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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN93

Prevailing Rate Systems; Definition of Johnson County, Indiana, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to define Johnson County, Indiana, as an area of application county to the Hardin-Jefferson, Kentucky, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there is one NAF FWS employee working in Johnson County, and the county is not currently defined to a NAF wage area.

DATES:

Effective date: This regulation is effective February 6, 2020.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 20, 2019, OPM issued a proposed rule (84 FR 49483) to define Johnson County, IN, as an area of application county to the Hardin-Jefferson, KY, NAF FWS wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Impact Analysis

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

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In Appendix D to subpart B amend the table by revising the wage area listing for the State of Kentucky to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage

* * * * *

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS

* * * * *

KENTUCKY

Christian-Montgomery

Survey Area

Kentucky:
Christian
Tennessee:
Montgomery

Area of Application. Survey area.

Hardin-Jefferson

Kentucky:
Hardin
Jefferson

Area of Application. Survey area plus:

Indiana:
Jefferson
Johnson
Martin
Kentucky:
Fayette
Madison
Warren

* * * * *

[FR Doc. 2019–28008 Filed 1–6–20; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–19–0048; SC19–922–1 FR]

Marketing Order Regulating the Handling of Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2019–2020 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *dalej.novotny@usda.gov* or *GaryD.Olson@usda.gov.* Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties of Washington. Part 922 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of apricot growers and handlers operating within the area of production.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate will be applicable to all assessable Washington apricots for the 2019–2020 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Committee members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The Committee discussed the assessment rate in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from $1.00 to $2.86 per ton of Washington apricots handled for the 2019–2020 and subsequent fiscal periods. The higher rate is necessary to fund the Committee's 2019–2020 fiscal period budgeted expenditures. Based on input received from growers at an annual meeting, the 2019 crop of Washington apricots is expected to be unusually low because of the effects of late season frost on budding orchard trees. The Committee believes that increasing the assessment rate will allow the Committee to fully fund its 2019–2020 budgeted expenses.

The Committee held a well-publicized meeting May 8, 2019, at which all interested parties were encouraged to participate in the discussions. However, the Order's quorum requirement was not met and the Committee was not able to conduct official business. The following day, the Committee voted by email and unanimously recommended 2019–2020 fiscal period expenditures of $8,325 and an assessment rate of $2.86 per ton of apricots handled. The 2019–2020 fiscal period budgeted expenses are unchanged from the prior year. The assessment rate of $2.86 is $1.86 higher than the $1.00 per ton rate currently in effect.

The Committee recommended the assessment rate increase due to the anticipated reduced production level in 2019 resulting from a late season frost that damaged the crop. The 2018 crop was also smaller than the Committee had anticipated by 2,036 tons, which resulted in the Committee using more funds from its financial reserve than expected.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include $4,000 for program management contract services provided by the Washington State Fruit Commission, $2,600 for annual audit and legal expenses, $1,300 for Committee travel and meeting expenses, and $425 for administrative expenses. In comparison, the aforementioned expense categories budgeted for the 2018–2019 fiscal period were the same amounts.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected apricot sales, and the amount of funds available in the authorized reserve. Expected income derived from handler assessments of $9,438 (3,300 tons of apricots at $2.86 per ton), would be adequate to cover budgeted expenses of $8,325 and contribute $1,113 to the Committee's financial reserve. Funds in the reserve (estimated to be $7,211 at the beginning of the 2019–2020 fiscal period) would be kept within the maximum permitted by § 922.142(a) by not exceeding the expenses of approximately one fiscal period.

The assessment rate established in this final rule will continue in effect

indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

The Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Act

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

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

There are approximately 315 growers and 13 handlers of apricots in the regulated production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

According to data from USDA's Market News Service, the 2018 season average f.o.b. price for Washington apricots was approximately $25.07 per carton. The Committee reported that the industry shipped 3,964 tons for the season, which equals approximately 528,533 cartons (3,964 tons at an approximate net weight of 15 pounds per carton). Using the number of handlers, and assuming a normal distribution, most handlers would have average annual receipts of less than $30,000,000 ($25.07 times 528,533 equals $13,250,331 divided by 13 handlers equals $1,019,256 per handler).

In addition, based on USDA National Agricultural Statistics Service data, the weighted average grower price for the 2018 season was $1,330 per ton of apricots. Based on grower price, shipment data, and the total number of Washington apricot growers, and assuming a normal distribution, the average annual grower revenue is below $1,000,000 ($1,330 times 3,964 tons equals $5,272,120 divided by 315 growers equals $16,737 per grower). Thus, most growers and handlers of Washington apricots may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2019–2020 and subsequent fiscal periods from $1.00 to $2.86 per ton of Washington apricots handled. The Committee unanimously recommended 2019–2020 fiscal period expenditures of $8,325 and the $2.86 per ton assessment rate. The assessment rate of $2.86 is $1.86 higher than the rate for the 2018–2019 fiscal period.

The Committee estimates that the industry will handle 3,300 tons of fresh, Washington apricots during the 2019–2020 fiscal period. Thus, the $2.86 per ton rate should provide $9,438 in assessment income. Income derived from handler assessments would be adequate to cover all budgeted expenses. In addition, the Committee anticipates adding $1,113 to its monetary reserve in the 2019–2020 fiscal period.

The major expenditures recommended by the Committee for the 2019–2020 fiscal period include $4,000 for program management contract services provided by the Washington State Fruit Commission, $2,600 for annual audit and legal expenses, $1,300 for Committee travel and meeting expenses, and $435 for administrative expenses. Those budgeted expenditures are unchanged from the previous fiscal period.

The higher assessment rate is necessary to cover all the Committee's 2019–2020 fiscal period budgeted expenditures and replenish its financial reserve. The Committee has had to draw from its monetary reserve to partially fund program activities during previous fiscal periods.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of $1.00 per ton. However, after grower input and discussions at its May 8, 2019, meeting, the anticipated crop was downgraded from 5,500 to 3,300 tons. This amount of production at the current assessment level of $1.00 per ton would not have generated enough revenue to fund the Committee's operations for the 2019–2020 fiscal period and allow it to maintain an adequate financial reserve. Based on estimated shipments, the recommended assessment rate of $2.86 per ton of apricots should provide $9,438 in assessment income. The Committee determined assessment revenue will be adequate to cover all budgeted expenditures for the 2019–2020 fiscal period and allow it to make a small contribution to its financial reserve. Reserve funds will be kept within the amount authorized in the Order.

A review of historical data and preliminary information pertaining to the upcoming fiscal period indicates that the average grower price for the 2019–2020 season should be approximately $800–$1,600 per ton of Washington apricots. Therefore, the estimated assessment revenue for the 2019–2020 marketing year as a percentage of total grower revenue will be between 0.18 and 0.36 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Washington apricot industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements will be necessary because of this action. Should any changes become necessary, AMS will submit them to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically

reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on October 2, 2019 (84 FR 52384). Copies of the proposed rule were provided to all Washington apricot handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 1, 2019, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2019, an assessment rate of $2.86 per ton is established for Washington apricots handled in the production area.

Dated: December 20, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–28056 Filed 1–6–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1103; Special Conditions No. 25–764–SC]

Special Conditions: Airbus Defense and Space Model No. C–295 Airplane; Non-Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Defense and Space (Airbus) Model C–295 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The Airbus Model C–295 airplane will have non-rechargeable lithium battery installations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on January 7, 2020. Send comments on or before February 21, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2019–1103 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *Nazih.Khaouly@faa.gov.*

SUPPLEMENTARY INFORMATION:

Emergency Locator Transmitters on Airplanes Operating in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 requires the FAA to consider the extent to which Alaska is not served by transportation modes other than aviation and to establish appropriate regulatory distinctions when modifying airworthiness regulations that affect intrastate aviation in Alaska. In consideration of this requirement and the overall impact on safety, the FAA does not intend to require non-rechargeable lithium battery special conditions for design changes that only replace a 121.5 megahertz (MHz) emergency locator transmitter (ELT) with a 406 MHz ELT that meets Technical Standard Order C126b, or later revision, on transport airplanes operating only in Alaska. This will support our efforts of encouraging operators in Alaska to upgrade to a 406 MHz ELT. These ELTs provide significantly improved accuracy for lifesaving services to locate an accident site in Alaskan terrain. The FAA considers that the safety benefits from upgrading to a 406 MHz ELT for

Alaskan operations will outweigh the battery fire risk.

Comments Invited

The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

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

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On September 19, 2014, Airbus applied to the European Union Aviation Safety Agency (EASA) for a change to EASA Type Certificate No. EASA.A.186 to install non-rechargeable lithium batteries in the Airbus Model C–295 airplane. On December 18, 2018, EASA forwarded an Airbus application to the FAA to validate this same change in the Model C–295 airplane for FAA Type Certificate No. A21NM. On November 22, 2019, Airbus filed for an extension to their original EASA application, which resulted in an agreement that December 20, 2014 be the new application date. The Airbus Model C–295 airplane is a twin engine, transport category airplane configured for freighter use, with a maximum takeoff weight of 46,300 pounds.

The FAA is issuing these special conditions for non-rechargeable lithium battery installations on the Airbus Model C–295 airplane. The current battery requirements in title 14, Code of Federal Regulations (14 CFR) part 25 are inadequate for addressing an airplane with non-rechargeable lithium batteries.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model C–295 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A21NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model C–295 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model C–295 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model C–295 airplane will incorporate the following novel or unusual design features:

The Airbus C–295 airplane will have non-rechargeable lithium battery installations.

Discussion

The FAA derived the current regulations governing installation of batteries in transport category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the recodification of CAR 4b that established 14 CFR part 25 in February 1965. This recodification basically reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an ELT installation demonstrated unanticipated failure modes. The United Kingdom's *Air Accidents Investigation Branch Bulletin S5/2013* describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication management units, and remote-monitor electronic line-replaceable units;
- Cabin safety, entertainment, and communications equipment, including emergency locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;
- Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

- *Internal failures:* In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.
- *Fast or imbalanced discharging:* Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

• *Flammability:* Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 also requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

Special condition nos. 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the battery designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special condition nos. 3, 7, and 8 are self-explanatory.

Special condition no. 4 makes it clear that the flammable-fluid fire protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate, due to any failure of it or its individual cells. The means of meeting special condition nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments. Those regulations remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model C–295 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are not applicable to changes to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or to relocate the installation to improve the safety of the airplane and occupants. Previously certified non-rechargeable lithium battery installations, as used in this paragraph, are those installations approved for certification projects applied for on or before the effective date of these special conditions. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation. These special conditions are also not applicable to unchanged, previously certified non-rechargeable lithium battery installations that are affected by a change in a manner that improves the safety of its installation. The FAA determined that these exclusions are in the public interest because the need to meet all of the special conditions might otherwise deter these design changes that improve safety.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Defense and Space Model C–295 airplanes.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (4) at Amendment 25–123, or § 25.1353(c)(1) through (4) at earlier amendments, each non-rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Have a failure-sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.
8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a ''battery'' and ''battery system'' are referred to as a battery.

Issued in Des Moines, Washington, on December 20, 2019.

Mary A. Schooley,

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

[FR Doc. 2019–28013 Filed 1–6–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–504]

Schedules of Controlled Substances: Placement of Solriamfetol in Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, an interim final rule with request for comments published in the **Federal Register** on June 17, 2019, placing solriamfetol (2-amino-3-phenylpropyl carbamate), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV of the Controlled Substances Act. With the issuance of this final rule, the Drug Enforcement Administration maintains solriamfetol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV of the CSA.

DATES: The effective date of this final rulemaking is January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

The Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89) was signed into law on November 25, 2015. This law amended the Controlled Substances Act (CSA) and states that in cases where the Drug Enforcement Administration (DEA) receives notification from The Department of Health and Human Services (HHS) that the Secretary has approved an application under section 505(c) of the Federal Food, Drug, and Cosmetic Act (FDCA), the DEA is required to issue an interim final rule, with opportunity for public comment and to request a hearing, controlling the drug not later than 90 days after receiving such notification from HHS and subsequently to issue a final rule. 21 U.S.C. 811(j). When controlling a drug pursuant to section 811(j), the DEA must apply the scheduling criteria of subsections 811(b), (c), and (d) and section 812(b). 21 U.S.C. 811(j)(3).

Solriamfetol (2-amino-3-phenylpropyl carbamate) is a new molecular entity with central nervous system (CNS) stimulant properties. Solriamfetol primarily acts as a dopamine and norepinephrine reuptake inhibitor and does not bind to any other receptors that are typically associated with abuse, such as opioid or cannabinoid receptors, GABAergic, and other ion channels. On December 20, 2017, Jazz Pharmaceuticals, Inc. (Sponsor) submitted a new drug application (NDA) to the Food and Drug Administration (FDA) for SUNOSI (solriamfetol) 75 and 150 mg oral tablets. On March 19, 2019, DEA received from HHS a scientific and medical evaluation document (dated March 8, 2019) prepared by the FDA related to solriamfetol. Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of solriamfetol, along with HHS' recommendation to control solriamfetol under schedule IV of the CSA. Subsequently, on March 20, 2019, the DEA received notification that the FDA, on that same date, approved the NDA for SUNOSI (solriamfetol), under section 505(c) of the FDCA, to improve wakefulness in adult patients with excessive daytime sleepiness associated with narcolepsy or obstructive sleep apnea (OSA).

On June 17, 2019, the DEA published an interim final rule [84 FR 27943] to make solriamfetol (including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible) a schedule IV controlled substance. Interested persons were provided a 30 day comment period in which to submit comments on this rulemaking in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). In addition, interested persons were provided an opportunity to file a request for hearing or waiver of hearing pursuant to 21 U.S.C. 811(j)(3) and 21 CFR 1308.44. The deadline for submitting comments or requests for hearing/waiver of hearing was July 17, 2019. The DEA received one comment and did not receive any requests for hearing or waiver of hearing.

Comments Received

In response to the interim final rule, the DEA received one comment. The commenter indicated that all clinical studies on solriamfetol are supported by the sponsor of the NDA for solriamfetol and thus subject to conflicts of interests. This commenter further stated that long-term adverse health effects (including adverse effects on the cardiovascular system) of solriamfetol have not been studied and such effects need to be considered.

DEA Response: The comment relating to the alleged conflicts of interests as a result of financial support of the clinical studies by the sponsor of the NDA and the long-term toxicity of solriamfetol are related to the FDA approval process (such as weighing the benefits versus risks of approving the drug for the proposed indication) and are outside of the scope of this rulemaking because they do not relate to the factors determinative of control of a substance (21 U.S.C. 811(c)). The DEA notes that the FDA approved an NDA for solriamfetol and provided the DEA with a scheduling recommendation for solriamfetol. The scheduling recommendation by HHS and its notification to DEA regarding the FDA approval of the NDA initiated the DEA review and scheduling action. As stated in the interim final rule, after careful consideration of data from preclinical and clinical studies, the DEA concurred with the HHS recommendation that solriamfetol has abuse potential comparable to other schedule IV stimulants and therefore supported—and continues to support through this final rule—placement of solriamfetol in schedule IV under the CSA.

Based on the rationale set forth in the interim final rule, the DEA adopts the interim final rule, without change.

Requirements for Handling Solriamfetol

As indicated above, solriamfetol has been a schedule IV controlled substance by virtue of the interim final rule issued by DEA in June 2019. Thus, this final rule does not alter the regulatory requirements applicable to handlers of solriamfetol that have been in place since that time. Nonetheless, for informational purposes, we restate here those requirements. Solriamfetol is subject to the CSA's schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including, but not limited to, the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) solriamfetol, or who desires to handle solriamfetol, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and

in accordance with 21 CFR parts 1301 and 1312. Any person who intends to handle solriamfetol, and is not registered with the DEA, must submit an application for registration and may not handle solriamfetol, unless the DEA approves that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of stocks.* Any person who obtains a schedule IV registration to handle solriamfetol but who subsequently does not desire or is not able to maintain such registration must surrender all quantities of solriamfetol, or may transfer all quantities of solriamfetol to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* Solriamfetol is subject to schedule III–V security requirements and must be handled and stored in accordance with 21 CFR 1301.71–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of solriamfetol must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of solriamfetol was required to keep an inventory of solriamfetol on hand, as of June 17, 2019, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for solriamfetol, or products containing solriamfetol, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for solriamfetol or products containing solriamfetol must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule IV controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of solriamfetol may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act and the CSA.

9. *Importation and Exportation.* All importation and exportation of solriamfetol must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving solriamfetol not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

This final rule, without change, affirms the amendment made by the interim final rule that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811 provides that in cases where a new drug is (1) approved by HHS and (2) HHS recommends control in CSA schedule II–V, the DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause. The DEA issued an interim final rule on June 17, 2019 and solicited public comments on that rule. Section 811 further states that after giving interested persons the opportunity to comment and to request a hearing, ''the Attorney General shall issue a final rule in accordance with the scheduling criteria of subsections (b), (c), and (d) of this section and section 812(b) of'' the CSA. 21 U.S.C. 811(j)(3). The DEA is now responding to the comment submitted by the public and issuing the final rule, in conformity with the APA and the procedure required by 21 U.S.C. 811.

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

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This final rule is not an Executive Order 13771 regulatory action pursuant to Executive Order 12866 and OMB guidance.[1]

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of Executive Order 13132. The final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. Under 21 U.S.C. 811(j), the DEA was not required to publish a general notice of proposed rulemaking prior to this final rule. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

[1] Office of Mgmt. & Budget, Exec. Office of The President, Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 Titled ''Reducing Regulation and Controlling Regulatory Costs'' (Feb. 2, 2017).

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Congressional Review Act

This final rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ Accordingly, the interim final rule amending 21 CFR part 1308, which published on June 17, 2019 (84 FR 27943), is adopted as a final rule without change.

Dated: December 17, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–27955 Filed 1–6–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

[201A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF46

List of Courts of Indian Offenses; Future Publication of Updates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises one section of our regulations to provide that the current list of areas in Indian Country with Courts of Indian Offenses (also known as CFR Courts) will be published and updated in the **Federal Register** and on the Bureau of Indian Affairs (BIA) website. Currently, that section of the Code of Federal Regulations, itself, lists the areas in Indian Country with CFR Courts, requiring a rulemaking each time a court is added or deleted. Allowing for publication in the **Federal Register**, in lieu of a rulemaking, will better keep Tribal members and the public updated on the current status of the Courts of Indian Offenses.

DATES: This rule takes effect on January 7, 2020.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION: Generally, Courts of Indian Offenses operate in those areas of Indian country where Tribes retain jurisdiction over Indians that is exclusive of State jurisdiction, but where Tribal courts have not been established to fully exercise that jurisdiction. The Code of Federal Regulations, at 25 CFR 11.100, currently lists each Tribe for which Courts of Indian Offenses have been established.

On occasion, a Court of Indian Offenses is established or re-established or, alternatively, a Court of Indian Offenses ceases operation because BIA and a Tribe enter into a contract or compact for the Tribe to provide judicial services or the Tribe establishes a court system that meets regulatory requirements. Each time one of these changes occurs, the list of Courts of Indian Offenses must be updated for public transparency. Because the list of Courts of Indian Offenses is directly in § 11.100, a rulemaking is required to change the list. During the time it takes to conduct a rulemaking, the list in the Code of Federal Regulations is not accurate.

On July 23, 2019, BIA published a proposed rule to remove the list of CFR Courts from the regulations and instead require the BIA to publish the current list and any updates to the current list in the **Federal Register** and on its website. 84 FR 35355. During the public comment period, BIA received one comment which suggested requirements related to Tribal courts, which are not relevant to this rulemaking. Therefore, BIA made no changes to the proposed rule.

This final rule allows enables BIA to keep the list of CFR Courts updated and accurate, improving transparency for Tribal members and the public who wish to know what areas in Indian Country have CFR Courts established. The rule also revises § 11.104 to clarify that the list would no longer be published directly in § 11.100, but rather would be published in accordance with the directions in § 11.100 to publish in the **Federal Register** and on the BIA website.

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

This action is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

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

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on Federally recognized Indian Tribes that will result from this rulemaking because BIA consults on an individual basis with each Tribe for which there is a change in the status of their CFR Court.

J. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. There is no information collection requiring OMB approval associated with this rule. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

M. Determination To Issue an Final Rule With Immediate Effective Date

We are publishing this final rule with an immediate effective date, as allowed under 5 U.S.C. 553(d)(3). Good cause for an immediate effective date exists because the delay in publishing this rule would inhibit access to justice for Tribal members and likely obstruct speedy trial rights for members of those Tribes coming under the jurisdiction of the CFR court.

List of Subjects in 25 CFR Part 11

Courts, Indians-law.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends 25 CFR part 11 as follows:

PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

■ 1. The authority for part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

■ 2. Revise § 11.100 to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) A list of the areas in Indian Country where Courts of Indian Offenses are established is available on the Bureau of Indian Affairs website (*www.bia.gov*) and is published periodically in the **Federal Register**.

(b) The Director, Bureau of Indian Affairs, will maintain on the Bureau of Indian Affairs website (*www.bia.gov*) an updated list of the areas in Indian Country where Courts of Indian Offenses are established and, upon any change to the list, will publish notice of the change in the **Federal Register** with an updated complete list.

■ 3. Revise § 11.104(a) introductory text to read as follows:

§ 11.104 When does this part apply?

(a) The regulations in this part continue to apply to each area in Indian Country listed in accordance with § 11.100 until either:

* * * * *

Dated: December 4, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–27997 Filed 1–6–20; 8:45 am]

BILLING CODE 4337–15–P

Proposed Rules

Federal Register
Vol. 85, No. 4
Tuesday, January 7, 2020

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AD37

District Financial Reporting

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes amending the regulation governing how a Farm Credit bank presents information on its related associations when preparing annual bank financial statements on a stand-alone basis. We propose to provide an additional presentation option that would allow the related association financial information to be in a supplement.

DATES: You may send us comments on or before March 9, 2020.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our website at *http://www.fca.gov.* Once you are on the website, click inside the ''I want to. . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT:

Technical information: Joi Neal, Senior Accountant, Office of Regulatory Policy, (703) 883–4223, TTY (703) 883–4056.

Legal information: Laura McFarland, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of the proposed rule is to improve shareholder access to district financial information by providing an additional method of presenting financial information on a bank's related associations to those banks preparing annual financial statements on a stand-alone basis.

II. Background

FCA regulation § 620.2(g) currently provides a Farm Credit bank with two alternatives for reporting information on its related associations within the bank's Annual Report to Shareholders. The first alternative, located in § 620.2(g)(1), allows each bank to issue a combined or consolidated report on the Farm Credit bank and its related associations. This presentation requires using a footnote disclosure that summarizes the bank's ''stand-alone'' balance sheet and income statement. The second alternative, located in § 620.2(g)(2), allows issuance of a bank's annual financial statements on a stand-alone basis, where limited financial information on the bank's related associations is placed in a footnote. This footnoted information may be unaudited but must include a condensed statement of condition and statement of income for the related associations. The § 620.2(g)(2) alternative was primarily added to the regulation in recognition of the creation of the Agricultural Credit Bank (ACB).[1] There is only one ACB in the System and it has both association stockholders and cooperative entity stockholders, requiring special consideration in reporting presentations to ensure the two groups of stockholders understand the information being disclosed.

When adding the § 620.2(g)(2) alternative in 1997, FCA explained that because both methods of presenting combined bank and related association financial information were consistent with Generally Accepted Accounting Principles (GAAP) provisions at the time, FCA made both alternatives available to all the banks.[2] However, whichever presentation is used, it must both comply with GAAP and provide the most meaningful disclosure to shareholders. Thus, each year Farm Credit banks may select from either reporting presentation when issuing their annual reports as long as it complies with GAAP and serves to provide the most meaningful disclosure to bank shareholders.

In November 2018, all four of the Farm Credit banks jointly requested that FCA amend § 620.2(g)(2) by allowing disclosure of related association financial information in a separate supplement to a bank's Annual Report to Shareholders instead of through use of a footnote within the annual report. We evaluated the merits of the banks' request and concluded permitting use of a supplement instead of a footnote in a bank's Annual Report to Shareholders could be beneficial so initiated this rulemaking. Nothing in this proposed rulemaking affects quarterly reporting requirements.

III. Section-by-Section Analysis

FCA has consistently stated that the relationship between a bank and its related associations is an important one that warrants discussion in the financial statements and reports provided by the banks. Further, we believe that a bank's shareholders need financial information not just on the bank but also on the

[1] The ACB structure resulted from the merger of the Title III Banks for Cooperatives and a Farm Credit Bank, resulting in the merged entity known as CoBank, ACB.

[2] *See* 62 FR 15089, March 31, 1997.

bank's related associations to properly evaluate the operations and financial position of the district which the bank funds.

A. Use of a Supplement When Issuing Bank-Only Annual Financial Statements

We propose revising § 620.2(g)(2) to allow a Farm Credit bank to use either a footnote or a supplement to provide financial information on its related associations when preparing the bank's annual financial statements on a stand-alone basis. Specifically, we propose adding regulatory language to § 620.2(g)(2) that would allow Farm Credit banks issuing the bank's financial statements on a stand-alone basis within its Annual Report to Shareholders to provide financial information on their related associations either through footnote or a supplement if such a presentation is both allowable under GAAP and serves as the most meaningful disclosure presentation for the bank's shareholders. We believe permitting use of a supplement could facilitate shareholders locating and understanding district information. However, to preserve flexibility in how the annual report of a bank is presented, we are not proposing to remove the existing method of reporting information on a bank's related associations within a footnote.

As proposed, all information provided through use of either a footnote or a supplement would still be considered part of the bank's annual report and therefore subject to the same accuracy, distribution, and internal control requirements of the annual report itself. We are proposing language specifying this to ensure the use of a supplement is not considered a separate, financial report. Further, we are specifically proposing that if a supplement presentation is used, it be distributed along with the bank's annual report. We do not believe allowing separate distribution of the supplement would achieve the stated purpose of facilitating shareholder comprehension of the financial condition of the bank and its district operations, including those of its related associations. All the financial information needs to be available to shareholders at the same time to accomplish that goal. Also, we believe the proposed requirement to have the supplement distributed along with the annual report information that it addresses will have little financial consequence to the bank's annual report distribution costs. A Farm Credit bank using the § 620.2(g)(2) presentation method is allowed under FCA regulation § 620.4(b)(1) to distribute its annual report exclusively through website postings, absent a significant event posing a material effect on the bank's related associations.[3]

We also propose that if a supplement is used that the supplement be referenced within the body of the bank's annual report. We propose requiring a reference to the supplement within the annual report to ensure shareholders know where the additional information is available. We believe this proposed requirement is in keeping with recognizing the supplement is a part of the annual report and, just as the report would direct the reader to a footnote or appendix, it should direct the reader to the supplement.

B. Reporting District Information When Issuing Bank-Only Annual Financial Statements

We propose adding language to § 620.2(g)(2) that the summary financial information on associations included as part of the bank's annual report be presented on a combined basis with the bank's information. FCA believes that shareholder and investors use the combined financial information to evaluate the operations and financial position of the district. Proposed changes to § 620.2(g)(2) would facilitate this use by requiring combined financial information of each bank and its related associations. Although the supplemental district information required by § 620.2(g)(2) is not a full set of financial statements, we believe the proposed condensed statements will provide information that is meaningful to stakeholders and investors, without providing the extensive detail captured in the Systemwide audited reports.

We are also proposing language to clarify that the current § 620.2(g)(2) option for banks to issue the related associations' financial information on an unaudited basis extends to all the financial information provided for the related associations, whether in a footnote or the proposed supplement. Currently, some may believe only the condensed statements of income and condition named in the rule text may be unaudited. It is our intent that the proposed language removes any perceived ambiguities in the existing rule text of § 620.2(g)(2) regarding which information may be unaudited. This clarification would not affect the existing requirement that the footnote or the proposed supplement disclose the basis of presentation if different from the presentation of the bank-only annual financial statements.

[3] *See* 66 FR 14299, dated March 12, 2001.

Additionally, we propose amending the § 620.2(g)(2) regulatory text to emphasize that the financial information provided by a bank on its related associations (when preparing annual bank financial statements on a stand-alone basis) is not limited to the named condensed statements of income and condition. We propose this change because we believe additional information is, and should be, provided as part of the bank's annual report. Examples of district information that we would expect to see in either the footnote or proposed supplement of a bank's annual report include, but are not limited to, the following:

- The nature of business relationships between System entities within the bank's district;
- Summary of District financial information for the preceding three years;
- Summary of district loan portfolio, discussing concentration risks and significant changes in credit quality, nonperforming assets, past due loans, loan loss allowance and reserves, and loan aging analysis within the district as compared to previous years.
- A description of combined association investments;
- Districtwide capital levels and regulatory ratios;
- Summary of key districtwide income statement line items and profitability measures; and
- A description of any qualified and nonqualified districtwide defined pension plan(s), including each plan's current funding status, accrued benefit obligation and projected benefit obligation, and key actuarial assumptions.

We believe the proposed change, along with the above list of items, will provide meaningful transparency on the financial condition of each Farm Credit District.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its related associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble the FCA proposes to amend 12 CFR part 620 as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 1. The authority citation for part 620 is revised to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—General

■ 2. Amend § 620.2 by revising paragraph (g) to read as follows:

§ 620.2 Preparing and filing reports

* * * * *

(g) Each Farm Credit institution shall present its reports in accordance with generally accepted accounting principles and in a manner that provides the most meaningful disclosure to shareholders.

(1) Any Farm Credit institution that presents its annual and quarterly financial statements on a combined or consolidated basis shall also include in the report the statement of condition and statement of income of the institution on a stand-alone basis. The stand-alone statements may be in summary form and shall disclose the basis of presentation if different from accounting policies of the combined or consolidated statements.

(2) Any Farm Credit bank that prepares its annual financial statements on a stand-alone basis must also provide financial information on its related associations as part of its annual report. The information on the related associations must be presented on a combined basis with the bank's financial information and, at a minimum, include both a condensed statement of condition and a statement of income. The combined bank and association financial information may either be in the footnotes of the bank's annual report or located in a supplement to the report. All combined information provided through either a footnote or a supplement will be considered part of the bank's annual report, subject to the same annual report preparation, distribution, and accuracy requirements of part 620.

(i) The combined bank and association financial information may be unaudited but must disclose the basis of presentation if different from accounting policies used for the bank-only financial statements.

(ii) If the combined bank and association financial information is presented in the form of a supplement, the supplement must be referenced within the bank's annual report and accompany the annual report when distributed.

* * * * *

Dated: December 17, 2019.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2019–27573 Filed 1–6–20; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 19–311, 13–249; FCC 19–123; FRS 16313]

All-Digital AM Broadcasting, Revitalization of the AM Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communication Commission proposes to amend its rules to allow AM broadcasters to use all-digital transmissions. All-digital AM broadcasting has the potential to provide a more reliable and robust radio signal than analog, as well as auxiliary digital services.

DATES: Comments may be filed on or before March 9, 2020 and reply comments may be filed on or before April 6, 2020. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 9, 2020.

ADDRESSES: You may submit comments, identified by MB Docket No. 19–311, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743. U.S. Postal Service First Class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Deputy Division Chief, Media Bureau, Audio Division (202) 418–2739; Christine Goepp, Attorney Advisor, Media Bureau, Audio Division, (202) 418–7834. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket Nos. 19–311, 13–249; FCC 19–123, adopted on November 22, 2019, and released on November 25, 2019. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/ndbedp.*

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* in document FCC 19–123 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. Currently, the AM broadcasting service suffers from interference and reception issues caused in part by increased emissions from various consumer electronic devices as well as broadcast sources. As a result, many AM stations are constrained to low-fidelity voice formats such as talk radio. Under the current rules, AM and FM stations are permitted to broadcast using either an analog signal or the hybrid analog and digital system licensed by Xperi Corporation under the brand name HD Radio. Although many FM stations have converted to hybrid broadcasting, various technical and other issues have prevented the widespread adoption of hybrid broadcasting by AM stations. Many AM stations believe that all-digital broadcasting represents a unique opportunity for AM broadcasters to improve their ability to reach the listening public and thus may be the single greatest hope for AM revitalization. All-digital AM broadcasting has the potential to improve signal ''robustness''—or resistance to interference and other impairments—as well as the ability to transmit auxiliary information to accompany the main audio programming.

2. To test the effectiveness of all-digital AM broadcasting, the not-for-profit industry organization NAB Labs (now PILOT) conducted a series of AM all-digital performance field tests at nine radio stations, followed by laboratory testing of potential all-digital interference. These tests were summarized in two technical papers presented at the 2015 and 2016 NAB Broadcast Engineering Conference Proceedings and are available for review and comment in MB Docket 19–311. In addition, one AM station, WWFD(AM), Frederick, Maryland, has been operating with an all-digital signal under an experimental license for more than a year. An analysis of the WWFD experiment was presented at the 2019 NAB Broadcast Engineering and Information Technology Conference and is available in MB Docket 19–311.

3. The data on record indicate that all-digital broadcasting has the potential to benefit AM stations and their listeners, particularly regarding audio quality and listenable signal coverage area. However, none of the all-digital test results available to date have been evaluated by the National Radio Systems Committee (NRSC), although all-digital operation is included in NRSC–5–D, an NRSC standard. Moreover, the record suggests that there may be certain areas that warrant further investigation, such as compliance with applicable power limits and the effects of noise on useful all-digital coverage area. Therefore, the Commission seeks comment on what additional data, if any, would be helpful in evaluating the full benefits and potential risks and/or costs of all-digital broadcasting. It invites commenters to place any other relevant data or studies that might be or become available in the record in this proceeding for public review.

4. In the *NPRM,* the Commission proposes to amend the rules to allow AM stations to broadcast an all-digital signal using the HD Radio in-band on-channel (IBOC) mode known as MA3. In the all-digital MA3 mode, as opposed to the currently authorized hybrid MA1 mode, there is no modulated analog carrier signal (although there is an unmodulated center carrier that serves as a reference point for the correct tuning and operation of the digital sidebands) and the digital carriers are moved toward center frequency with increased power, resulting in a more robust digital signal that is less susceptible to adjacent channel interference. An analog receiver cannot receive an all-digital MA3 signal.

5. *Audio quality.* The Commission tentatively concludes that all-digital operation would improve the audio quality of AM broadcasts and seeks comment on this conclusion. The Commission notes that, compared to hybrid mode, in all-digital mode all the modulated transmitter power is dedicated to the digital carriers, in theory resulting in a significantly more robust reception even in the presence of a stronger analog co-channel signal. The Commission seeks comment on whether the data on record establish that all-digital MA3 operation will provide an improved, consistently high-quality listener experience and relief from interference and other signal impairments. Would all-digital AM operation provide better audio quality than analog or hybrid AM operation? Would all-digital operation provide listenable signals even at relatively low signal strength levels? What is likely to be the listener experience at the outer listenable fringes of the all-digital signal coverage, particularly where a co-channel signal is encountered? Was there a strong co-channel interferer in the WWFD experiment that might have affected the range of the listenable signal? How detrimental to an all-digital signal would interference from power lines, other stations, or other sources be? Are digital receivers better equipped to receive a listenable AM signal than their current analog counterparts? Would all-digital operation provide AM broadcasters a greater range of programming choices, including music formats?

6. *Auxiliary data.* The Commission tentatively concludes that all-digital operation would provide AM broadcasters the opportunity to provide additional services such as stereo audio, song and artist identification, as well as emergency notifications that include text and images (such as missing person photos or emergency evacuation maps). However, it notes that NAB Labs did not report on auxiliary data transmission and that the WWFD secondary and tertiary carriers—which transmit program metadata such as song and artist information—are not always reliable. Therefore, the Commission seeks comment on whether all-digital operation, as a practical matter, would put AM stations on a more level playing field with other broadcast services that can broadcast music formats complete with program metadata. It also seeks comment on how AM broadcasters might use their additional digital capacity in other ways. The Commission asks whether it should provide flexibility for AM broadcasters to provide auxiliary services, while requiring that all digital broadcasters transmit a single stream of free audio programming comparable in audio quality to a standard analog broadcast. How are all-digital broadcasters likely to use such flexibility? How do hybrid AM broadcasters currently use their auxiliary capacity? Are secondary and tertiary digital carriers likely to be primarily used for metadata relating to the primary audio broadcast or are there other possible applications? Specifically, is there the potential in the AM service for future multicast channels?

7. *Signal coverage.* The Commission tentatively concludes, based on the data on record, that an all-digital signal offers the potential of greater useable signal coverage compared to existing AM stations—whether analog or hybrid. NAB Labs field testing demonstrated reliable all-digital daytime reception beyond the subject stations' analog predicted 0.5 mV/m contour and generally out to the 0.1 mV/m contour or beyond, and nighttime reception generally reliable to or beyond the test stations' analog predicted night interference-free (NIF) contours. WWFD reports similar results: Reliable signal coverage to its 0.5 mV/m predicted contour (including critical hours), with reception up to its 0.1 mV/m contour under ideal circumstances, with nighttime reception to WWFD's NIF

contour. The Commission seeks comment on these test coverage results and its tentative conclusion. It also seeks comment on whether to monitor whether an individual station's digital coverage corresponds to its previous analog coverage, and if not, whether the Commission should take steps to ensure that the station's digital coverage is not significantly less than its previous analog coverage.

8. *Energy efficiency.* The Commission seeks comment on whether all-digital operation would offer greater energy efficiency and thus utility cost savings for AM broadcasters. How much power would an all-digital AM HD Radio system use compared to analog AM? Would all-digital operation lower power costs for broadcasters compared to analog or hybrid coverage of the same area?

9. *Spectrum efficiency.* The Commission tentatively concludes that all-digital operation would help realize the full potential of digital technology for spectrum efficiency and seeks comment on this conclusion. Within the current AM spectrum allocations and analog emissions mask, all-digital transmission may use 10 or 20 kHz of bandwidth, depending on configuration. The Commission seeks comment on the spectrum efficiency of the all-digital mode of HD Radio transmission and the implications of using the current 20 kHz AM channel assignments in all-digital mode.

10. *Interference.* The Commission seeks comment on whether all-digital operation fits within the existing framework for interference protection or whether there are concerns unique to all-digital broadcasting that should be accounted for in the Commission's rules governing both groundwave and skywave protection of AM stations. A number of commenters express concern that all-digital operation could cause interference to co- and adjacent-channel analog stations. In this respect, the Commission observes that an all-digital signal has fewer emissions at the outer limits of the occupied bandwidth and therefore should present fewer interference concerns in general than the hybrid mode. It seeks comment on this determination.

11. The Commission tentatively concludes that co-channel interference is more of a concern with all-digital broadcasting than adjacent channel interference. By design, all-digital AM is less likely to cause interference to adjacent channel signals than hybrid operation, due to the relocation of the digital carriers to the center of the channel. The Commission tentatively agrees with NAB Labs that all-digital operation is not likely to create additional interference to adjacent channel signals. It seeks comment on this tentative conclusion and on the likelihood of all-digital adjacent channel interference. Would all-digital operation cause less adjacent-channel interference than hybrid operation?

12. The Commission seeks comment on co-channel interference and asks for comments addressing the co-channel interference studies conducted by NAB Labs. This testing indicated that all-digital interference typically degrades analog signal-to-noise ratios approximately 10.5 dB more than an equal amount of analog interference. However, the NAB Labs field testing of one subject station, WSWW, indicated that impairment to analog co-channel stations was essentially equivalent irrespective of whether WSWW was operating with an analog or an all-digital AM signal. The Commission seeks comment on these lab results and on the potential impact of all-digital signals on co-channel analog stations both in and outside their protected contours.

13. The Commission notes that when it authorized hybrid operations, it accepted a certain amount of interference potential (in that case, mostly adjacent-channel) outside other stations' protected contours in return for the benefits of digital operation. It asks whether this reasoning apply equally to the potential for co-channel interferences as a result of all-digital operation.

14. The Commission seeks comment on ways to minimize the likelihood of co-channel interference from all-digital stations and to resolve impermissible interference if it occurs. For currently-authorized AM hybrid stations, if interference is anticipated or occurs, the licensee may adjust the power level of the primary digital subcarriers downward by as much as 6 dB. If actual interference occurs within another station's protected service contour and the respective licensees are unable to reach agreement on a voluntary power reduction, the Commission staff may order power reductions for the primary digital carriers or, in extreme cases, termination of IBOC operation. Is this streamlined procedure effective; and, if so, should it govern claims of all-digital interference within the protected contours of the affected station? Should the Commission consider adopting additional protections and/or complaint procedures to allow affected stations to object to all-digital interference even outside their protected contours? How can it best gather information regarding instances of excessive interference if a future power reduction is required? What is the appropriate balance between protecting reception of analog stations outside their protected contours and maximizing all-digital coverage?

15. The Commission seeks comment on the potential of digital-to-digital interference, including whether co-channel interference would be reduced if all AM stations became digital. It also seeks comment on whether the increased power and bandwidth occupancy of the digital carriers might affect adjacent channel digital transmissions. What would be the impact of all-digital stations on hybrid stations? Would all-digital operation be more likely to affect co-channel all-digital stations but not adjacent hybrid stations?

16. Finally, the Commission seeks comment on whether to allow AM all-digital operation at night. It notes that the Commission did not initially approve nighttime hybrid broadcasting due to the increased potential for interference through skywave propagation. NAB Labs did not evaluate potential nighttime interference by all-digital stations; however, it determined that all-digital nighttime reception was reliable to or beyond most test stations' analog predicted NIF contours. In addition, WWFD's experimental license authorizes it to operate at night. The Commission seeks comment on the effects of nighttime skywave on interference among multiple MA3 all-digital signals and between digital and analog co-channel signals. How would all-digital operation affect potential interference caused by skywave propagation? What additional study and testing might be needed to assess AM all-digital performance under nighttime propagation conditions?

17. *Operating rules.* The Commission tentatively concludes that: (1) The allowed operating power (nominal power) limits for AM stations, as set out in 47 CFR 73.21 and in individual station authorizations, should be applied to the unmodulated analog carrier signal for all-digital AM stations; and (2) the emissions mask specified by HD Radio (HD Radio Emissions Mask), which is incorporated by reference into the NRSC–5–D Standard, should determine the allowable power for the digital sidebands. It seeks comment on this tentative conclusion, stating that this approach minimizes the interference potential of all-digital stations by limiting an all-digital station's unmodulated carrier to the same maximum power levels as hybrid and analog stations and ensuring that its digital emissions will not exceed the existing analog emissions mask. The HD

Radio Emissions Mask is designed to conform to the analog AM emission mask specified in 47 CFR 73.44, which is integrally related to the Commission's allocations rules, which in turn rest on certain assumptions concerning tradeoffs between coverage and interference. The Commission asks whether reliance on the HD Radio Emissions Mask for digital sidebands would preserve its existing allocations priorities. Should the Commission adjust all-digital power limits in an effort to replicate existing analog coverage, and if so, what would be the appropriate power levels? If it were to adjust such power limits, how would that impact other stations, including analog and hybrid stations? The Commission explains that protected service contours reflect a balance between providing adequate service areas for each station and maximizing the potential number of station assignments. How should this balance be struck as the AM service transitions to an all-digital environment? Would a change in nominal power limits encourage or discourage digital adoption?

18. The Commission seeks comment on the ability of all-digital stations to comply with the proposed emissions mask requirements. The nine radio stations that NAB Labs tested in all-digital mode had some difficulty meeting the HD Radio Emissions Mask limits. For this reason, NAB Labs suggests that a possible future study regarding emissions compliance could be appropriate. The Commission seeks comment on whether these compliance issues also implicate the test stations' ability to comply with 47 CFR 73.44. In general, are there specific characteristics of all-digital AM operation, particularly using existing AM facilities, that pose challenges to emissions mask compliance, and if so, how should these issues be approached?

19. The Commission seeks comment on the advisability of mandating compliance with the HD Radio Emissions Mask, given that the NRSC has not evaluated it and the NAB Labs testing indicated that all-digital stations might have difficulty complying with it. The Commission asks whether it should wait to approve all-digital operation until the HD Radio Emissions Mask as it relates to MA3 all-digital operation has been evaluated and/or formally endorsed by the NRSC.

20. Finally, the Commission seeks comment on how signal power should best be measured in all-digital broadcasting mode, for the purposes of compliance with 47 CFR 73.44, 73.51, 73.1590, and the HD Radio Emissions Mask. What procedures and equipment would give the most accurate results? Should the Commission specify what types of measurements will be acceptable to demonstrate compliance with the Commission's rules? Due to the peak-to-average ratio of the MA3 mode, which is significantly higher than that of standard amplitude modulation, the power level meter on some transmitters may not read accurately. Do the majority of digital transmitters include measurement tools capable of accurately monitoring compliance with the proposed operating power and emissions mask limitations?

21. The Commission tentatively concludes that it should impose a 1 Hz carrier frequency tolerance standard on AM stations to improve all-digital reception. NAB Labs reports that undesired analog signals that are further off-frequency (*e.g.,* 2 and 5 Hz) were found to have a greater impact on the all-digital signal. In contrast, if desired and undesired carriers are locked or within 1 Hz of one another, the undesired analog signal amplitude can be as great as 6 dB less than the desired all-digital signal before any degradation is detected in the digital audio signal. The proposed standard is a significant improvement over the current 26 dB desired-to-undesired (D/U) interference standards for analog AM. The Commission seeks comment on the proposed benefits and feasibility of a 1 Hz carrier frequency tolerance standard. What would be the burden for existing analog AM stations to comply with the stricter frequency tolerance standard as proposed?

22. The Commission proposes that any station commencing all digital operation must inform the Commission using substantially the same notification procedure currently applicable to hybrid operations (*i.e.,* electronically filing an FCC Form 335–AM within ten days of commencing all-digital operation). It seeks comment on this proposal. The Commission tentatively concludes that it should likewise be notified when an all-digital station reverts to analog operation, because—unlike a hybrid station simply dropping the digital portion of its signal—conversion from all-digital to analog operation would introduce a new signal that was previously absent. It seeks comment on this tentative conclusion.

23. The Commission tentatively concludes that all-digital AM stations should be subject to the 47 CFR 73.1250 requirement for all free digital stations to participate in the nationwide emergency alert system (EAS). As noted above, all-digital stations are anticipated to cover the same broadcast area with a clearer, more listenable signal—including during emergencies—and will be required to broadcast EAS alerts. Nonetheless, analog-only listeners would only receive EAS alerts from local stations that broadcast an analog signal. The Commission seeks comment on the effect of a voluntary transition to all-digital broadcasting on the EAS system and how best to maximize consumer access to emergency information if local AM stations are allowed to convert to all-digital broadcasting.

24. The Commission seeks comment on the effect of all-digital operations on travelers' information stations (TIS, also called highway advisory radio), which are operated by some state or local governments to disseminate local traffic and weather advisories. TIS facilities are limited to a 10-watt transmitter output power, antenna height no greater than 15 meters, and a coverage radius of 3 km. What would the effect of all-digital operation be on the TIS service?

25. The Commission notes that, in general, radio stations operating in a digital format must comply with the service rules and public interest obligations applicable to analog stations, such as rules relating to station logs, public file, political broadcasting, contests, sponsorship identification, and so on. It asks whether there any service, programming, operational, or technical rules applicable to digital services generally that should be reconsidered or modified for all-digital operation. AM stations are currently authorized to operate with the hybrid AM IBOC system as tested by the NRSC. Other than the HD Radio Emissions Mask, are there other technical aspects to the NRSC–5–D Standard that should be re-examined for all-digital operation?

26. *Incorporation by reference.* The Commission proposes to adopt the NRSC–5–D standard for all digital stations, hybrid as well as all-digital. In accordance with the Office of the Federal Register requirements for any document that is to be incorporated by reference, it accordingly summarizes and indicates the availability of the NRSC–5–D standard as follows. The NRSC–5–D standard provides technical specifications for IBOC transmission systems. It includes various IBOC transmission system characteristics and transport and service multiplex characteristics, including the HD Radio emissions masks and other technical specifications, which are in turn incorporated by reference. The NRSC–5–D standard is free and available to the public at *https://www.nrscstandards.org/standards-and-guidelines/documents/standards/nrsc-5-*

d/nrsc-5-d.pdf. Adoption of the NRSC–5–D standard would codify the existing *de facto* technical parameters for hybrid and all-digital IBOC operation and thus provide greater operational and business certainty to both broadcasters and equipment manufacturers. The Commission does not anticipate that adoption of the NRSC–5–D standard will change, for practical purposes, the technical guidelines applicable to AM and FM hybrid stations or require stations to change their operations in any way. It seeks comment on this proposal.

27. *Conversion Costs and Receiver Availability.* The Commission tentatively concludes that the costs of conversion to all-digital, while variable by station, do not appear to be prohibitive and emphasizes that such costs will be entirely voluntary. At present, Xperi charges a one-time licensing fee of around $10,000 for single main channel broadcasting and additional annual fees based on a percentage of revenues for each additional subchannel. The Commission seeks comment on the licensing costs of the HD Radio system and whether this fee presents an obstacle to the adoption of all-digital broadcasting. Are HD Radio license fees a disproportionate burden on smaller broadcasters? The Commission also asks commenters to provide any relevant experience with Xperi in licensing the required technology. It also invites comment on the cost and availability of digital transmission equipment. Has the average cost of acquiring the equipment and licensing to convert to digital operation, in total, gone down in the years since adoption?

28. The Commission observes that the WWFD conversion process was technically challenging and that WWFD continues to experience transmitter issues that prevent full use of the secondary and tertiary digital carriers. Therefore, it asks how likely it is that AM broadcasters, particularly early adopters, will encounter similar technical obstacles. What technical support will be available to converting AM broadcasters and/or their engineering consultants? Is extensive site rehabilitation likely to be necessary for other (particularly older) AM facilities? If so, what level of expertise and expense is likely to be required to duplicate the WWFD experiment? On the other hand, will some legacy AM antenna systems that are unable to pass digital carriers in the MA1 mode be capable of doing so using MA3?

29. Also factored into the cost of conversion borne by any station opting to go all-digital is any loss of existing analog listeners who do not either migrate to an associated translator or acquire an all-digital receiver. In the case of WWFD, this loss was minimized by migrating most listeners to an FM channel, converting the AM station to all-digital, and then promoting the all-digital AM signal on the FM translator. Currently, over half of AM stations have FM translators. The Commission invites comment on whether the acquisition of FM translators resulting from the AM Revitalization proceeding will allow AM broadcasters greater freedom to experiment with their AM signals as with WWFD. If successful, would a transition to all-digital AM ease the industry pressure to enhance protections for FM translators despite their well-established status as a secondary service? The Commission also seeks comment on whether all-digital translator rebroadcasting or digital synchronous booster stations would further improve the reliability and coverage of MA3 signals.

30. The Commission seeks comment on its conclusion that a voluntary conversion process would allow each AM broadcaster to make the determination whether to assume the associated risks and expenses based on their own assessment of the state of the individual market and the future viability of their analog AM signal. It notes that adoption of the hybrid HD Radio system by AM broadcasters has been relatively lukewarm compared to FM, with fewer than 250 a.m. stations broadcasting in hybrid mode. This low rate of hybrid adoption is due to multiple factors, including reception issues with the hybrid analog signals, limited signal robustness and reception range caused by the relatively low amplitude of the digital sidebands in relation to the analog carrier, and adjacent channel interference caused by the wider bandwidth of hybrid signals. In addition, the hybrid mode is more likely to require replacement of the entire antenna system than all-digital. The Commission seeks comment on the technical and economic factors that might encourage more widespread adoption of all-digital broadcasting within the AM service.

31. The Commission seeks comment on the overall readiness of AM listeners to transition to digital broadcasting. To determine the overall likelihood of successful AM conversion to all-digital, it seeks additional comment on the degree of market penetration of digital receivers nationwide, including car and portable receivers, as well as information regarding the quality and cost of such receivers. Are portable (non-vehicle) HD receivers readily available and affordable? How many HD Radio receivers that have been sold in the past are currently still in operation?

32. The Commission seeks comment on the impact that stations converting to all-digital operations could have on listeners with analog-only receivers. What is the estimated size of this audience, and their estimated frequency of use of such receivers? In a market with very few stations, a single station's conversion to all-digital could reduce options for analog-only listeners. The Commission thus seeks comment on whether preserving the long-term economic viability of an AM station and the public benefit of improved service to some listeners would justify the present-day loss of service to other listeners. What steps, if any, could the Commission or broadcast industry take to minimize service disruption and the impact of all-digital conversion on consumers? For example, should it require a station converting to all-digital to notify its listeners that it will be converting to all digital and additional information such as when the transition will take place, what the new service area will be, and what type of receiver will be necessary to continue receiving broadcasts from that station? If so, what should be the timing and frequency of such on-air announcements? Are there any analogies from other broadcast transitions that would be instructive in this regard?

33. The Commission seeks comments on the costs and benefits associated with this proposal, as well as the costs and benefits of any other alternative approaches to addressing the issues raised in this *NPRM.* To the extent possible, commenters should quantify the claimed costs and benefits and provide supporting information. The Commission also asks for comment on the effect of these proposals on AM broadcasters that are small entities and seek comment as to alternatives that would minimize burdens on such small entities.

Comments and Reply Comments

34. *Filing Requirements.—Comments and Replies.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743.

• U.S. Postal Service First Class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

35. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

36. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII.

Procedural Matters

Ex Parte Rules

37. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppl, searchable .ppl). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on the first page of the *NPRM.* The Commission will send a copy of this entire *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

39. The Commission initiates this rulemaking proceeding to obtain comments regarding its proposal to allow AM broadcasters to broadcast an all-digital signal using the HD Radio in-band-on-channel (IBOC) mode known as MA3. Specifically, the Commission seeks comment on the following issues relating to all-digital operation: (1) Audio quality and signal coverage; (2) digital carrier power limits and emissions mask compliance; (3) interference potential; (4) spectrum efficiency and auxiliary digital services; (5) conversion costs and procedures; (6) availability of digital receivers and industry demand for digital broadcasting; (7) emergency alert and travelers' information systems; (8) adoption of the NRSC–5–D Standard for digital broadcasting; and (9) a stricter carrier frequency tolerance standard for all AM stations. The new rules proposed are designed to improve the economic viability of many AM stations by providing the option to convert to all-digital broadcasting, including an improved audio signal and the ability to provide other digital information to consumers. This option is seen as a natural outgrowth of the fact that—due to the AM Revitalization proceeding—more than half of AM stations are now able to reach their traditional analog audience by means of an FM translator.

B. Legal Basis

40. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, and 316.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

41. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rules

proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

42. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

43. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,406 and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations. This number is derived from subtracting the total number of noncommercial educational AM stations (204) from the total number of licensed AM stations (4610). As of September 2019, 4,294 a.m. stations and 6,739 FM stations had revenues of $41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,179. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

44. The *NPRM* proposes to adopt new rules to permit AM stations to broadcast using an all-digital signal. Such operation will be entirely voluntary. Stations converting to all-digital operation would be required to notify the Commission of the commencement of such operation by filing existing Form 335–AM (currently used to report commencement of hybrid operations). In the *NPRM,* the Commission also seeks comment on a complaint procedure for all-digital operation substantially similar to the existing procedure for hybrid stations. Because the type of information to be filed (*i.e.,* information required to be included in notifications) is already familiar to broadcasters, the additional paperwork burdens would be minimal.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

46. In the *NPRM,* the Commission proposes to allow AM stations to broadcast using all-digital transmissions. This proposal offers the flexibility to AM licensees, many of whom are small entities, to assess their own market and resources to decide what form of transmission, analog or digital, would work best for them. If an AM station chooses to continue broadcasting in analog mode, no further reporting or compliance steps are required. Should a licensee opt to broadcast using an all-digital signal, no prior approval by the Commission is needed. Rather, the all-digital station licensee must file a notification within 10 days of the commencement of all-digital operation. This notification uses an existing form and can be submitted online. Therefore, the burden on small entities will be minimal. Alternatives considered by the Bureau include retaining the existing rules, under which no all-digital operation is permitted. The Commission seeks comment on the effect of the proposed rule changes on all affected entities, including the cost and potential technical difficulties of all-digital conversion. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on AM broadcasters, many of whom are small businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

47. None.

Ordering Clauses

48. Accordingly, *it is ordered* that, pursuant to the authority contained in section 1.407 of the Commission's rules, 47 CFR 1.407, the Petition for Rulemaking filed by Bryan Broadcasting Corporation *is granted* to the extent specified herein.

49. *It is further ordered* that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this Notice of Proposed Rulemaking *is adopted.*

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Incorporation by reference.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.402, add paragraph (h) to read as follows:

§ 73.402 Definitions.

* * * * *

(h) All-digital AM station. An AM station broadcasting an IBOC waveform that consists solely of digitally modulated subcarriers and the unmodulated AM carrier.

■ 3. In § 73.403, revise paragraph (a) to read as follows:

§ 73.403 Digital audio broadcasting service requirements

(a) Broadcast radio stations using IBOC must transmit at least one over-the-air digital audio programming stream at no direct charge to listeners.

In addition, a hybrid broadcast radio station must simulcast its analog audio programming on one of its digital audio programming streams. The DAB audio programming stream that is provided pursuant to this paragraph must be at least comparable in sound quality with a standard analog broadcast.

* * * * *

■ 4. Revise § 73.404 to read as follows:

§ 73.404 IBOC DAB operation.

(a) The licensee of an AM or FM station, or the permittee of a new AM or FM station which has commenced program test operation pursuant to § 73.1620, may commence interim hybrid IBOC DAB operation with digital facilities which conform to the technical specifications specified for hybrid DAB operation in the First Report and Order in MM Docket No. 99–325, as revised in the Media Bureau's subsequent Order in MM Docket No. 99–325. In addition, the licensee of an AM station, or the permittee of a new AM station that has commenced program test authority pursuant to § 73.1620, may commence all-digital IBOC operation with digital facilities that conform to the requirements set out in the First Report and Order in MB Docket No. 19–311 and MB Docket No. 13–249. An AM or FM station may transmit IBOC signals during all hours for which the station is licensed to broadcast.

(b) In situations where interference to other stations is anticipated or actually occurs, hybrid or all-digital AM licensees may, upon notification to the Commission, reduce the power of the primary DAB sidebands by up to 6 dB. Any greater reduction of sideband power requires prior authority from the Commission via the filing of a request for special temporary authority or an informal letter request for modification of license.

(c) Hybrid IBOC AM stations must use the same licensed main or auxiliary antenna to transmit the analog and digital signals.

(d) FM stations may transmit hybrid IBOC signals in combined mode; *i.e.,* using the same antenna for the analog and digital signals; or may employ separate analog and digital antennas. Where separate antennas are used, the digital antenna:

(1) Must be a licensed auxiliary antenna of the station;

(2) Must be located within 3 seconds latitude and longitude from the analog antenna;

(3) Must have a radiation center height above average terrain between 70 and 100 percent of the height above average terrain of the analog antenna.

■ 5. Add § 73.405 to subpart C to read as follows:

§ 73.405 Digital Audio Broadcasting Standard

Unless expressly authorized otherwise, all DAB stations must conform to the technical specifications set out in the NRSC–5–D In-band/on-channel Digital Radio Broadcasting Standard (Apr. 2017) (incorporated by reference, see § 73.8000).

■ 6. Add § 73.406 to subpart C to read as follows:

§ 73.406 Notification.

Licensees must provide notification to the Commission in Washington, DC, within 10 days of commencing IBOC digital operation or reverting from all-digital to analog operation.

(a) Every digital notification must include the following information:

(1) Call sign and facility identification number of the station;

(2) Date on which IBOC operation commenced;

(3) Name and telephone number of a technical representative the Commission can call in the event of interference;

(4) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and is therefore categorically excluded from environmental processing pursuant to § 1.1306(b) of this chapter. Any station that cannot certify compliance must submit an environmental assessment (''EA'') pursuant to § 1.1311 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

(b) Every AM digital notification must also include the following information:

(1) Certification that the IBOC DAB facilities conform to the NRSC–5–D standard.

(2) Transmitter power output; if separate analog and digital transmitters are used, the power output for each transmitter;

(3) If applicable, any reduction in an AM station's primary digital carriers;

(c) Every FM digital notification must also include the following information:

(1) Certification that the IBOC DAB facilities conform to the NRSC–5–D standard;

(2) FM digital effective radiated power used and certification that the FM analog effective radiated power remains as authorized;

(3) If applicable, the geographic coordinates, elevation data, and license file number of the auxiliary antenna employed by an FM station as a separate digital antenna;

(4) If applicable, for FM systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of the limits specified in § 73.317;

■ 7. In § 73.1545, revise paragraph (a) to read as follows:

§ 73.1545 Carrier frequency departure tolerances.

(a) AM stations. The departure of the carrier frequency for monophonic transmissions or center frequency for stereophonic transmissions may not exceed ±1 Hz from the assigned frequency.

* * * * *

■ 8. In § 73.8000, revise the last sentence of paragraph (a) and add paragraph (e) to read as follows:

§ 73.8000 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.*

* * * * *

(e) The National Radio Systems Committee, Principal Contacts: David Layer, *dlayer@nab.org,* (202) 429–5339 and Mike Bergman, *mbergman@ce.org,* (703) 907–4366, *www.nrscstandards.org/standards-and-guidelines/standards-and-guidelines.asp.*

(1) NRSC–5–D In-band/on-channel Digital Radio Broadcasting Standard (Apr. 2017).

(2) [Reserved].

[FR Doc. 2019–27609 Filed 1–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 19–347, 17–105, 10–71; FCC 19–132; FRS 16379]

Cable Service Change Notifications; Modernization of Media Regulation Initiative; Retransmission Consent

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to update our rules concerning notice that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes in order to reduce potential consumer confusion. Specifically, we

seek comment whether to amend the rules to make clear that cable operators must provide subscriber notice ''as soon as possible'' when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract. We also seek comment on whether to require notice to LFAs only if required by the LFA pursuant to its statutory authority and whether to adopt several technical edits to the rules to make them more readable and remove duplicative requirements.

DATES: Comments due on or before February 6, 2020; reply comments due on or before February 21, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* or John Cobb, *John.Cobb@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket Nos. 19–347, 17–105, 10–71; FCC 19–132, adopted and released on December 12, 2019. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. The full text of this document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

In today's video marketplace, retransmission consent and program carriage negotiations are often concluded within days—if not hours—of the expiration of existing agreements. And in those cases, it is frequently unclear, 30 days prior to a contract's expiration, whether a new agreement will be reached, there will be a short-term extension, or programming will be dropped. This uncertainty raises difficult questions regarding what notice cable operators should be required to provide to subscribers and when they should be required to provide it. On the one hand, subscribers must receive meaningful information regarding their programming options so they can make informed decisions about their service. On the other hand, inaccurate or premature notices about theoretical programming disruptions that never come to pass can cause consumer confusion and lead subscribers to change providers unnecessarily.

This Notice of Proposed Rulemaking (*NPRM*) seeks comment on whether to update our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. Specifically, in order to eliminate the potential for consumer confusion, we seek comment on whether to amend §§ 76.1601 and 76.1603 of our rules to make clear that cable operators must provide subscriber notice ''as soon as possible'' when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract. We also seek comment on whether to amend § 76.1603 to require notice to LFAs (for any service change) only if required by the LFA and whether to adopt other minor streamlining changes to the rule discussed below. In reviewing these rules, we seek to make consumer notices more meaningful and accurate, reduce consumer confusion, and ensure that subscribers receive the information they need to make informed choices about their service options. With this proceeding, we continue our efforts to modernize our regulations to better reflect today's media marketplace.

Background. Several provisions of the Communications Act of 1934, as amended (the Act) address the notices that cable operators must provide to their subscribers and local franchise authorities regarding service or rate changes. Section 632 directs the Commission to adopt ''standards by which cable operators may fulfill their customer service requirements,'' that govern, among other things, ''communications between the cable operator and the subscriber'' and specifies that a cable operator may ''provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.'' In addition, section 623(b) of the Act, which directs the Commission to adopt regulations governing the rates for the basic service tier for cable systems not subject to effective competition, specifies that the standards must ''require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.'' Further, section 624(h) grants LFAs the authority to require a cable operator to ''[p]rovide 30 days' advance notice of any change in channel assignment or in the video programming service provided.''

The Commission adopted regulations implementing these notice and customer service requirements through several decisions issued in 1993. In 1999, the Commission revised and streamlined the cable television notice requirements contained throughout Part 76 of the Commission's rules and consolidated them into a newly created Subpart T. As part of that reorganization, the Commission moved to § 76.1601 a requirement that cable operators provide written notice to any broadcast television station and all of the system's subscribers at least 30 days prior to either deleting from carriage or repositioning that station. In addition, the Commission consolidated three other notice requirements into § 76.1603. Currently, § 76.1603 requires cable operators to: (1) Notify customers ''of any changes in rates, programming services, or channel positions as soon as possible in writing,'' and ''a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator;'' (2) ''notify subscribers 30 days in advance of any significant changes in the other information required by § 76.1602''; (3) ''give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change,'' stating the precise amount of any rate change and a brief explanation in readily understandable fashion of the cause of the rate change; and (4) ''provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective'' and no more than 60 days if the equipment is provided to the consumer without charge under § 76.630 because the operator encrypts the basic service tier. Notably, these rules only apply to cable operators and not to other MVPDs.

In 2011, the Commission sought comment on whether to revise § 76.1601 ''to require that notice of potential deletion of a broadcaster's signal be given to consumers once a retransmission consent agreement is within 30 days of expiration, unless a renewal or extension has been executed, and regardless of whether the station's signal is ultimately deleted.'' The Commission noted that while adequate advance notice of retransmission consent disputes can allow consumers

to prepare for service disruptions, ''such notice can be unnecessarily costly and disruptive when it creates a false alarm, *i.e.,* concern about disruption that does not come to pass, and induces subscribers to switch MVPD providers in anticipation [thereof].'' The Commission also sought comment on whether to expand the § 76.1601 consumer notice requirements in various ways, including whether they should apply to all MVPDs. Notably, the Retransmission Consent NPRM focused only on notice related to changes that resulted from broadcast retransmission consent negotiations and only on revisions to § 76.1601.

More recently, in response to a service notice change complaint that the Media Bureau ultimately dismissed at the complainant's request, Charter filed a letter urging us not to adopt an interpretation of § 76.1603 that would require that cable operators ''provide a 30-day advance notice to subscribers any time negotiations over the carriage of a channel enter the final month of an agreement solely because the channel might be dropped.'' Such an interpretation, they maintain, would ''harm[ ] consumers and disserve[ ] the public interest in ensuring fair bargaining.'' Charter explains that ''[n]egotiations between cable operators and programmers or broadcasters usually come down to the final 30 days of an agreement—indeed, often down to the final day or hours.'' And Charter notes that ''[t]he vast majority of those negotiations—as many as 99 percent—end successfully, but a few do not.'' Moreover, Charter contends any failed negotiations are not strictly within the cable operator's control. Accordingly, ''Charter proposes that the Commission clarify that the 30-day advance notice requirement does not apply when a cable operator and a programmer or a broadcaster remain in carriage negotiations, even during the final 30 days of an agreement. If those negotiations fail and the channel goes dark as a result, the cable operator would be required to provide notice to subscribers 'as soon as possible.' ''

Earlier this year, the Commission, in response to parties' feedback to the *Media Modernization Public Notice,* amended our rules to clarify the mechanism by which cable operators must notify subscribers and LFAs about service and rate changes. Specifically, the Commission modified our rules to allow certain notices required under Subpart T of the Commission's rules, including the notices required to be delivered to subscribers under §§ 76.1601 and 76.1603, to be delivered electronically via a verified email address, so long as an opt out mechanism for the subscriber to receive paper notices instead is provided. This flexibility applies to ''general notices,'' that provide ''a comprehensive catalog of information'' as opposed to the notices that convey ''targeted and immediate information about a single event'' at issue in this *NPRM.* We seek to build on these reforms to ensure that our rules about the timing of service and rate change notices best reflect marketplace realities and minimize customer confusion

Discussion. We seek comment on three specific issues related to the notice obligations in §§ 76.1601 and 76.1603: (1) Whether to make clear in § 76.1603(b) that cable operators have no obligation to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to retransmission consent or program carriage negotiations that fail during the last 30 days of a contract but, in that situation, they must provide notice ''as soon as possible''; (2) whether to modify § 76.1603(c) to require service and rate change notices to LFAs only if required by an LFA; and (3) whether to adopt several technical edits to §§ 76.1601 and 76.1603 to make the rules more readable and remove duplicative requirements. Finally, we seek comment on whether there are any other changes to these rules or other notice rules that we should consider.

Service Change Notice Due to Failed Carriage Negotiations. First, we seek comment on whether to amend § 76.1603(b) to make clear that there is no obligation on a cable operator to provide notice to subscribers of changes 30 days in advance when retransmission consent or program carriage negotiations between a cable operator and a broadcaster or programmer fail during the last 30 days of a contract. Rather, in that situation, they must provide notice ''as soon as possible'' when service changes occur. As noted above, section 632(b) of the Act directs the Commission to adopt ''standards by which cable operators may fulfill their customer service requirements,'' and section 632(c) affords cable operators the flexibility to ''provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion.'' These statutory provisions do not explicitly state that all notices must be provided in advance. In fact, section 632(c) refers only to ''notice,'' whereas various other provisions of the Act specifically require ''advance notice.'' We recognize, however, that the legislative history of the Telecommunications Act of 1996 indicates that Congress wanted ''to ensure that consumers have sufficient warning about rate and service changes so they can choose to disconnect their service prior to the implementation of the change.'' Although cable operators must currently provide notice of all channel lineup changes to subscribers, we recognize that providing 30-day advance notice in the context of carriage negotiations poses unique challenges to providers and risks creating consumer confusion, particularly given that consumers usually do not experience service disruption as a result of retransmission consent or program carriage negotiation disputes.

Charter asserts that providing 30-days' advance notice of a potential channel deletion is often impractical because ''[n]egotiations between cable operators and programmers or broadcasters usually come down to the final 30 days of an agreement—indeed, often down to the final day or hours.'' It maintains that requiring a cable operator to notify its subscribers and LFAs 30 days in advance ''any time negotiations over the carriage of a channel enter the final month of an agreement solely because the channel might be dropped harms consumers and disserves the public interest in ensuring fair bargaining.'' Charter proposes that if ''negotiations fail and the channel goes dark as a result,'' a cable operator should be required to provide notice ''as soon as possible.''

We seek comment on Charter's proposal and other ways we can make consumer notice more effective in the context of failed carriage negotiations. Specifically, if a channel is deleted because of a failure of negotiations in the last 30 days of a contract, should we require cable operators to provide notice of the deletion ''as soon as possible'' after the failure occurs, as Charter proposes? If so, how should we define ''as soon as possible,'' and would this provide subscribers sufficient notice? How would we determine when negotiations have failed so as to trigger the requirement? Is there an alternative event that could be used to trigger the notice requirement short of a blackout? The Commission has previously said that retransmission consent negotiations are under the ''control of both parties to the negotiations, and thus, failure to reach retransmission consent agreement would not be an excuse for failing to provide notice.'' While the Commission correctly acknowledged that there are two parties in ''control'' of the retransmission consent negotiations, we question, based on the experience the Commission has gained observing various retransmission consent disputes over the past eight years, whether

failure to reach agreement is essentially ''within the control'' of the cable operator such that the operator has an advance notice obligation. Accordingly, we seek comment on whether the better interpretation is that a single party to a negotiation cannot control the ultimate outcome of the negotiation and therefore cannot be required to give advance notice of a potential loss of a channel. If so, should we provide clarity to interested parties by codifying in our rules that failed retransmission consent or program carriage negotiations are not within the control of the cable operator for purposes of the advanced notice requirement of § 76.1603?

We seek comment on the impact to subscribers to the extent that we make clear that cable operators must provide channel deletions notices to subscribers ''as soon as possible'' in the case of retransmission consent and program carriage negotiations that fail during the last 30 days of a contract. We seek comment on whether requiring notice ''as soon as possible'' in these circumstances, rather than 30 days in advance, would be beneficial to subscribers because the notice they would receive would be clearer and more meaningful. As Charter points out, premature notices ''could create significant subscriber confusion, leading subscribers to unnecessarily change their cable provider, which could be costly for consumers.'' Assuming negotiations usually come down to the final 30 days, as Charter maintains, does requiring 30-days' notice anytime an agreement could not be reached create unnecessary subscriber confusion? Does the practice of agreeing to short-term extensions of carriage agreements while negotiations are ongoing add to this confusion? Or, is there a benefit to consumers in receiving 30-day advance notices even if such notices turn out not to be accurate that outweighs any harms? If the rules are revised to allow notice to be given to consumers only after a negotiation has failed and a channel has been deleted, could this practice cause other unintended harms for consumers? Should cable operators be required to provide notice at a time other than 30 days before loss of service in the context of a retransmission consent negotiation, such as a week or 48 hours before expiration of a contract? Do the available online video programming alternatives to traditional MVPD services eliminate the need for subscribers to have advance notice of any potential blackouts, as Charter suggests? Given that subscribers may have access to blacked out programming via online sources, does that reduce or eliminate the need to switch providers in order to continue receiving the blacked out content? Are there other factors that impact a consumer's ability to change providers in the event of a loss of programming? Is there a way to ensure that subscribers have sufficient warning that they may no longer have access to programming without unnecessarily alerting them every time carriage negotiations could result in an impasse? Are there ways for the Commission to track the use and effectiveness of these notices? Should cable operators be required to include these notices in their online public files?

How do cable operators comply with our notice rules today when faced with the prospect of failed retransmission consent and program carriage negotiations? Specifically, to what extent do cable operators currently provide notice 30 days in advance when negotiations may fail, and what mechanism do they use to provide notice in situations where it is unclear whether the channel in question will remain available? How often do those notices alert subscribers that they may lose a channel when the subscriber's service ultimately does not change because the cable operator and programmer negotiate a carriage agreement during the last 30 days of the expiring carriage agreement? How common is it for there to be multiple extensions of existing retransmission consent agreements, and do cable operators provide subscriber notice of each extension? Are there ways that cable operators currently keep subscribers informed of ongoing negotiations with content providers or expiring contracts that could be used here? What type of notice, if any, do other non-cable MVPDs, that are not regulated under § 76.1603, provide to their subscribers in such instances?

As stated above, the statute allows cable operators to provide notice to subscribers using ''any reasonable written means.'' We seek comment on the ''written means'' by which the cable operator should give notice were we to adopt an approach requiring notice as soon as possible following failed negotiations. Are there any ''reasonable written means'' in the context of carriage negotiation failures that would not be reasonable in situations outside of the retransmission consent or program carriage context? For example, NCTA states that cable operators may use ''channel slates''—notices that would replace the video feed in the event of a blackout—in order to quickly notify subscribers of a service change in the event of a negotiation failure. We seek comment on whether this mechanism would constitute a ''reasonable written means'' for alerting subscribers of failed negotiations because it is the most targeted means to alert all affected subscribers as soon as possible. We also seek comment on whether newspaper notice is a reasonable written means in this context given the distinct possibility that the notice would not reach all, or many of, the affected subscribers in a timely manner. That is, even assuming that the affected cable subscriber actually subscribed to a newspaper, it is not clear whether that particular newspaper would contain the requisite notice or that the subscriber would read it in time to make an informed decision about potential service changes.

Notice to LFAs for Service and Rate Changes. Second, we seek comment on whether to modify § 76.1603(c) to require that notice of rate or service changes be provided by cable operators to LFAs only if required by an LFA. We also seek comment on whether to amend § 76.1603(c) to direct cable operators to provide notice to LFAs 30 days in advance unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible. This would change § 76.1603(c)'s current requirement that cable operators provide written notice to LFAs of any change in rates or services 30 days in advance regardless of the circumstance. To what extent do LFAs rely on the current notice rules or the information about rate or other service changes provided to them pursuant to these rules? How can LFAs use this information given that almost no LFAs can regulate basic tier rates? We acknowledge the Commission has said that the purpose of § 76.1603(c) is ''to protect subscribers,'' and that ''[p]roviding advance notice to LFAs furthers this objective by enabling LFAs to respond to any questions or complaints from subscribers in an informed manner.'' We seek comment on whether our contemplated modifications are consistent with this precedent as we contemplate that LFAs may still obtain service and rate change information to the extent they determine that they need and will require the information to protect subscribers. In light of the ability of LFAs to require rate and service change information from cable operators, we also seek comment on whether the notice requirements in § 76.1603(c) still remain

necessary to enable LFAs to protect subscribers and, if so, why? Do LFAs receive similar information from non-cable MVPDs? Parties should discuss the costs and benefits of modifying this requirement.

We seek comment on whether the Commission has authority to revise its rule mandating 30-days advance notice to LFAs of any basic tier rate increase to instead require such notice only if required by an LFA. Section 623(b)(2) of the Act requires the Commission to ''prescribe, and periodically thereafter revise, regulations to carry out its obligations'' under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. And section 623(b)(6), in turn, provides that such regulations ''shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.'' But Congress directed the Commission to ''prescribe, and periodically thereafter revise'' its regulations adopted pursuant to section 623(b). We seek comment on whether the Commission has authority to revise this rule as described given these statutory provisions.

We note that multiple provisions of the Communications Act give LFAs the authority to require this type of notice independent of the Commission's rules. Any individual LFA that wishes to be notified of rate or service changes may require such notices through the cable franchising process or pursuant to their authority under section 632(a) of the Act to ''establish and enforce . . . customer service requirements of the cable operator.'' Further, section 624(h) of the Act explicitly states that an LFA may require a cable operator to ''provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.'' Given these statutory provisions, should we eliminate § 76.1603(c) altogether and allow LFAs to require this information under their own authority? Would LFAs be unreasonably burdened by having to require explicitly that cable operators under their jurisdiction provide this information? Is such a notice requirement already typically included in local franchise agreements or State or local franchise requirements?

Readability and Redundancy. Third, we seek comment on four technical changes to §§ 76.1601 and 76.1603 that would clean up these rules. As noted above, Subpart T was the product of an effort to streamline the Commission's cable rules that consolidated multiple disparate notice provisions into one new subpart. As a result, §§ 76.1601 and 76.1603 contain several redundancies that we propose to eliminate. First, we propose to delete the requirement in the second sentence of § 76.1601 that cable operators provide notice of the deletion or repositioning of a broadcast channel ''to subscribers of the cable system,'' a change that would not only delete a redundant provision but also consolidate all subscriber notice requirements regarding the deletion or repositioning of channels into § 76.1603(b).

Second, we propose to revise §§ 76.1603(b) and 76.1603(c) to clarify the notice obligations owed to subscribers and LFAs respectively. Currently, paragraph (b) applies only to subscribers, while paragraph (c) applies to both subscribers and LFAs. Both sections require cable operators to give notice of any changes in rates, programming services, or channel positions. In order to eliminate the redundancies in the notice requirements applicable to subscribers in paragraphs (b) and (c), we propose to revise § 76.1603(b) to explain what notice must be given to subscribers and § 76.1603(c) to explain what notice must be given to LFAs.

Third, we note that § 76.1603(d)'s requirement that cable operators notify subscribers about changes in rates for equipment that is provided without charge under § 76.630 was adopted pursuant to section 624A of the Act. We seek comment on whether to delete this requirement from § 76.1603, because it is duplicative of language in § 76.630(a)(1)(vi).

Fourth, we seek comment on whether to delete § 76.1603(e) of our rules as redundant of the statutory requirement in section 632(c). That is, the language contained in § 76.1603(e), ''any reasonable written means at its sole discretion'' mirrors the statutory requirement. Moreover, currently both § 76.1603(b) and (c) require written notifications of service and rate changes to subscribers. Thus, it is not clear what the requirement in § 76.1603(e) adds. We seek comment on the extent to which we need to elaborate in § 76.1603(b) or elsewhere what constitutes ''reasonable written means'' under the Act.

Other Proposals. Finally, we seek comment on whether the Commission should consider other modifications to §§ 76.1601 or 76.1603 unrelated to failed carriage negotiations. Frontier asserts that the Commission should ''shorten the 30-day timeframe to 5 or 15 days to better enable regulated providers [to] respond to competition.'' Should the Commission consider shortening notice timeframes and, if so, to which notices covered by §§ 76.1601 and 76.1603 should these timeframes apply? What is the appropriate timeframe that should be adopted for each rule under consideration? If the Commission were to shorten these notice periods, would subscribers still have adequate time to change service providers or make other changes in response to such notices?

Other stakeholders have suggested that the §§ 76.1601 or 76.1603 notice requirements include much information that does not actually assist subscribers in making decisions about their cable service. Does the volume of information required by these notice rules and the frequency with which notices must be given inundate subscribers with information that does not assist them in making decisions about their cable service? Would subscribers benefit more from more targeted notices? What information do subscribers actually require to make informed decisions about whether to continue or discontinue their cable service?

For example, should we eliminate the requirement in § 76.1603(b) that cable operators notify subscribers 30 days in advance of any significant changes in the information reported in annual notices required by § 76.1602, as NCTA and Frontier request? NCTA contends that this notice requirement ''imposes unnecessary burdens on operators to provide change notices,'' and that ''much of this information is of little value to customers and readily available on company websites.'' Would consumers be able to obtain such information elsewhere if this requirement were eliminated? Should we consider a more targeted rule that requires 30-day notice of only certain specified changes, such as changes in channel position, rather than notice of significant changes to any of the information delineated in § 76.1602?

We also seek comment on whether we should amend the notice requirements with respect to multiplexed broadcast signals. Specifically, we question the continued relevance of the language in § 76.1603(c) that states: ''[f]or the purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.'' The Commission originally adopted this rule eight years prior to the full-power digital transition. Now that it has been more than 10 years since the digital transition, is this rule still relevant? This language, based on the Commission's predictive judgment regarding a nascent service, appears to exempt multicast programming streams that air only during certain dayparts

from the subscriber notification requirements (to the extent such streams are carried by a cable operator). We seek comment on that interpretation and whether such a rule is necessary or appropriate today. Do cable operators even carry such streams (*i.e.,* those that only air during certain dayparts) in their channel lineups? We seek comment on these issues.

Initial Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this *NPRM.* The IRFA is set forth below.

Paperwork Reduction Act. This *NPRM* may result in new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 through 3520). If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ex Parte Rules—Permit-But-Disclose. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements—Comments and Replies. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Availability of Documents. Comments and reply comments will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules. In today's video marketplace, retransmission consent and program carriage negotiations are often concluded within days—if not hours—of the expiration of existing agreements. And in those cases, it is frequently unclear, 30 days prior to a contract's expiration, whether a new agreement will be reached, there will be a short-term extension, or programming will be dropped. This uncertainty raises difficult questions regarding what notice cable operators should be required to

provide to subscribers and when they should be required to provide it. On the one hand, subscribers must receive meaningful information regarding their programming options so they can make informed decisions about their service. On the other hand, inaccurate or premature notices about theoretical programming disruptions that never come to pass can cause consumer confusion and lead subscribers to change providers unnecessarily.

This *NPRM* seeks comment on whether to update our rules concerning notices that cable operators must provide to subscribers and local franchise authorities (LFAs) regarding service or rate changes. Specifically, in order to eliminate the potential for consumer confusion, we seek comment on whether to amend §§ 76.1601 and 76.1603 of our rules to make clear that cable operators must provide subscriber notice ''as soon as possible'' when service changes occur due to retransmission consent or program carriage negotiations that fail within the last 30 days of a contract. We also seek comment on whether to amend § 76.1603 to require notice to LFAs (for any service change) only if required by the LFA and whether to adopt other minor streamlining changes to the rule discussed below. In reviewing these rules, we seek to make consumer notices more meaningful and accurate, reduce consumer confusion, and ensure that subscribers receive the information they need to make informed choices about their service options.

Legal Basis. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 543, 544, and 552.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply—Small Governmental Jurisdictions. A ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

Cable Companies and Systems (Rate Regulation Standard). The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 4,200 cable operators nationwide, all but 9 are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 4,200 systems nationwide, 3,900 have fewer than 15,000 subscribers, based on the same records. Thus, under this second size standard, the Commission believes that most cable systems are small.

Cable System Operators. The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 49,011,210 cable subscribers in the United States today. Accordingly, an operator serving fewer than 490,112 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on the available data, we find that all but five independent cable operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under the definition in the Communications Act.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. Today, cable operators must provide notice to subscribers and LFAs at least 30 days prior to any service or rate change if the change is within the control of the cable operator and explain the reason for any rate change. If we were to adopt the rule changes upon which we seek comment, two reporting requirements would change. First, cable operators would not need to provide notice to subscribers 30 days in advance of channel lineup changes when the change is due to unsuccessful carriage negotiations, but rather the cable operator would need to provide notice ''as soon as possible'' to its subscribers and LFAs. Second, cable operators would only need to notify LFAs of any relevant rate or service changes if the LFA requires such notice.

Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

We do not propose any specific steps to treat small entities differently from other entities because we see no statutory authority for such treatment. We seek comment on this analysis. The NPRM's proposals would reduce the burdens on all cable operators, including small operators, because the operators would not need to provide as many notices. Likewise, they could reduce the burdens on small local governments, which would not have to review as many filings. We believe, however, that some subscriber and LFA notice is necessary to effectuate the requirements of the Communications Act and provide subscribers and LFAs with information they need to make reasoned decisions.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

It is ordered that, pursuant to the authority found in sections 1, 4(i), 4(j), 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 543, 544, and 552 this Notice of Proposed Rulemaking *is adopted. It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center,

shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable Television, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Revise § 76.1601 to read as follows:

§ 76.1601 Deletion or repositioning of broadcast signals.

A cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station.

■ 3. Amend § 76.1603 by revising paragraphs (b) and (c) to read as follows, removing paragraphs (d) and (e), and redesignating paragraph (f) as paragraph (d):

§ 76.1603 Customer service—rate and service changes.

* * * * *

(b) Cable operators shall provide written notice to subscribers of any changes in rates, services, or any of the other information required to be provided to subscribers by § 76.1602 using any reasonable written means at the operator's sole discretion. Notice shall be provided to subscribers at least 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible. Notice of rate changes shall include the precise amount of the rate change and explain the reason for the change in readily understandable terms. Notice of changes involving the addition or deletion of channels shall individually identify each channel affected.

(c) Upon the request of the local franchising authority, cable operators shall provide written notice to local franchising authorities of any changes in rates or services using any reasonable written means at the operator's sole discretion. Notice shall be provided to local franchising authorities 30 days in advance of the change, unless the change results from circumstances outside of the cable operator's control (including failed retransmission consent or program carriage negotiations during the last 30 days of a contract), in which case notice shall be provided as soon as possible. Notice of rate changes shall include the precise amount of the rate change and explain the reason for the change in readily understandable terms. Notice of changes involving the addition or deletion of channels shall individually identify each channel affected.

* * * * *

[FR Doc. 2019–28430 Filed 1–6–20; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1812, 1831, 1846, and 1852

RIN 2700–AE38

NASA Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Parts (NFS Case 2017–N010)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to add new text that requires covered contractors and subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as described above, they must purchase the parts from a NASA identified supplier or contractor-approved supplier. The contractor will then assume responsibility and be required to inspect, test and validate authentication of the parts. The contractor will also be required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 9, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by NFS Case 2017–N010, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''NFS Case 2017–N010'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''NFS Case 2017–N010'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''NFS Case 2017–N010'' on your attached document.

○ *Email: Dorice.M.Kenely@nasa.gov.* Include NFS Case 2017–N010 in the subject line of the message.

○ *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement, Policy, Training and Pricing Division, Attn: Dorice Kenely, LP–011, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dorice Kenely, NASA HQ, Office of Procurement, Policy, Training and Pricing Division, LP–011, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–0443; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule implements section 823(c)(2)(B) of Public Law 115–10, the National Aeronautics and Space Administration Transition Authorization Act of 2017. In this Section Congress stated it found in a 2012 Investigation by the Committee on Armed Services counterfeit electronic parts in the Department of Defense supply chain. From 2009 through 2010 the investigation uncovered 1,800 cases and over 1,000,000 counterfeit parts. This exposed the threat counterfeit parts pose to service members and national security. Since 2010, the Comptroller General of the United States has discussed in three reports the risks and challenges associated with counterfeit parts and counterfeit prevention at both the Department of Defense and NASA, including inconsistent definitions of counterfeit parts, poorly targeted quality control practices, and other potential

barriers to improvements to these practices.

With this rule, NASA is proposing to revise the NASA Federal Acquisition Regulation Supplement (NFS) to add new text requiring a covered contractor, defined as a contractor supplying an electronic part or a product that contains an electronic part, and their subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as described above they must purchase the parts from a NASA identified supplier or contractor-approved supplier. The contractor then assumes responsibility and be required to inspect, test and validate authentication of the part. The contractor will also be required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

II. Discussion

The following NFS subparts, 1812 ''Acquisition of Commercial Items'', 1831 ''Contract Cost Principles and Procedures'' and 1846 ''Quality Assurance'' are being revised to add language to implement the requirements of the NASA Transition Authorization Act of 2017 by: Defining the term counterfeit electronic parts (1846 ''Quality Assurance''); requiring covered contractors and subcontractors at all tiers to use parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers and identifying requirements when the contractor doesn't use those electronic parts (1846 ''Quality Assurance''); and making the cost of corrective actions involving counterfeit parts unallowable unless the contractor meets the requirements stated in the proposed policy (1831 ''Contract Cost Principles and Procedures'').

The additional definitions within the proposed policy to the NFS can be found in the DFARS 252.246–7007 and 252.246–7008, addressing the same subject, Detection and Avoidance of Counterfeit Parts. The proposed changes to the NFS will apply to all procurements involving electronic parts, end items, components, parts, or assemblies containing electronic parts, or services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

NASA is aware of one occurrence of a suspect counterfeit part within the last 17 years, as reported in Government Industry Data Exchange Program (GIDEP). Given what appears to be a low occurrence of counterfeit parts in NASA procurements, NASA anticipates the proposed rule will impose a limited burden on NASA contractors.

III. Expected Impact of the Proposed Rule and Differentiation From FAR Council Rule on GIDEP

Both the FAR final rule entitled, ''Federal Acquisition Regulation: Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013–002)'' published at 84 FR 64680, and this NFS rule pertain to the topic of counterfeit parts and suspected counterfeit parts, however discernable differences do exist between the two rule as they are implementing separate acts. The FAR rule is implementing sections 818(c)(4) and (c)(5) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81, 10 U.S.C. 2302 Note) while the NFS rule is implementing section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10).

The following highlights the similarities and differences between these two rules:

Applicability—Commercial/COTS and SAT

The FAR Council determined that the FAR rule does not apply to commercial items, including commercially available off-the-shelf (COTS) items, or to contract at or below the simplified acquisition threshold (SAT). NASA has determined that the NFS rule applies to commercial items, including COTS items, and to contracts at or below the SAT. Section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10) does not provide for any exemptions to the requirements being implemented via this rule.

Scope

While both rules pertain to the topic of counterfeit parts and suspected counterfeit parts, the rules differ in the scope of items to which the regulations apply. The FAR rule has a broader application in the types of items that are covered under the new requirements. Specifically, the FAR rule is applicable to all items that are subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher-Level Contract Quality Requirement; all items that the contracting officer, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate; and for the acquisition of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section. In addition, the FAR rule covers acquisitions that exceeds the simplified acquisition threshold and are by, or for, the Department of Defense for electronic parts or end items, components, parts, or materials containing electronic parts. Based on the requirements of section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10), the NFS rule applies only to electronic parts for use in a safety or mission critical applications.

Reporting/Notification

The FAR rule requires two reporting requirements which are currently cleared under OMB Control number 9000–0187 titled Reporting of Nonconforming Items to the Government-Industry Data Exchange Program (FAR Case 2013–002)—FAR Sections affected: 52.246–26. One requirement is the submission of a report to GIDEP when the contractor becomes aware or has reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the Contractor for delivery to, or for, the Government is a counterfeit or suspect counterfeit item or a common item that has a major or critical nonconformance.

The second reporting requirement is a notification to the contracting officer after becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the Contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit. While the NFS rule does not include a GIDEP reporting requirement, like the FAR rule, the NFS rule does include a requirement to notify the contracting officer when the contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or

subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

Allowability of Costs

As required by section 823(c)(2)(B), of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10), the NFS rule establishes that costs related to counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts is unallowable unless a specific set of criteria is met. The FAR rule does not address the allowability of costs as it relates to the counterfeit parts, suspect counterfeit parts, or any corrective action that may be required to remedy the use or inclusion of such parts.

Supply Chain Sources

As required by section 823(c), of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10), the NFS rule establishes required sources for both electronic parts that are in production or currently available in stock and separately electronic parts are not in production or currently available in stock from suppliers. The FAR rule does not address sources of items.

IV. Applicability to Commercial Item Acquisitions, Including Commercially Available Off-the-Shelf (COTS) Items, and Acquisitions Below the Simplified Acquisition Threshold (SAT)

The objective of this rule is to implement section 823 of the National Aeronautics and Space Administration Transition Authorization Act of 2017 (Pub. L. 115–10). Section 823 does not limit the application of the requirements of the statue to non-commercial contracts or contracts above the simplified acquisition threshold. Consistent with 41 U.S.C. 1905, 1906 and 1907, the NASA Assistant Administrator for Procurement has determined that it is in the best interest of NASA to apply section 823 to the acquisition of commercial items, including COTS items, and those requirements below the SAT.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action which was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule is not expected to be subject to the requirements of E.O. 13771 because it is expected to result in no more than de minimus costs.

VII. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized below.

The rule will apply to all ''covered contractors.'' Covered contractors, as defined by Public Law 115–10 are contractors, including small entities, that supply an electronic part, or a product that contains an electronic part to NASA. While the rule will apply to all classes of small business, it will not necessarily affect those business because the rule requires reporting only when nonconforming defective and/or suspect counterfeit parts are present or there is suspicion that counterfeit parts are present in the supply chain. Since this rule requires contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, the authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or for products that are not currently in production use of a NASA identified contractor, NASA believes that there is very little risk that a contractor or subcontractor will have a counterfeit part in the supply chain and thus very little risk that a small contractor will have to report. As reported in FPDS, NASA has had contract obligations with 3,120, 3,023 and 2,805 small business contractors in 2016, 2017 and 2018, respectively and no counterfeit parts were found in the supply chain. Further, based on the initial scope of the rule, NASA has assessed the number of commercial item acquisitions for electronic items procured above and below the simplified acquisition threshold and believe the impact of this proposed rule will be minimal. An analysis of data for the last three fiscal years from the FPDS revealed the following:

	Number of actions	Total dollar amount of actions
2019		
Electronic Commercial Items	131	$17,810,644
Under the SAT	110	6,348,554
Above the SAT	21	11,462,089
2018		
Electronic Commercial Items	275	38,516,656
Under the SAT	229	10,922,058
Above the SAT	46	27,594,598
2017		
Electronic Commercial Items	526	38,020,457
Under the SAT	498	16,934,479
Above the SAT	28	21,085,978

NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The policy requires covered contractors and subcontractors to notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

The proposed rule also requires covered contractors and subcontractors to purchase electronic parts that are currently in production from the original manufacturer, their authorized dealers or suppliers who obtain parts exclusively from the original manufacturer or their authorized dealers. Electronic parts that are not currently in production or available in stock shall be obtained from NASA identified suppliers or contractor-approved suppliers and the contractor assumes responsibility for the authenticity, inspection, testing and traceability of the part. Contractor-approved suppliers are subject to review and audit by the CO.

VIII. Paperwork Reduction Act

This proposed rule contains information collection requirements that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, NASA has submitted a request for approval of a new information collection requirement associated with NFS Case 2017–N010 Detection and Avoidance of Counterfeit Parts to the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to be 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows based on:

Respondents: 1.

Responses per Respondent: 1.

Total Annual Responses: 1.

Preparation Hours per Response: 2.

Total Response Burden Hours: 2.

Data reported via GIDEP, reveals that NASA has had only one alert of suspect counterfeit parts associated with a NASA contract within the last 17 years. Additionally, GIDEP alerts across the government have decreased since 2011 to the present. Both the one NASA specific GIDEP alert over the course of 17 years, and the downward trend of GIDEP alerts across the government substantiate the expected burden amounts.

List of Subjects in 48 CFR: Parts 1812 ''Acquisition of Commercial Items''; 1831 ''Contract Cost Principles and Procedures''; 1846 ''Quality Assurance'': 1852 Provisions and Clauses.

Government procurement.

Geoffrey Sage,

NASA FAR Supplement Manager.

Accordingly, NASA proposes to amend 48 CFR parts 1812, 1831, 1846, and 1852 as follows:

■ 1. The authority citation for parts 1816, 1832, and 1852 continues to read as follows:

Authority: 51 U.S.C. sec. 20113(a) and 48 CFR chapter 1.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 1812.301 by—

■ a. Redesignating paragraph (f)(i)(T) as paragraph (f)(i)(U); and

■ b. Adding a new paragraph (f)(i)(T).

The addition reads as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) * * *

(T) 1852.246–74, Counterfeit Electronic Part Detection and Avoidance.

* * * * *

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Add section 1831.205–70 to read as follows:

1831.205–70 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) Scope. This section implements the requirements of section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10).

(b) The costs of counterfeit electronic parts, suspect counterfeit electronic parts, and any corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1)(i) The covered contractor, as defined in section 1846.7001, has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(ii) The covered contractor, including subcontractors, notifies the applicable NASA contracting officer in writing in accordance with 1846.7002(c); or

(2) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

PART 1846—QUALITY ASSURANCE

■ 4. Add subpart 1846.70 consisting of sections 1846.7000 through 1846.7003 to read as follows:

Subpart 1846.70—Counterfeit Electronic Part Detection and Avoidance

1846.7000 Scope of subpart.

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10).

(a) Prescribes policy and procedures for preventing counterfeit electronic parts and suspect counterfeit electronic parts from entering the supply chain when procuring electronic parts or end items, components, parts, or assemblies that contain electronic parts; and

(b) Applies to electronic parts when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.

(c) Contracting officers, in consultation with the requiring activity, are responsible for making a determination concerning the applicability of this section and the appropriate use of the prescribed contract clauses.

1846.7001 Definitions.

''Authentic part'' means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

''Authentication'' means a process to verify that a part is not counterfeit or suspect counterfeit.

''Authorized aftermarket manufacturer'' means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

''Authorized supplier'' means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

''Contract manufacturer'' means a company that produces goods under contract for another company under the label or brand name of that company.

''Contractor-approved supplier'' means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified as trustworthy by a contractor or subcontractor as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

''Covered contractor'' means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.

''Counterfeit electronic part'' means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

''Electronic part'' means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.

''Original component manufacturer'' means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

''Original equipment manufacturer'' means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

''Original manufacturer'' means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

''Suspect counterfeit electronic part'' means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

1846.7002 Policy.

The government and its contractors and subcontractors at all tiers are required to obtain electronic parts as prescribed in this section, whether the electronic parts are procured as discrete items or contained in an assembly.

(a) The covered contractor and subcontractors at all tiers shall obtain electronic parts that are in production or currently available in stock from—

(1) The original manufacturers of the parts;

(2) Their authorized dealers; or

(3) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.

(b) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (a) of this section, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(1) The covered contractor assumes responsibility for the authenticity of parts; and

(2) The covered contractor performs inspection, testing and authentication of parts; and

(3) The covered contractor obtains traceability information for the electronic parts (*e.g.,* data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(4) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) The covered contractor, including subcontractors, shall notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

1846.7003 Contract clause.

For acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246–74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—

(a) Electronic parts;

(b) End items, components, parts, or assemblies containing electronic parts; or

(c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add section 1852.246–74 to read as follows:

1852.246–74 Contractor Counterfeit Electronic Part Detection and Avoidance.

As prescribed in 1846.7003, use the following clause:

Contractor Counterfeit Electronic Part Detection and Avoidance. (DATE)

(a) Definitions. As used in this clause—

''Authentic part'' means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

''Authentication'' means a process to verify that a part is not counterfeit or suspect counterfeit.

''Authorized aftermarket manufacturer'' means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

''Authorized supplier'' means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

''Contract manufacturer'' means a company that produces goods under contract for another company under the label or brand name of that company.

''Contractor-approved supplier'' means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified by the contractor or subcontractor approved by the contractor or government as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

''Counterfeit electronic part'' means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

''Electronic part'' means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or

mission critical application (section 823 (d)(2) of Pub L. 115–10).

''Original component manufacturer'' means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

''Original equipment manufacturer'' means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

''Original manufacturer'' means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

''Suspect counterfeit electronic part'' means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Sources of Electronics Parts.* In accordance with section 823(c)(3), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10), the covered contractor shall—

(1) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized dealers; or

(iii) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

(2) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (b) of this clause, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—

(i) The covered contractor assumes responsibility for the authenticity of parts; and

(ii) The covered contractor performs inspection, testing and authentication of parts; and

(iii) The covered contractor obtains traceability information for the electronic parts (*e.g.,* data code, lot code, serial number) and provides this information to the contracting officer upon request; and

(iv) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.

(c) *Notification.* The covered contractor, including subcontractors, shall notify the NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.

(d) Costs related to counterfeit electronic parts and suspect counterfeit electronic parts. In accordance with section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115–10), the costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The covered contractor has a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(2) The covered contractor, including a subcontractor, notifies the applicable NASA contracting officer in writing in accordance with paragraph (c) of this clause; or

(3) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

(e) *Subcontracts.* The covered contractor shall insert this clause, including this paragraph (e), in subcontracts for (1) Electronic parts; (2) End items, components, parts, or assemblies containing electronic parts; or (3) Services where the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer. The covered contractor shall not alter the clause other than to identify appropriate parties.

(f) *Corrective Action.* In the event that the covered contractor supplies a counterfeit electronic part, suspect counterfeit electronic part or end item, component, or assembly containing a counterfeit electronic part to NASA, the covered contractor shall take such corrective actions as the Administrator considers necessary to remedy the use or inclusion of additional counterfeit electronic parts, suspect counterfeit electronic part or end items, components, or assemblies containing a counterfeit electronic part.

(End of clause)

[FR Doc. 2019–27714 Filed 1–6–20; 8:45 am]

BILLING CODE 7510–13–P

Notices

Federal Register

Vol. 85, No. 4

Tuesday, January 7, 2020

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.

AMERICAN BATTLE MONUMENTS COMMISSION

Performance Review Board Appointments

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required by the Civil Service Reform Act of 1978.

DATES: These appointments are effective as of 27 December 2019.

FOR FURTHER INFORMATION CONTACT: Jamilyn Smyser, Chief of Human Resources and Administration, American Battle Monuments Commission, Courthouse Plaza II Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia 22201. Telephone number: (703) 696–7969.

American Battle Monument Commission SES Performance Review Board—2019/2020

Kate Kelly, Chief Human Capital Officer, Army Futures Command, United States Army

Dr. Erin Mahan, Chief Historian, Office of the Secretary of Defense

Michael Conley, Chief of Staff, American Battle Monuments Commission

Jamilyn Smyser,

Chief, Human Resources and Administration.

[FR Doc. 2020–00003 Filed 1–6–20; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Housing Vacancy Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The information to be collected is the Housing Vacancy Survey, conducted in conjunction with the Current Population Survey.

DATES: To ensure consideration, written comments must be submitted on or before March 9, 2020.

ADDRESSES: Direct all written comments to Lisa A. Clement, Survey Director, Current Population and American Time Use Surveys, U.S. Census Bureau, 4600 Silver Hill Road, ADDP/CPS HQ–7H141, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0012, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim J. Marshall, U.S. Census Bureau, ADDP/CPS HQ–7H143, Washington, DC 20233–8400, (301) 763–3806 (or via the internet at *dsd.cps@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the Housing Vacancy Survey (HVS) to be conducted in conjunction with the Current Population Survey (CPS). The Census Bureau sponsors the HVS, which collects data from a sample of vacant housing units identified in the monthly CPS sample. The current clearance expires June 30, 2020.

Collection of the HVS in conjunction with the Current Population Survey began in 1956, and serves a broad array of data users. The HVS provides the only quarterly statistics on rental vacancy rates and homeownership rates for the United States, the four census regions, the 50 states and the District of Columbia, and the 75 largest metropolitan statistical areas (MSAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time.

Policy analysts, program managers, budget analysts, and congressional staff use these data to advise the executive and legislative branches of government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. These data are a component of consumer expenditure statistics. They also are used to project mortgage demand and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

The HVS is collected by both personal visit and telephone interviews in conjunction with the CPS interviewing. The Census Bureau conducts HVS interviews using computer-assisted interviewing with landlords or other knowledgeable people concerning vacant housing units identified in the monthly CPS sample and meeting certain criteria.

III. Data

OMB Control Number: 0607–0179.

Form Number(s): There are no forms. We conduct all interviewing on computers.

Type of Review: Regular submission.

Affected Public: Individuals who have knowledge of the vacant sample unit (*e.g.,* landlords, rental agents, neighbors).

Estimated Number of Respondents: 84,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 4200.

Estimated Total Annual Cost to Public: $0 (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Section 1.

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. 2020–00011 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV168]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 21, 2020 at 12:30 p.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton, One Audubon Road, Wakefield, MA 01880; Phone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Advisory will discuss Amendment 23: Groundfish Monitoring to review the draft Environmental Impact Statement (DEIS) and recommend preliminary preferred alternatives to the Groundfish Committee. They will also receive an overview of the Council's 2020 priorities. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: January 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–00012 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Swordfish Fishery Survey

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: Written comments must be submitted on or before March 9, 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 Dr. Stephen Stohs, Southwest Fisheries Science Center—La Jolla Laboratory, La Jolla, CA 92037, (858) 546–7084, *Stephen.Stohs@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a review of a regular submission (extension without change of a currently approved information collection).

The Southwest Fisheries Science Center—La Jolla Laboratory (SWFSC) proposes to collect information from the different types of fishing vessels operating in the U.S. West Coast Commercial Swordfish Fishery (WCCSF). Requested information will include different components of operating costs and earnings for the various types of vessels in the U.S. west coast commercial swordfish fleet.

This economic data collection effort for the WCCSF will improve the SWFSC's capability to do the following: (1) Describe and monitor economic performance (*e.g.,* profitability, capacity utilization, efficiency, and productivity) and impacts (*e.g.,* sector, community, or region-specific employment and income impacts); (2) determine the quantity and distribution of net benefits derived from living marine resources; (3) understand and predict the behavior of participants in Federally managed commercial fisheries; (4) predict the biological, ecological, and economic impacts of existing management measures and alternative proposed management actions; and (5) in general, more effectively conduct the analyses required under the MSA, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA), the National Environmental Policy Act (NEPA), and Regulatory Flexibility Act (RFA), Executive Order 12866, and other applicable law.

II. Method of Collection

A standardized survey will be administered via in-person interview, telephone interview and/or mail to all WCSF participants.

III. Data

OMB Control Number: 0648–0751.

Form Number(s): None.

Type of Review: Regular submission (extension without change of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: There is no cost to respondents other than their time.

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. 2020–00006 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG233]

Red Hake Stock Structure Research Track Assessment Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel will convene the Red Hake Stock Structure Research Track Assessment Peer Review Meeting for the purpose of reviewing the stock structure of Red Hake. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by Stock Assessment Workshop (SAW) working groups and reviewed by an independent panel of stock assessment experts called the Assessment Oversight Panel (AOP). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Red Hake Stock Structure Research Track Assessment Peer Review Meeting will be held from March 9, 2020–March 12, 2020. The meeting will commence on March 12, 2020 at 5:00 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held in Stephen H. Clark Conference Room in the Aquarium Building of the National Marine Fisheries Service, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the NEFSC website at *https://www.fisheries.noaa.gov/region/new-england-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC SAW web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/northeast-region-stock-assessment-process.*

Daily Meeting Agenda—Red Hake Stock Structure Research Track Peer Review Meeting (Subject to Change; All times are approximate and may be changed at the discretion of the Peer Review Chair).

Time	Activity	Lead
	Monday, March 9, 2020	
1 p.m.–1:30 p.m	Welcome/Logistics Introductions/Process	Michele Traver/Chair (TBD).
1:30 p.m.–2:30 p.m	Review of Current Assessment and Historical Designations (TOR #1).	Toni Chute/Dave Richardson (WG Chair).
2:30 p.m.–3:30 p.m	New Data and Analyses (TOR #2)	Dave Richardson (WG Chair).
3:30 p.m.–3:45 p.m	Break.	

Time	Activity	Lead
3:45 p.m.–5:00 p.m	New Data and Analyses (TOR #2) cont	Dave Richardson (WG Chair).
5:00 p.m.–5:30 p.m	Review/Discussion/Summary	Review Panel.
5:30 p.m.–5:45 p.m	Public Comment	Public.
5:45 p.m	Adjourn.	
Tuesday, March 10, 2020		
8:30 a.m.–8:45 a.m	Brief Overview and Logistics	Michele Traver/Chair (TBD).
8:45 a.m.–10:45 a.m	New Data and Analyses (TOR #2) cont	Dave Richardson, WG Chair.
10:45 a.m.–11:00 a.m	Break.	
11:00 a.m.–12:30 p.m	Catchability (TOR #4)	Dave Richardson, WG Chair.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3:30 p.m	Stock Structure Proposals (TOR #3)	Dave Richardson, WG Chair.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–5:00 p.m	Stock Structure Proposals (TOR #3) cont	Dave Richardson, WG Chair.
5:00 p.m.–5:30 p.m	Review/Discussion/Summary	Review Panel.
5:30 p.m.–5:45 p.m	Public Comment	Public.
5:45 p.m	Adjourn.	
7:00 p.m	Dinner Social	TBD.
Wednesday, March 11, 2020		
8:30 a.m.–8:45 a.m	Brief Overview and logistics	Michele Traver/Chair (TBD).
8:45 a.m.–10:45 a.m	Model Proposals (TOR #5)	Dave Richardson, WG Chair.
10:45 a.m.–11:00 a.m	Break.	
11:00 a.m.–12:00 p.m	Research Recommendations (TOR #6)	Dave Richardson, WG Chair.
12:00 p.m.–12:30 p.m	Review/Discussion/Summary	Review Panel.
12:30 p.m.–12:45 p.m	Public Comment	Public.
12:45 p.m.–1:45 p.m	Lunch.	
1:45 p.m.–5:00 p.m	Report Writing	Review Panel.
5:00 p.m	Adjourn.	
Thursday, March 12, 2020		
9:00 a.m.–5:00 p.m	Report Writing	Review Panel.

The meeting is open to the public; however, during the 'Report Writing' session on Wednesday, March 11th, and Thursday, March 12th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, 508–495–2195, at least 5 days prior to the meeting date.

Dated: January 2, 2020.

Jennifer M. Wallace,

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

[FR Doc. 2020–00029 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent

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 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 March 9, 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 Jerod Cook, (907) 772–2285; *jerod.cook@noaa.gov* or Robert Marvelle (907) 586–9329; *robert.marvelle@noaa.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and

clothing. Possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited (exception, 50 CFR 216.26: Beach found non-Endangered Species Act (ESA) teeth or bones that have been registered with NOAA's National Marine Fisheries Service (NMFS)). As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal produce, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products. The information is necessary for law enforcement purposes to ensure that only Alaska Indians, Aleuts, or Eskimos are submitting marine mammal hides or parts for tanning.

The information required by 50 CFR 216.23 is of two types. Applications: Information is required to identify the applicant as a tanner/agent in order to preclude prosecution under the MMPA and to determine that he/she has an acceptable record keeping program to accurately account for those marine mammal products received. This information serves as a deterrent for those individuals who might use this registration program for entering prohibited marine mammal products into interstate commerce. Reports: Information is also needed annually to evaluate the agent/tanner's activities during the year, and his/her procedures for bookkeeping and yearly inventory to assure NMFS, the Marine Mammal Commission, and the general public that prohibited marine mammal products were not being transshipped through registered agents.

The reporting requirements are: Report in writing to the Assistant Administrator for Fisheries, NMFS, any changes in the facts stated in Registrant's applications for this Certificate of Registration within 30 days of such change; maintain current records of each transaction authorized stating the marine mammals or marine mammal parts or products involved, from whom received, any processing accomplished, to whom returned, and the date of each such transaction. These records shall be kept separate and apart from other records maintained in the ordinary course of business and shall be retrained for not less than three years; and annually, during the month of January, send certified copies of such records (annual report) to the Assistant Administrator for Fisheries.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

OMB Number: 0648–0179.

Form Number: None.

Type of Review: Regular submission (extension of an existing information collection).

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 2 hours for an application and 2 hours for a report.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $175.00.

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. 2020–00005 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG907

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska

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

ACTION: Notice; issuance of two incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive incidental harassment authorizations (IHA) to the Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass, by Level A and Level B harassment, marine mammals during two years of activity related to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK.

DATES: The Phase 1 Authorization is effective from March 1, 2020 to February 28, 2021. The Phase 2 Authorization is effective from March 1, 2021 to February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* 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 is 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 as ''mitigation''); and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

Summary of Request

On September 11, 2018, NMFS received a request from ADOT&PF for two consecutive IHAs to take marine mammals incidental to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, Alaska. The application was deemed adequate and complete on June 11, 2019. ADOT&PF's request was for take of a small number of eight species of marine mammals, by Level B harassment. Of those eight species, three (harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), and Dall's porpoise (*Phocoenoides dalli*)) may also be taken by Level A harassment. Neither ADOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate. The issued IHAs would each cover one year of the two-year project.

Description of Specified Activity

Overview

ADOT&PF is planning to make improvements to existing ferry berths and construct new ferry berths on Gravina Island and Revilla Island in Tongass Narrows, near Ketchikan in southeast Alaska. These ferry facilities provide the only public access between the city of Ketchikan, AK on Revillagigedo (Revilla) Island, and the Ketchikan International Airport on Gravina Island (see Figure 1–2 in application). The project's activities that have the potential to take marine mammals, by Level A harassment and Level B harassment, include vibratory and impact pile driving, drilling operations for pile installation (rock socketing), and vibratory pile removal.

Planned construction includes the installation of new ferry facilities and the renovation of existing structures. The marine construction associated with the planned activities will occur during two distinct year-long phases, and take associated with these phases would be authorized in separate, consecutive IHAs. Phase 1, which primarily includes both improvement of existing facilities and construction of new facilities on both islands, is planned to occur between March 1, 2020 to February 28, 2021, and Phase 2, which includes the improvement/refurbishing of existing facilities on both islands, is planned to occur from March 1, 2021, to February 28, 2022.

In September 2019, as the ADOT&PF progressed its plans for the 2020 construction season in Tongass Narrows, it became clear that considerations associated with the contracting strategy for the project would likely result in two or three construction sites that could be active concurrently during Phase 1. It is not anticipated that more than one construction site will be active at any time during Phase 2. When the proposed IHAs (84 FR 34134; July 17, 2019) was published, concurrent pile driving and removal activities were not expected to occur. However, on October 23, 2019, ADOT&PF submitted a memorandum to NMFS that outlined the changes to the project including concurrent pile driving and removal activities which resulted in revised monitoring zones and take estimates. All other information had been previously analyzed in the FR Notice for the two Proposed IHAs and remains unchanged. The underwater activities that may affect marine mammals, including species listed under the Endangered Species Act (ESA), still include only vibratory and impact pile installation, vibratory pile removal, and drilling of rock sockets. Pile numbers and sizes also remain consistent with the information in the proposed IHAs (84 FR 34134; July 17, 2019).

Section 101(a)(5)(D) specifies that ''the Secretary shall authorize [incidental take by harassment] for periods of not more than 1 year.'' In this case, the ADOT&PF knew that it would take two years to complete the entire project, and knew which activities would be conducted in each of the two years. NMFS had sufficient information to determine which species would be affected, the estimated amount and type of take that would result from the activities, and the estimated impacts to subsistence use from ADOT&PF's activities over each of the two years of the project. Thus NMFS determined that the proposed activities met all statutory requirements and developed appropriate mitigation, monitoring, and reporting requirements for both years. It is therefore appropriate for NMFS to issue IHAs for each of the two consecutive years of the project.

Dates and Duration

In-water construction of Phase 1 is scheduled to begin on March 1, 2020 and continue through February 28, 2021. In-water construction of Phase 2 is scheduled to begin on March 1, 2021 and continue through February 28, 2022. However, in-water pile installation/removal (including drilling) may occur simultaneously at one or more component sites during Phase 1 only. Pile installation will occur intermittently over the work period, for durations of minutes to hours at a time depending on weather, construction and mechanical delays, marine mammal shutdowns, and other potential delays and logistical constraints. There are approximately 101 days of in-water construction planned for Phase 1 assuming that two pieces of equipment are used concurrently on 30 percent of planned driving days. Use of three hammers on some days will further reduce the total number of days of pile installation. ADOT&PF anticipates that Phase 2 will require 27 days of in-water construction and will not include any concurrent pile installation or removal activities.

Specific Geographic Region

The Tongass Narrows project is located within the City of Ketchikan, Alaska. Improvements and new construction on Revilla Island will occur approximately 2.6 miles north of downtown Ketchikan. A detailed description of the area is provided in the proposed IHAs (84 FR 34134; July 17, 2019) and is not repeated here. Please see that document for more information.

Detailed Description of Specific Activity

As discussed earlier, this project is composed of two consecutive phases with take of marine mammals from each phase authorized through separate IHAs. When necessary, the description of activity is broken down by phase below, but information relevant to both phases is presented together. Planned activities with potential to take marine mammals include the noise generated by drilling of rock sockets into bedrock for steel pipe piles, vibratory removal of steel pipe piles, vibratory installation of sheet piles, and vibratory and impact installation of steel pipe piles. Each phase of the project will include different activities that are described in detail in the following sections.

ADOT&PF has revised its contracting approach and will use multiple contractors at different locations during Phase 1. While this change may result in up to three construction sites being active during the same timeframe during Phase 1, it will not change the construction phasing or the amount or extent of activity completed in either Phase 1 or Phase 2. The potential exists during Phase 1 for pile installation or removal to occur at all three locations on the same day and it is likely that two or three hammers or a combination of hammers and down-the-hole (DTH) drills will be used on the same day.

When this occurs, equipment use may be staggered throughout the day, and hammer or drill use could occur at times when no other hammer or drill is being used. It is also possible that one, two, or three hammers, or a combination of up to two DTH drills and an impact or vibratory hammer, could coincidentally be in use simultaneously on the same or different project components. The likelihood of such an occurrence is anticipated to be infrequent and would be for short durations on that day. In-water pile installation is an intermittent activity, and it is common for installation to start and stop multiple times as each pile is adjusted and its progress is measured and documented. However, the underwater activities that may affect marine mammals, including ESA-listed species, still include only vibratory and impact pile installation, vibratory pile removal, and drilling of rock sockets. Pile numbers and sizes also remain consistent with the information originally provided to NMFS.

Description of In-Water Activities (General to Both Phases)

Four methods of pile installation are planned. These include use of vibratory and impact hammers, DTH drilling of rock sockets, and installation of tension anchors at some locations. Most piles will be installed vertically (plumb), but some will be installed at an angle (battered). Tension anchors will be used to secure some piles to the bedrock to withstand uplift forces. Rock sockets will be drilled at other locations where overlying sediments are too shallow to adequately secure the bottom portion of the pile. Some piles will be seated in rock sockets as well as anchored with tension anchors. A vibratory hammer will be used to install 44 temporary template piles, no greater than 20 inches in diameter, to a depth of 25 feet or less. The total duration of vibratory installation and subsequent removal of temporary piles will be approximately 22 hours spread over multiple days as shown in Table 2, and will take place within the same days as permanent pile installation. Installation and removal of temporary piles is therefore not anticipated to add to the overall estimated 101 days of pile installation and removal for Phase 1 as described in the footnote for Table 1.

The steel sheet piles for the bulkheads are of a Z-shape. Each pile is approximately 28 to 30 inches wide, and they interlock together to form a continuous wall. These sheet piles will be installed into the existing ground at elevations varying from +8 inches to +26 inches mean lower low water. Most of this work is expected to be done at lower tides so that in-water pile driving work is minimized. However, some installation work below the tidal elevations (in water) can be expected. The ground where the sheet piles will be installed is comprised of existing rubble mound slopes. Some excavation work will be needed to temporarily remove the large rocks prior to driving the sheet piles.

Vibratory and Impact Pile-Driving Methods—Installation of steel piles through the sediment layer will be done using vibratory or impact methods. All piles will be advanced to refusal at bedrock. Where sediments are deep and rock socketing or anchoring is not required, the final approximately 10 feet of driving will be conducted using an impact hammer so that the structural capacity of the pile embedment can be verified. Where sediments are shallow, an impact hammer will be used to seat the piles into competent bedrock before rock drilling begins. The pile installation methods used will depend on sediment depth and conditions at each pile location. The sheet pile abutment bulkheads for the new Revilla and Gravina ferry berths will be installed using vibratory hammer methods. Vibratory and impact pile driving will occur during both Phase 1 and Phase 2 of the project (Table 1 and Table 3).

As shown in Table 1, it is estimated that some piles will require 50 strikes from the impact hammer and others will require 200 strikes. In general, projects on Gravina Island will require approximately 50 strikes and projects on Revilla Island will require approximately 200 strikes. These differences are based on sediment characteristics, depth to bedrock, and the planned need for further drilling once at bedrock.

Vibratory Pile Removal—A total of 44 temporary piles will be installed and removed during Phase 1 of the project (Table 2), while 12 piles will be installed and removed during Phase 2 (Table 4). When possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used if necessary to extract piles that cannot be directly lifted. Removal of each old pile is estimated to require no more than 15 minutes of vibratory hammer use for the majority of the piles, but the removal of one 24-inch diameter pile may take up to 30 minutes.

Rock Socket Drilling—Rock sockets are holes drilled into the bedrock to advance piles beyond the depth vibratory or impact driving methods are able to achieve in softer overlying sediments. The depth of the rock socket varies, but 10–15 feet is commonly required. Drilling of rock sockets through the bedrock may use both rotary and percussion drill mechanisms. Drilling breaks up the rock to allow removal of the fragments and insertion of the pile. Drill cuttings are expelled from the top of the pile using compressed air. The diameter of the drilled rock socket is slightly larger than the pile being driving, and the pile is therefore easily advanced in the rock as the hole is drilled. It is estimated that drilling rock sockets into the bedrock will take about 1–3 hours per pile. Rock sockets will be used in both Phase 1 and Phase 2 of the project (Table 1 and 3).

Tension Anchors—Tension anchors are installed within piles that are drilled into the bedrock below the elevation of the pile tip, after the pile has been driven through the sediment layer to refusal. A 6- or 8-inch diameter steel pipe casing is inserted inside the larger diameter production pile. A rock drill is inserted into the casing, and a 6- to 8-inch-diameter hole is drilled into bedrock with rotary and percussion drilling methods. The drilling work is contained within the smaller steel pile casing and the larger steel pipe pile. The typical depth of the drilled hole varies, but 20–30 feet is common. Rock fragments will be removed through the top of the casing with compressed air. A steel rod is then grouted into the drilled hole and affixed to the top of the pile. The purpose of a rock anchor is to secure the pile to the bedrock to withstand uplift forces. Tension anchors will be utilized during both Phase 1 and Phase 2 of the project, as shown in Table 1 and Table 3.

Phase 1 Project Components

Each of the four permanent project components in Phase 1 will include installation of steel pipe piles that are 18, 24, or 30 inches in diameter. Temporary piles installed and removed during Phase 1 to support templates for permanent piles will be a maximum of 20 inches in diameter. Two of the components (Revilla and Gravina New Ferry Berths) will require the installation of steel sheet piles that will comprise the bulkhead abutments and are 27.6 or 30.3 inches in width. These sheet piles will be installed using vibratory driving at elevations varying from +8 inches to +26 inches mean lower low-water. Most of this work is expected to be done at lower tides so that in-water pile driving work is minimized. However, some installation work below the tidal elevations (in water) can be expected. The ground where the sheet piles will be installed is comprised of existing rubble mound

slopes. Some excavation work will be needed to temporarily remove the large rocks prior to driving the sheet piles.

The estimated installation and removal rates for Phase 1 are 1.5 permanent pipe piles per day, 10 permanent sheet piles per day, and 4 to 6 temporary piles per day. Different types of piles may be installed or removed within a day.

Project components are briefly described below and Table 1 shows the number and size of piles broken down by the individual components of Phase 1. For additional information on how these piles will be configured, and what structures they will make up, please refer to the IHA Application.

Revilla New Ferry Berth and Upland Improvements—The new Revilla Island airport shuttle ferry berth will be constructed immediately adjacent to the existing Revilla Island Ferry Berth (Figure 1–2 in IHA Application). It is the only Phase 1 component that will occur on Revilla Island.

New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements—The new Gravina Island airport shuttle ferry berth will be constructed immediately adjacent to the existing Gravina Island Ferry Berth (Figure 1–2 in IHA Application).

Gravina Airport Ferry Layup Facility—Improvements to the Gravina Island Ferry layup dock facility will occur in the same location as the existing layup dock facility (Figure 1–2 in IHA Application). The current layup dock is in disrepair and needs to be replaced.

Gravina Freight Facility—The new Gravina Island heavy freight mooring facility will be constructed in the same location as the existing barge offload facility (Figure 1–2 in IHA Application). This facility will provide improved access to Gravina Island for highway loads that cannot be accommodated by the shuttle ferry. Five breasting dolphins and one mooring dolphin will be constructed to support barge docking and will include pedestrian walkways for access by personnel. In addition, two new pile-supported mooring line structures will be constructed above the high tide line.

TABLE 1—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION DURING PHASE 1

Project component / Pile Type	Number of piles	Number of rock sockets	Number of tension anchors	Average vibratory duration per pile (minutes)	Average drilling duration for rock sockets per pile (minutes)	Impact strikes per pile	Estimated total number of hours	Average piles per day (range)	Days of installation
Revilla New Ferry Berth and Upland Improvements:									
24″ Pile Diameter	65	0	25	30	N/A	200	65	1.5 (1–3)	43
30″ Pile Diameter	18	0	14	30	N/A	200	18	1.5 (1–3)	12
AZ 14–770 Sheet Pile	55	N/A	N/A	15	N/A	N/A	14	6 (6–12)	9
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements:									
24″ Pile Diameter	66	52	25	15	120	50	182	1.5 (1–3)	44
30″ Pile Diameter	8	4	4	15	180	50	8	1.5 (1–3)	5
AZ 19–700 Sheet Pile	66.6	N/A	N/A	15	N/A	N/A	14	6 (6–12)	12
Gravina Airport Ferry Layup Facility:									
18″ Pile Diameter	3	0	0	15	N/A	50	2	1.5 (1–3)	2
30″ Pile Diameter	12	12	10	15	180	50	23	1.5 (1–3)	8
Gravina Freight Facility:									
20″ Pile Diameter	6	0	6	15	N/A	50	2	1.5 (1–3)	4
24″ Pile Diameter	3	3	3	15	120	50	3	1.5 (1–3)	2
30″ Pile Diameter	4	2	4	15	180	50	75	1.5 (1–3)	3
Phase 1 Total	320	73	91						*144

*This number reflects the number of days that would be required if pile driving only occurred at one location at a time. ADOT&PF expects that multiple project components may be constructed simultaneously, reducing the actual number of days of pile driving to 101.

TABLE 2—NUMBERS OF TEMPORARY PILES TO BE INSTALLED AND REMOVED FOR EACH PROJECT COMPONENT AND STRUCTURE DURING PHASE 1

Project component	Number of temporary piles	Average vibratory duration per pile for installation (minutes)	Average vibratory duration per pile for removal (minutes)	Days of installation	Days of removal	Piles per day
Revilla New Ferry Berth and Upland Improvements.	12	15	15	2 to 3	2 to 3	4 to 6.
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements.	12	15	15	2 to 3	2 to 3	4 to 6.
Gravina Airport Ferry Layup Facility	8	15	15	1 to 2	0.75 to 2	4 to 6.
Gravina Freight Facility	12	15	15	2 to 3	2 to 3	4 to 6.
Total	44	660 (11 hours)	660 (11 hours)	7–11	7–11.	

Phase 2 Project Components

The two project components in Phase 2 will include installation of steel pipe piles that are 16, 24 and 30 inches in diameter as shown in Table 3. Methods for vibratory and impact installation of temporary and permanent piles, drilling of rock sockets, and installation of tension anchors will be consistent with those described above. The estimated installation and removal rate for Phase

2 is between 1.2 to 1.5 pipe piles per day depending on pile size.

One 24-inch diameter pile will be installed at the existing Revilla ferry berth. Fifteen 24-inch diameter piles and eight 30-inch-diameter piles will be installed at the existing Gravina ferry berth. A total of 10 piles will be removed to accommodate upgrades to the existing Revilla Island and Gravina Island ferry berths. One 24-inch pile will be removed from the floating fender dolphin at the existing Revilla ferry berth. The nine 16-inch-diameter piles that support the three existing dolphins at the Gravina ferry berth will also be removed. It is anticipated that, when possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used if necessary to extract piles that cannot be directly lifted. Installation of sheet piles is not planned during Phase 2.

Revilla Refurbish Existing Ferry Berth Facility—Improvements to the existing Revilla Island Ferry Berth will include the following: (1) Replace the transfer bridge, (2) replace rubber fender elements and fender panels, (3) replace one 24-inch pile on the floating fender dolphin, (4) installation of 12 tension anchors and (5) replace the bridge float with a concrete or steel float of the same dimensions. Construction of the transfer bridge, bridge float, and fender elements will occur above water. The only in-water work will be pile installation and removal associated with construction of the dolphins. No temporary piles will be installed or removed during this component of the project.

Gravina Refurbish Existing Ferry Berth Facility—Improvements to the existing Gravina Island Ferry Berth will include the following: (1) Replace the transfer bridge, (2) remove the catwalk and dolphins, (3) replace the bridge float with a concrete or steel float of the same dimensions, (4) construct a floating fender dolphin, and (5) construct four new breasting dolphins. Construction of the transfer bridge, catwalk, and bridge float will occur above water. The only in-water work will be pile installation and removal associated with construction of the dolphins. A vibratory hammer will be used to install and remove 12 temporary template piles, no greater than 20 inches in diameter, to a depth of 25 feet or less (Table 4). The total duration of vibratory installation and subsequent removal of temporary piles will be approximately 6 hours spread over multiple days, and will take place within the same days as permanent pile installation. Installation and removal of temporary piles is therefore not anticipated to add to the overall estimated 27 days of pile installation and removal for Phase 2.

TABLE 3—PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION AND REMOVAL DURING PHASE 2

Project component / Pile Type	Number of piles	Number of rock sockets	Number of tension anchors	Average vibratory duration per pile (minutes)	Average drilling duration for rock sockets per pile (minutes)	Impact strikes per pile	Estimated total number of hours	Average piles per day (range)	Days of installation and removal
Revilla Refurbish Existing Ferry Berth Facility:									
24″ Pile Diameter	1			30		50	1	1	1
24″ Pile Diameter (Removal)	1			30		N/A	1	1	1
Gravina Refurbish Existing Ferry Berth Facility:									
24″ Pile Diameter	15	0		15		50	11	1.5 (1–3)	10
30″ Pile Diameter	8	3	12	15	180	50	6	1.2 (1–3)	7
16″ Pile Diameter (Removal)	12			15			2	1.5 (1–3)	8
Phase 2 Total	*24	3							27

* (+13 Removal)

TABLE 4—NUMBER OF TEMPORARY PILES TO BE INSTALLED AND REMOVED FOR EACH PROJECT COMPONENT AND STRUCTURE DURING PHASE 2

Project component	Number of temporary piles	Average vibratory duration per pile for installation (minutes)	Average vibratory duration per pile for removal (minutes)	Days of installation	Days of removal	Piles per day
Revilla Refurbish Existing Ferry Berth Facility.	0	0	0	0	0	0.
Gravina Refurbish Existing Ferry Berth Facility.	12	15	15	2 to 3	2 to 3	4 to 6.
Total	12	180 (3 hours) *	180 (3 hours)	2 to 3	2 to 3.	

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see the *Mitigation* and *Monitoring and Reporting* sections).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to ADOT&PF was published in the **Federal Register** on July 17, 2019 (84 FR 34134). That notice described, in detail, ADOT&PF's planned activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received the following comments from the Marine Mammal Commission:

Comment 1: The Commission indicated that NMFS had not included tension anchoring when estimating take of marine mammals and also used a source level for rock socket drilling that was low compared to a report featuring hydroacoustic data collected during anchor installation and rock socket

drilling for the White Pass Yukon Route authorization (Reyff and Heyvaert 2019).

Response: There is limited data available regarding sound source levels associated with tension anchoring (also known as rock anchor drilling) and down-the-hole (DTH) drilling (also known as rock socket drilling). Much of the available data are highly variable and feature limited sample sizes. The sources also demonstrate characteristics of both impulsive and continuous noise sources. These factors influence our determination of appropriate Level A harassment and Level B harassment isopleths as well as estimated take levels. NMFS' approach to assessing potential impacts from tension anchoring or rock socket drilling has changed over time as new information becomes available regarding potential impacts from tension anchoring or rock socket drilling.

NMFS had assumed that impacts from tension anchoring were discountable because the anchoring process does not generate steel-on-steel drilling noise and because the anchoring noise occurs in isolation from the water column. In one instance, NMFS did use JASCO sound source verification data from DTH drilling at Kodiak Pier 1. NMFS used this to establish a proxy source level of 167.7 dB RMS for rock anchor drilling (cited as both Warner and Austin 2016; and Denes *et al.* 2016) for the Ketchikan Berth IV Expansion Project IHA (83 FR 37473; August 8, 2019). However, rock anchor drilling is different from rock socket drilling in that much smaller holes are drilled in the bedrock that is well below where rock sockets are drilled. The bedrock is overlain with sediments, and will likely attenuate noise production from drilling and reduce noise propagation into the water column. Additionally, the casing used during drilling is inside the larger diameter pile, meaning that there is no steel-on-steel contact, which should further reduce noise levels.

A recent report by Reyff and Heyvaert (2019) recorded a level of 157 dB RMS for rock anchor drilling near Skagway, AK. The authors noted that this report represents a small amount of data, which was highly variable, and the conditions at testing sites need to be considered before applying the findings to projects at other locations. The authors treated rock anchor drilling as a continuous noise and calculated that the Level B harassment isopleth was 205 meters. By comparison, the calculated distance to the 120 dB rms threshold for continuous noise using a source level of 166 dB rms (Denes *et al.* 2016) and 15logR resulted in a Level B harassment zone isopleth of 12,023 meters. Given the very small Level B harassment zone (205 m) associated with measured source level that is 9 dB greater (166 dB vs. 157 dB) NMFS has determined that take from rock anchor drilling is discountable.

The Commission further commented that the source value of 166 dB RMS used by NMFS for DTH/rock socketing was too low considering that Reyff and Heyvaert (2019) reported a value of 179 dB RMS. The value used by NMFS was adopted from DTH drilling at Kodiak and represents the median from Denes *et al.* (2016) compared to the average from that study (167.7 dB RMS) used for the Ketchikan Berth IV Expansion Project noted previously. Additionally, measurements at Kodiak were collected from a sample of 8 piles, which constitutes a robust data set while only three driving events with highly variable measurements were recorded for rock socket drilling by Reyff and Heyvaert (2019). As noted above, the calculated distance to the 120 dB rms threshold for continuous noise using a source level of 166 dB rms and 15logR resulted in a Level B harassment zone isopleth of 12,023 meters for Tongass Narrows. In comparison, JASCO calculated the transmission loss coefficient at Kodiak as 18.9 with distances of 5,049 meters to the mean and 6,846 meters to the 90th percentile for the 120 dB threshold. Therefore, the sound source level of 166 dB RMS and associated Level B harassment isopleth calculated for the Tongass Narrows IHA can be considered conservative.

There is also some uncertainty about whether these sound sources should be classified as impulsive or continuous noise sources, since they often contain characteristics of both. The classification selected would have a significant effect on the size of the resulting Level A harassment and Level B harassment zones. Here DTH/rock socketing is treated as a continuous noise source because it does not demonstrate rapid rise times and decay of sound pressure level that is typical of impulsive noises

For these particular IHAs, NMFS has determined that the potential impacts to marine mammals from tension anchoring are discountable. NMFS also determined it is appropriate to adopt 166 dB RMS as a proxy for DTH/rock socket drilling. NMFS will continue to investigate noise characteristics associated with these relatively new pile driving technologies. We will also work on the development of guidance that could be used by future applicants when submitting applications for incidental take authorizations that utilize these methods.

Comment 2: The Commission recommended that NMFS authorize additional take of harbor seals by Level A harassment. Based on Table 1 of the proposed IHAs, impact pile driving would occur on up to 60 days during Phase I and on those days the Level A harassment zones exceed 100-m shut down zone. Although ADOT&PF would shut down its activities if a harbor seal approaches the Level A harassment zones, harbor seals could pop up undetected in Level A harassment zones larger than 100 m.

Response: While seals may appear or enter into the Level A harassment zone specified for a given activity, there is only a small likelihood that any of those animals would likely remain in the zone long enough such that their cumulative exposure could result in permanent threshold shift (PTS). Additionally, the anticipated effectiveness of the required monitoring and mitigation measures would limit the number of seals that experience auditory injury. However, NMFS concluded that while take of seals by Level A harassment is unlikely, it could occur in limited numbers and, therefore, authorized take at a level that reflects this assessment.

Comment 3: The Commission noted that the Level B harassment takes for humpback whales were vastly underestimated based on the method NMFS used for other cetaceans for ADOT's proposed authorizations. NMFS used the number of months (12) that a species could occur in the area and the frequency of occurrence to estimate the numbers of takes for all species other than humpback whales. For humpback whales, NMFS divided the number of days (144 in the proposed IHA) by the frequency of occurrence, which resulted in 82 rather than 204 Level B harassment takes of humpback whales for Phase I.

Response: NMFS frequently calculates authorized take numbers of assorted species in different ways. In this case, local anecdotal information regarding the presence of humpback whales was presented to NMFS in the format of a weekly rate. Take of other species was tabulated based on monthly rates. NMFS determined that both methods are acceptable and were used appropriately.

Comment 4: The Commission warned that potential one-year renewals of these two authorizations could have unintended consequences. For example, if ADOT&PF is unable to complete Phase I activities by March 2021 and a renewal is necessary, the renewal authorization would overlap with the Phase II activities that are to begin in March 2021. The Commission asked

whether the Phase II authorization would be reissued for March 2022 to March 2023 to eliminate overlap of activities or whether the unfinished Phase I activities would occur along with all of the Phase II activities as of March 2021. The Commission further recommended that NMFS issue a one-year renewal for Phase I activities only if the Phase II authorization is delayed until 2022.

Response: ADOT&PF is planning to employ concurrent driving which will decrease the number of driving days from 144 to 101 and expedite the completion of Phase 1, reducing the likelihood that a Phase 1 renewal would be needed.

The Commission's comment likely reflects concern regarding the potential for cumulative impacts or cumulative effects to occur. NMFS has determined that the concurrent operation of up to three driving devices would result in a negligible impact to affected species. The required mitigation and monitoring measures in combination with the short duration of any overlapping activities (27 days at most, but likely much fewer), would result in potential impacts to marine mammals that are both temporary and relatively minor. Further, NMFS does not expect that cumulative impacts to marine mammals associated with the potential overlap of two IHAs would affect the reproduction or survival of any individual marine mammals, let alone annual rates of recruitment or survival, either alone or in combination with other past, present, or ongoing activities. Additionally, we note two important facts: (1) The MMC appears to suggest that if the activities authorized in Phase 1 overlapped with the activities of Phase 2, then the impacts would necessarily be greater—but this is not a justified assumption. While some individual(s) could potentially be temporarily exposed to higher sound levels in a slightly larger area across a day or several, if that happened it would mean that the pile driving would take fewer days to complete overall, which could potentially reduce the overall impact to the exposed animals; and (2) while it is important to consider cumulative impacts in the context of NEPA (which we have), as with any two independent IHAs, the small numbers and negligible impact determinations are made in the context of the impacts of each of the specified activities considered in each of the separate IHAs.

Comment 5: The Commission recommended that NMFS require all action proponents that plan to conduct activities in areas where subsistence hunting occurs to contact the relevant Native Alaskan communities and entities well in advance of any activities commencing. Additionally, NMFS should specify in all related documents announcing proposed incidental take authorizations which communities and entities were contacted, whether any concerns were conveyed, and whether any additional mitigation measures should be implemented. The Commission also recommended that NMFS refrain from issuing the authorizations until ADOT&PF specifies which Native Alaskan communities and entities were contacted, whether any concerns were conveyed, and any additional measures that may be required to mitigate any potential conflicts with subsistence hunting

Response: NMFS requires applicants to contact Native Alaskan communities if proposed projects are located near subsistence hunting areas and likely to affect subsistence resources. However, this project does not occur in a known subsistence hunting area. The project area is largely developed and features regular marine vessel traffic. ADOT&PF plans to provide advance public notice of construction activities to reduce construction impacts on local residents, ferry travelers, adjacent businesses, and other users of Tongass Narrows and nearby areas. This will include notification to local Alaska Native communities that may have members who hunt marine mammals for subsistence. If any Alaska Native communities express concerns regarding project impacts to subsistence hunting of marine mammals, further communication with ADOT&PF will take place, including provision of any project information, and clarification of any mitigation and minimization measures that may reduce potential impacts to marine mammals. However, given that NMFS does not anticipate any effects on the availability of marine mammals for subsistence uses to result from the specified activities because project activities will take place within the industrial area of Tongass Narrows immediately adjacent to Ketchikan where subsistence activities do not generally occur, there is no need to delay issuance of the IHAs.

Comment 6: The Commission recommended that NMFS publish revised proposed authorizations due to the issues described in this *Comment* section prior to the issuance of final authorizations.

Response: NMFS has consulted with ADOT&PF regarding a number of issues brought forth by the Commission. NMFS has addressed all of the issues brought forth by the Commission and has determined that the publication of revised proposed authorizations is not warranted.

Comment 7: The Commission recommended that NMFS refrain from using the renewal process for ADOT&PF's authorization and limit the IHA renewal process to authorizations that are expected to have the lowest levels of impacts and require the least complex analysis. The Commission also recommended that if NMFS intends to use the renewal process frequently or for authorizations that require more complex analysis, it should provide the Commission and other reviewers a 30-day comment opportunity.

Response: We appreciate the Commission's input and direct the Commission and other readers to our recent response to a similar comment, which can be found at 84 FR 52464 (October 2, 2019; 84 FR 52466).

Comment 8: The Commission recommended that NMFS authorize the incidental taking of marine mammals via a rulemaking rather than individual incidental harassment authorizations and authorization renewals for activities that are scheduled to last more than one year at the outset.

Response: NMFS and prospective applicants routinely discuss how incidental take authorization can be obtained most efficiently in a manner that satisfies an applicant's authorization needs. A range of factors (*e.g.* project length, project complexity, planned start date) generally dictate whether a rulemaking or IHA would be the most appropriate path for a specific scenario. There are likely situations where the issuance of more than one IHA is more efficient and preferable to a formal rulemaking.

Comment 9: The Commission recommended that NMFS conduct a more thorough review of the applications and **Federal Register** documents to ensure not only accuracy, completeness, and consistency, but also to ensure that they are based on best available science, prior to submitting them to the **Federal Register** for public comment.

Response: NMFS thanks the Commission for its recommendation. NMFS makes every effort to review notices thoroughly prior to publication and will continue this effort to publish the best possible notice for public comment using the best available science.

Changes From the Proposed IHAs to Final IHAs

As described above, ADOT&PF realized in August 2019 that its contracting strategy for this project would likely result in two or three

construction sites that could be active at one time during Phase 1, although not during Phase 2. The contracting approach does not change the construction phasing or the amount or extent of activity completed in each phase. The potential for more than one piece of equipment (vibratory hammer, impact hammer, and/or DTH drill) to operate within a day or simultaneously was not considered in the proposed IHAs published on July 17, 2019 (84 FR 34134).

The extent to which the use of more than one hammer or DTH drill could occur within a day or simultaneously is unknown and difficult to quantify. Use of more than one hammer for pile installation on the same day (whether simultaneous or not) would result in a reduction in the total number of days of pile installation by increasing the number of piles that can be installed per day. The overall number of days of pile installation would decrease with use of two or three pieces of equipment. With two pieces of equipment used on 30 percent of construction days, the anticipated project duration would be reduced from a total of 144 days as described in the proposed IHAs to 101 days as described in this document. Take estimates for all species uthorized for take, except for Minke whale have been revised and all changes are noted in the *Estimated Take* section. Level B harassment monitoring zones have also been established to include concurrent driving scenarios. Some of the mitigation and monitoring requirements have also been revised as described herein and noted in the *Mitigation* and the *Monitoring and Reporting* sections. Nonetheless, none of these changes affect our negligible impact determinations or small numbers findings for any of the affected species or stocks.

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 5 lists all species with expected potential for occurrence in waters near Ketchikan, Alaska and summarizes information related to the species 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. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (*e.g.,* Muto *et al.,* 2018) except for gray whale, which could occur in the project area and is assessed in the U.S. Pacific SARs (Carretta *et al.* 2018). All values presented in Table 5 are the most recent available at the time of publication and are available in the 2018 SARs (Muto *et al.,* 2019, Carretta *et al.* 2019) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 5—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	MMPA stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	138
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	E, D,Y	10,103 (0.3; 7,890; 2006)	83	25
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, N	N.A	N.A	N.A.
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	N.A	5.1	0.6
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, N	2,347 (N.A.; 2,347; 2012)	24	1
		West Coast Transient	-, N	243 (N.A, 243, 2009)	2.4	0
		Northern Resident	-, N	261 (N.A.; 261, 2011	1.96	0
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-,-; N	26,880 (N.A.; N.A.; 1990)	N.A.	0
Family Phocoenidae:						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, Y	975 (0.10; 896; 2012)	8.95	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, N	83400 (0.097, N.A., 1993)	N.A.	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-,-, N	41,638 (N.A.; 41,638; 2015)	2,498	108
Family Phocidae (earless seals):						

TABLE 5—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	MMPA stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Harbor seal	*Phoca vitulina richardii*	Clarence Strait	-, N	31,634 (N.A.; 29,093; 2011)	1,222	41

[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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N.A.).

[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.

All species that could potentially occur in the project areas are included in Table 5. However, the spatial occurrence of gray whale and fin whale is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Gray whales have not been reported by any local experts or recorded in monitoring reports and it would be extremely unlikely for a gray whale to enter Tongass Narrows or the small portions of Revillagigedo Channel this project will impact. Similarly for fin whale, sightings have not been reported and it would be unlikely for a fin whale to enter the project area as they are generally associated with deeper, offshore waters.

A detailed description of the species likely to be affected by the Tongass Narrows Ferry Terminal Modifications and Improvements 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 proposed IHAs (84 FR 34134; July 17, 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** document for these descriptions.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from ADOT&PF's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The proposed IHAs (84 FR 34134; July 17, 2019) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to that **Federal Register** document for additional information.

Marine Mammal Habitat Effects

The main impact associated with ADOT&PF's activities would be temporarily elevated sound levels and the associated direct effects on marine mammals. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as forage fish, and minor impacts to the immediate substrate during installation and removal of piles during the pile driving project. These potential effects are discussed in detail in the proposed IHAs (84 FR 34134; July 17, 2019), therefore that information is not repeated here; please refer to that **Federal Register** document for that information.

Estimated Take

This section provides an estimate of the number of incidental takes that are reasonably expected to occur and, therefore, are authorized through these IHAs, which informed both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

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 sources (*i.e.,* impact/vibratory pile driving and drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals and some small amount of temporary threshold shift (TTS). There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for mid-frequency species and otariids. The required mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable, and result in no take by Level A harassment for mysticetes.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which 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). Due to the lack of marine marine mammal density data, NMFS relied on local occurrence data and average group size to estimate take. Below, we describe the factors considered here in more detail and present the calculated take estimates.

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).

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) (microPascal root mean square) for continuous (*e.g.,* vibratory pile-driving, drilling) and above received levels of 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Typically, and especially in cases where PTS is predicted, NMFS anticipates that some number of individuals may incur TTS. However, it is not necessary to separately quantify those takes, as it is very unlikely that an individual marine mammal would be exposed at the levels and duration necessary to incur TTS without also being exposed to the levels associated with behavioral harassment and, therefore, we expect any potential TTS takes to be captured by the estimated takes by behavioral harassment.

Both phases of ADOT&PF's planned activity include the use of continuous (vibratory pile driving/removal and drilling) and impulsive (impact pile driving) sources and, therefore, both the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 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).

These thresholds are provided in Table 6 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
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 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, vibratory pile removal, and drilling).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth. An impact hammer would then generally be used to place the pile at its intended depth. The actual durations of each installation method vary depending on the type and size of the pile. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation.

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels (see Table 7). Note that piles of differing sizes have different sound source levels (SSLs).

Empirical data from recent ADOT&PF sound source verification (SSV) studies were used to estimate sound source levels from Ketchikan for vibratory and impact driving of 30-inch steel pipe piles and Kodiak for drilling (Denes *et al.* 2016). The source level for rock socket drilling was derived from the above mentioned ADOT&PF SSV study at Kodiak, Alaska. The reported median source value for drilling was determined to be 166 dB rms for all pile types (Denes *et al.* 2016, Table 72).

For vibratory driving of 24-inch steel piles, data from a Navy pile driving project in the Puget Sound, WA was reviewed (Navy, 2015). From this

review, ADOT&PF determined the Navy's suggested source value of 161 dB rms was an appropriate proxy source value, and NMFS concurs. Because the source value of smaller piles of the same general type (steel in this case) are not expected to exceed a larger pile, the same 161 dB rms source value was used for 18-inch and 16-inch steel piles. This assumption conforms with source values presented in Navy (2015) for a project using 16-inch steel piles at Naval Base Kitsap in Bangor, WA.

For vibratory driving of both 27.6-inch and 30.3-inch sheet piles, ADOT&PF used a source level of 160 dB rms. These source levels were reported in Caltrans (2015) summary tables for 24-inch steel sheet piles, and NMFS concurs that this value was an acceptable proxy.

Finally, ADOT&PF used source values of 177 dB SEL and 190 dB rms for impact driving of 24-inch and 18-inch steel piles. These values were determined based on summary values presented in Caltrans (2015) for impact driving of 24-inch steel piles. NMFS concurs that the same source value was an acceptable proxy for impact driving of 18-inch steel piles.

TABLE 7—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DRILLING, AND VIBRATORY PILE REMOVAL

Method and pile type	Sound source level at 10 meters			Literature source
Vibratory Hammer	dB rms			
30-inch steel piles	162			Denes *et al.,* 2016, Table 72.
24-inch steel piles	161			Navy 2015.
20-inch steel piles	161			Navy 2015.
18-inch steel piles	161			Navy 2015.
16-inch steel piles	161			Navy 2015.
27.6-inch sheet pile	160			Caltrans 2015.
30.3-inch sheet pile	160			Caltrans 2015.
Drilling Rock Sockets	dB rms			
All pile diameters	166			Denes *et al.*, 2016, Table 72.
Impact Hammer	dB rms	dB SEL	dB peak	
30-inch steel piles	195	181	209	Denes *et al.*, 2016, Table 72.
24-inch steel piles	190	177	203	Caltrans 2015.
18-inch steel piles	190	177	203	Caltrans 2015.

Note: It is assumed that noise levels during pile installation and removal are similar. Use of an impact hammer will be limited to 5–10 minutes per pile, if necessary. It is assumed that drilling produces the same SSL regardless of DTH diameter. SEL = sound exposure level; dB peak = peak sound level; rms = root mean square.

ADOT&PF plans to employ the simultaneous use of two or more noise sources which can create overlapping sound fields that result in additive effects of sound from the different hammers under certain conditions (NMFS 2018, WSDOT 2019). The combined source levels can be calculated using rules of decibel addition described below and shown in Table 8. Overlapping sound fields created by use of more than one hammer are handled differently for impact and vibratory hammers. The use of two impact hammers simultaneously is unlikely to result in the two hammers operating in synchrony therefore, the sound pressure levels will not be adjusted regardless of the distance between the hammers. In this case, each impact hammer will be considered to have its own independent harassment zones. Sound from two or more continuous sources near the same location results in louder sound levels than from a single source. NMFS is treating DTH drilling as a continuous noise source for this project and it will be considered a similar noise to vibratory hammering. The sound levels from continuous sources cannot be added by standard addition because the decibel is measured on a logarithmic scale. For example, two sounds of equal level (plus or minus 1 dB) combine to raise the sound level by 3 dB. However, if two sounds differ by more than 10 dB, there is no combined increase in the sound level; the higher output covers any other sound. For marine mammal monitoring purposes, if the isopleth from one sound source encompasses a second sound source over a free sound field (*i.e.,* no landmass separating the sound sources), then the continuous sources are considered close enough to be a ''combined sound source'' and their sound levels are added (NMFS 2018, WSDOT 2019) to determine the sound isopleth. The resulting isopleth is centered on the ''combined source,'' which is the geometric centroid of the polygon formed by the sound sources.

For simultaneous use of three or more hammers or DTH drills, the three pieces with the highest noise levels must be identified. The same rules for decibel addition are then applied to the two lowest source levels of the three. The resulting combined source level is then added to the third remaining source level using the same rules. For example, if two DTH hammers (166 dB rms each) are used simultaneously with vibratory installation of a 24-inch pile (161 dB rms), first the two lowest levels are added together using the rules of decibel addition: $166 - 161 = 5$, and therefore 1 dB is added to 166 dB as shown in Table 8, resulting in a combined noise level of 167 dB for the two pieces of equipment. Then 167 is added to the noise level of the third piece of equipment, 166. Since $167 - 166$ is 1, 3 dB are added to 167, resulting in a combined noise level for all equipment of 170 dB as shown in Table 8.

At this stage in project planning, it is difficult to predict when or where each of the two or three contractors or construction crews may be working, and therefore, is also difficult to predict which combinations of activities might occur simultaneously and for how long. The Phase 1 sound source levels were calculated for all possible combinations of pile installation and removal using two and three vibratory hammers and/or two DTH drills and are shown in Tables 9, 10, 11, and 12. The combined

sound source levels for simultaneous vibratory hammer use, or use of a vibratory hammer and DTH drill simultaneously, range from 163 to 170 dB rms, depending on the number of piles (two or more) being installed simultaneously, pile size and type, and method of installation. These source levels were used to establish Level A harassment and Level B harassment isopleths. Simultaneous use of three DTH drills was not analyzed because it is not anticipated to occur.

TABLE 8—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE INSTALLATION AND REMOVAL

Hammer types	Difference in SSL	Level A harassment zones	Level B harassment zone
Vibratory, Impact	Any	Use impact zones	Use vibratory zone.
Impact, Impact	Any	Use zones for each pile size and number of strikes.	Use zone for each pile size.
Vibratory, Vibratory	0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
	2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
	4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
	10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Source: Modified from USDOT 1995, WSDOT 2018, and NMFS 2018.
Note: SSL = sound source level; dB = decibels.

Simultaneous in-water pile installation and removal will not occur during Phase 2 of the Tongass Narrows Project, and therefore this possibility was not analyzed. As described in the proposed IHAs, in-water pile installation and removal on the Revilla Island side of the Narrows during Phase 2 will be limited to no more than 2 hours, and, as agreed by ADOT&PF, the IHA will require that those 2 hours not coincide with in-water pile installation/removal on Gravina Island.

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Table 9. Combined Sound Levels Generated during Pile Installation and Removal for Combinations of Two Pieces of Equipment: Impact Hammer, Vibratory Hammer, and DTH Drill.

	Method			Vibratory					Drilling		Impact		
		Pile Diameter		Sheet	18	20	24	30	24	30	18/20	24	30
			SSL	160	161	161	161	162	166	166	190	190	195
Phase 1	Vibratory	Sheet	160	**163**	**164**	**164**	**164**	**164**	**167**	**167**	No Addition (Level B harassment= Vibratory, Level A harassment = Impact)		
		18	161	**164**	NA		**164**	**165**	**167**	**167**			
		20	161	**164**			**164**	**165**	**167**	**167**			
		24	161	**164**	**164**	**164**	**164**	**165**	**167**	**167**			
		30	162	**164**	**165**	**165**	**165**	**165**	**167**	**167**			
	Drilling	24	166	**167**	**167**	**167**	**167**	**167**	**169**	**169**			
		30	166	**167**	**167**	**167**	**167**	**167**	**169**	**169**			
	Impact	18/20	190	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)							No Addition		
		24	190										
		30	195										

Note: This table is applicable when two piles are installed/removed simultaneously.

Table 10. Combined Sound Levels Generated during Pile Installation and Removal for Combinations of Three Pieces of Equipment: Impact Hammer, Vibratory Hammer, and DTH Drill, when the Pile Installed at Revilla is 24 inches in Diameter.

Phase 1	New Gravina Island Shuttle Ferry Berth												
	Method			Vibratory					Drilling		Impact		
		Pile Diameter		Sheet	18	20	24	30	24	30	18/20	24	30
			SSL	160	161	161	161	162	166	166	190	190	195
Gravina Airport Layup and Freight	Vibratory	18	161	**166**	NA		**166**	**166**	**168**	**168**	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)		
		20	161	**166**			**166**	**166**	**168**	**168**			
		24	161	**166**	**166**	**166**	**166**	**166**	**168**	**168**			
		30	162	**166**	**166**	**166**	**166**	**167**	**169**	**169**			
	Drilling	24	166	**168**	**168**	**168**	**169**	**168**	**170**	**170**			
		30	166	**168**	**168**	**168**	**169**	**168**	**170**	**170**			
	Impact	18/20	190	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)							No Addition		
		24	190										
		30	195										

Notes:
24-inch SSL = 161
This table is applicable when three piles are installed simultaneously, and the pile installed at Revilla is 24-in diameter.
** NA = Combinations of equipment not possible given construction plans for each component.

Table 11. Combined Sound Levels Generated during Pile Installation and Removal for Combinations of Three Pieces of Equipment: Impact Hammer, Vibratory Hammer, and DTH Drill, when the Pile Installed at Revilla is 30 Inches in Diameter.

	Method			Vibratory					Drilling		Impact		
		Pile Diameter		Sheet	18	20	24	30	24	30	18/20	24	30
			SSL	160	161	161	161	162	166	166	190	190	195
Gravina Airport Layup and Freight	Vibratory	18	161	**166**	NA		**166**	**167**	**169**	**169**	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)		
		20	161	**166**			**166**	**167**	**169**	**169**			
		24	161	**166**	**166**	**166**	**166**	**167**	**169**	**169**			
		30	162	**166**	**167**	**167**	**167**	**167**	**169**	**169**			
	Drilling	24	166	**169**	**169**	**169**	**169**	**168**	**170**	**170**			
		30	166	**169**	**169**	**169**	**169**	**168**	**170**	**170**			
	Impact	18/20	190	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)							No Addition		
		24	190										
		30	195										

Notes:
30-inch SSL = 162
This table is applicable when three piles are installed simultaneously, and the pile installed at Revilla is 30-in diameter.
** NA = Combinations of equipment not possible given construction plans for each component.

Table 12. Combined Sound Levels Generated during Pile Installation and Removal for Combinations of Three Pieces of Equipment: Impact Hammer, Vibratory Hammer, and DTH Drill, when the Pile Installed at Revilla is Sheet Pile.

Phase 1	New Gravina Island Shuttle Ferry Berth												
	Method			Vibratory					Drilling		Impact		
		Pile Diameter		Sheet	18	20	24	30	24	30	18/20	24	30
			SSL	160	161	161	161	162	166	166	190	190	195
Gravina Airport Layup and Freight	Vibratory	18	161	**166**	NA		**166**	**166**	**168**	**168**	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)		
		20	161	**166**			**166**	**166**	**168**	**168**			
		24	161	**166**	**166**	**166**	**166**	**166**	**168**	**168**			
		30	162	**166**	**166**	**166**	**166**	**166**	**168**	**168**			
	Drilling	24	166	**168**	**168**	**168**	**168**	**168**	**170**	**170**			
		30	166	**168**	**168**	**168**	**168**	**168**	**170**	**170**			
	Impact	18/20	190	No Addition (Level B harassment = Vibratory, Level A harassment = Impact)							No Addition		
		24	190										
		30	195										

Notes:
Sheet pile SSL = 160
This table is applicable when three piles are installed simultaneously, and sheet piles are installed at Revilla.
** NA = Combinations of equipment not possible given construction plans for each component.

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Level B Harassment Zones

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:

$TL = B * Log10 (R_1/R_2)$,

Where
TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
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

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as at Tongass Narrows, where water generally increases with depth as the receiver moves away from pile driving locations, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions.

Using the practical spreading model, ADOT&PF determined underwater noise would fall below the behavioral effects threshold of 120 dB rms for marine mammals at a maximum radial distance of 12,023 m for rock socket drilling. This distance determines the maximum Level B harassment zone for the project. Other activities, including vibratory and impact pile driving, will have smaller Level B harassment zones. All Level B harassment isopleths are reported in Table 13 and Table 14 below. It should be noted that based on the geography of Tongass Narrows and the surrounding islands, sound will not reach the full distance of the Level B harassment isopleth in all directions. Generally, due to interaction with land, only a thin slice of the possible area is ensonified to the full distance of the Level B harassment isopleth.

TABLE 13—CALCULATED DISTANCES TO LEVEL B HARASSMENT ISOPLETHS AND ENSONIFIED AREAS DURING PILE INSTALLATION AND REMOVAL OF A SINGLE PIECE OF EQUIPMENT

Pile size	Isopleth—impact (m) (160 dB)	Impact (km^2)	Isopleth—vibratory (m) (120 dB)	Vibratory (km^2)	Isopleth—drilling (m) (120 dB)	Drilling (km^2)
Phase 1 Revilla side						
24-inch piles	1,000	0.780348	5,412	3.224297	.....	.....
30-inch piles	2,154	1.504843	6,310	3.584237	.....	.....
Sheet pile	.....	.....	4,642	2.856483	.....	.....
Phase 1 Gravina side						
18-inch	1,000	1.297393	5,412	9.361061	.....	.....
24-inch piles	1,000	1.297393	5,412	9.361061	12,023	23.618314
30-inch piles	2,154	3.077801	6,310	11.11939	12,023	23.618314
Sheet pile	.....	.....	4,642	7.712967	.....	.....
Phase 2 Revilla side						
24-inch	1,000	0.780348	5,412	3.187212	.....	.....
Phase 2 Gravina side						
16-inch	.....	.....	5,412	8.03168	.....	.....
24-inch piles	1,000	1.297393	5,412	8.03168	.....	.....
30-inch piles	2,154	3.077801	6,310	9.472484	12,023	23.618314

The Level B harassment zone distance was determined based on calculating the combination of simultaneously installed piles, and their resulting combined source level through decibel addition, as shown in Table 14. For each combined source level, the Level B harassment is consistent, regardless of the combination of equipment. Level B harassment zones range from 7,356 meters (vibratory installation of two sheet piles or two 24-inch round piles simultaneously) to 21,544 meters (drilling for two piles and simultaneous vibratory installation of a 30-inch pile).

TABLE 14—LEVEL B HARASSMENT ZONES FOR COMBINATIONS OF TWO AND THREE PILES OF DIFFERENT SIZES, TYPES, AND INSTALLATION METHODS

Combined SSL (dB)	Distance to Level B Harassment Isopleth (meters)
163	7,356
164	8,577
165	10,000

TABLE 14—LEVEL B HARASSMENT ZONES FOR COMBINATIONS OF TWO AND THREE PILES OF DIFFERENT SIZES, TYPES, AND INSTALLATION METHODS—Continued

Combined SSL (dB)	Distance to Level B Harassment Isopleth (meters)
166	11,659
167	13,594
168	15,849
169	18,478
170	21,544

These larger zones are truncated to the southeast by islands, which prevent propagation of sound in that direction beyond the confines of Tongass Narrows. To the northwest of Tongass Narrows, combined sound levels that equal or exceed 167 dB rms extend into Clarence Strait before attenuating to sound levels that are presumably below 120 dB rms. The maximum size of the ensonified area in Clarence Strait is 21.3 square kilometers (km^2), which occurs only when two DTH drills are used simultaneously with a vibratory hammer. This value for area is used in calculation of exposure estimates for the two species for which we have density estimates in Clarence Strait, harbor porpoises and Dall's porpoises. This represents the maximum area that could be ensonified when multiple pieces of equipment are used, and therefore results in a maximum estimate of exposure, because a smaller area is ensonified under most equipment combinations.

In some cases, Level B harassment zones for pile combinations are smaller than the Level B harassment zone for DTH drilling with a single drill, which is 12,023 meters (Table 14). Only the Level B harassment zones for pile combinations equal to or exceeding 167 dB rms extend past the 12,023-meter zone analyzed in the proposed IHAs. All combinations of two vibratory hammers result in Level B harassment zones that are smaller than 12,023 meters in radius (Table 9). To reach the 167 dB rms threshold with only vibratory pile installation (no DTH drilling), three vibratory hammers would have to simultaneously install 30-inch piles Table 11). It is possible, but unlikely, that this would occur, given that the New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements Project includes vibratory installation of only eight 30-inch piles for 15 minutes each, or a total of 2 hours of vibratory installation; the remaining 66 piles for this project are 24 inches in diameter.

ADOT&PF assumes that the 2 hours of simultaneous installation of 30-inch piles represents 2 days maximum when the Project's Level B harassment zone could briefly exceed 12,023 meters. All other combinations of three vibratory hammers will have Level B harassment zones that are smaller than 12,023 meters in radius and are confined within Tongass Narrows, and effects to this area were analyzed in the proposed IHAs.

Combinations of one DTH drill with a vibratory hammer, two DTH drills, and two DTH drills with a vibratory hammer also have source levels that equal or exceed 167 dB rms (Tables 9, 10, 11, and 12) and Level B harassment zones that exceed 12,023 meters (Table 14). No DTH drilling will occur during construction on Revilla Island. One or two DTH drills could be used for construction of the New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements Project and the Gravina Freight Facility and Gravina Airport Ferry Layup Facility on the same day and/or simultaneously.

Use of at least one DTH drill simultaneously with a second DTH drill or one or two vibratory hammers is the most likely combination of multiple pieces of equipment that would result in Level B harassment zones that exceed 12,023 meters. It is estimated that construction of the New Gravina Island Shuttle Ferry Berth will require the most DTH drilling, with an estimated 49 days at a production rate of 1.5 piles per day (approximately 180 minutes of DTH drilling per day). On the days when DTH drilling occurs, simultaneous use of one or more vibratory hammers or a second DTH drill could also occur, resulting in a Level B harassment zone that potentially could exceed 12,023 meters for a brief period each day.

In total, the Level B harassment zone could exceed the previously analyzed 12,023 meters on up to 51 days (2 days when three 30-inch piles are likely to be installed simultaneously plus 49 days when a DTH drill could be used in combination with a second DTH drill or vibratory hammers, for 51 days total). However, use of multiple pieces of equipment, whether simultaneous or on the same day, results in an increased production rate as more piles per day are installed. This decreases the total number of days of pile installation from 144 to 101 days (duration of the project) and decreases the number of days when the Level B harassment zone size could exceed 12,023 meters.

Level A Harassment Zones

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 take by Level A harassment. 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 impact/vibratory pile driving or drilling, the NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below (Table 15).

Level A harassment thresholds for impulsive sound sources (impact pile driving) are defined for both SELcum and Peak SPL with the threshold that results in the largest modeled isopleth for each marine mammal hearing group used to establish the Level A harassment isopleth. In this project, Level A harassment isopleths based on SELcum were always larger than those based on Peak SPL. It should be noted that there is a duration component when calculating the Level A harassment isopleth based on SELcum, and this duration depends on the number of piles that will be driven in a day and strikes per pile. For some activities, ADOT&PF plans to drive variable numbers of piles per day throughout the project and determine at the beginning of each pile driving day, how many piles will be driven that day. Here, this flexibility has been accounted for by modeling multiple durations for the activity, and determining the relevant isopleths as shown in Table 17.

TABLE 15—SINGLE PILE DRIVING AND DRILLING ACTIVITY INPUTS FOR USER SPREADSHEET

Equipment type	Vibratory pile removal	Vibratory pile driver (installation of sheet piles)	Vibratory pile driver (installation of 30-inch steel piles)	Vibratory pile driver (installation of 24-inch steel piles)	Vibratory pile driver (installation of 20-inch steel piles)	Vibratory pile driver (installation of 18-inch steel piles)	Impact pile driver (30-inch steel piles)	Impact pile driver (24-inch steel piles)	Impact pile driver (18-inch steel piles)	Rock socket drilling
Spreadsheet tab used	A.1) Vibratory pile driving	A.1) Vibratory pile driving	A.1) Vibratory pile driving	A.1) Vibratory pile driving	A.1) Vibratory pile driving	A.1) Vibratory pile driving	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving	E.1) Impact pile driving
Source Level	161 SPL	160 SPL	162 SPL	161 SPL	161 SPL	161 SPL	181 SEL	177 SEL	177 SEL	166 SPL.
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	2.5	2.5	2.5	2	2	2	2.5.
(a) Activity duration (hours) within 24 hours. (b) Number of strikes per pile. (c) Number of piles per day.	(a) 2.5 24-in pile 30 min/ 16-in 15 min.	(a) 2.5 (15 mins * 10).	(a) 1.5 3 * 30 mins.	(a) 1.5 3 * 30 mins.	(a) 0.75 3 * 15 mins.	(a) 0.75 3 * 15 mins.	(b) 200 or 50 (c) 1 to 3.	(b) 200 or 50 (c) 1 to 3.	(b) 50 (c) 1 to 3.	(a) 9 or 6.*
Propagation (xLogR).	15	15	15	15	15	15	15	15	15	15.
Distance of source level measurement (meters)*.	10	10	10	10	10	10	10	10	10	10.

* Duration estimates for rock socket drilling are based on assumption of drilling 3 rock sockets per day. 9 hours would be the estimated duration for drilling related to 30-inch piles, and 6 hours would be the duration for drilling related to 24- and 18-inch piles.
** For specifics of what number of strikes and number of piles will be used in a given situation, please refer to Table 1 and Table 3.

TABLE 16—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

Activity	Pile diameter(s)	Minutes per pile or strikes per pile	Piles installed or removed per day	Level A harassment isopleth distance (meters)				
				Cetaceans			Pinnipeds	
				LF	MF	HF	PW	OW
Vibratory Installation	30-inch	30 Minutes	3	11	<1	15	6	<1
	24-inch, 20-inch, 18-inch	15–30 Minutes	3	9	<1	13	5	<1
	27.6-inch sheet pile, 30.3-inch sheet pile.	15 Minutes	12	13	2	18	8	1
Vibratory Removal	24-inch, 16-inch	30 Minutes	5	13	1	19	8	<1
Drilling Rock Sockets	30-inch	180 Minutes	3	66	6	97	40	3
	24-inch, 18-inch	120 Minutes	3	50	4	74	30	2
Impact Installation	30-inch	50 Strikes	3	208	8	247	111	9
		50 Strikes	2	159	6	189	85	7
		50 Strikes	1	100	4	119	54	4
		200 Strikes	3	523	19	623	280	21
		200 Strikes	2	399	15	476	214	16
		200 Strikes	1	252	9	300	135	10
Impact Installation	24-inch	50 Strikes	3	113	4	134	61	5
		50 Strikes	2	86	3	102	46	4
		50 Strikes	1	54	2	65	29	3
		200 Strikes	3	283	11	337	152	11
		200 Strikes	2	216	8	258	116	9
		200 Strikes	1	136	5	162	73	6
Impact Installation	18-inch	50 Strikes	3	113	4	134	61	5
		50 Strikes	2	86	3	102	46	4
		50 Strikes	1	54	2	65	29	3

Note: A 10-meter shutdown zone will be implemented for all species and activity types to prevent direct injury of marine mammals.

To keep the analysis simple, ADOT&PF and NMFS analyzed the highest source levels for the longest durations of pile installation that could occur within a day. For example, if seventeen 30-inch piles were installed with a vibratory hammer on a single day, the Level A harassment zone for all functional hearing groups would remain smaller than 50 meters. Only on the eighteenth 30-inch pile would the isopleth for high-frequency cetaceans exceed 50 meters. Similarly, the combined source level for vibratory installation of three 30-inch piles is 167 dB rms (Table 11). The Level A harassment zone for this source level is reached when the duration exceeds 155 minutes (2.6 hours). Only after 470 minutes (7.8 hours) of simultaneous installation of three 30-inch piles would the Level A harassment zone reach 100 meters, a production rate that is unlikely to be met or exceeded.

If two DTH drills operated within a day, 5 piles could be installed with 115 minutes of DTH drilling for each (575 minutes or 9.5 total hours), and the Level A harassment zone for all functional hearing groups would remain below 100 meters. Two DTH drills operating simultaneously would have a combined source level of 169 dB rms (Table 9); the Level A harassment zone for this source level is reached when the duration exceeds 148 minutes (4.9 hours) of simultaneous use of two DTH drills, a production rate that is also unlikely to be met or exceeded.

TABLE 17—PILE DRIVING AND DRILLING ACTIVITY INPUTS FOR USER SPREADSHEET RESULTING IN LESS THAN 100-m LEVEL A HARASSMENT ISOPLETH

Equipment type	30-inch vibratory maximum (non-concurrent installation)	30-inch vibratory, 3 piles (concurrent installation)	2 DTH drills (concurrent installation)	DTH drill maximum (non-concurrent installation)
Spreadsheet Tab Used	A.1) Vibratory Pile Driving	A.1) Vibratory Pile Driving	A.1) Vibratory Pile Driving	A.1) Vibratory Pile Driving
Source Level	162	167	169 SPL	166 SPL.
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5.
(a) Activity duration (hours) within 24 hours	(a) 8.5; (b) 17	(a) 7.8; (b) 3	(a) 4.9 (b) 2	(a) 9.5 (b) 5.
(b) Number of piles per day				
Propagation (xLogR)	15	15	15	15.
Distance of source level measurement (meters)*	10	10	10	10.

TABLE 18—MAXIMUM CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS DURING CONCURRENT PILE INSTALLATION AND REMOVAL

Activity	Time of installation per day (hours)	Level A harassment isopleth distance (meters)				
		Cetaceans			Pinnipeds	
		LF	MF	HF	PW	OW
30-inch Vibratory Maximum (non-concurrent installation)	8.5	33	3	49	20	2
2 DTH (concurrent)	[1] 4.9	67	6.0	100	41	3
30-inch vibratory, 3 piles (concurrent)	[2] 7.8	68	6	100	41	3
DTH Maximum (non-concurrent installation)	[3] 9.5	64	6	98	40	3

[1] Hours of simultaneous installation with 2 DTH drills*.
[2] Hours of simultaneous installation of 3 30-inch piles**.
[3] Hours of installation with 2 DTH drills non-concurrent installation (cannot exceed 3 piles or 10 hours per day without being concurrent)

The scenarios evaluated above and depicted in Table 17 and Table 18 represent levels of efficiency (production rates) that are unlikely to be achieved in the field, and Level A harassment zones for all functional hearing groups remained below 100 meters in all cases presented above.

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 that will inform the take calculations. ADOT&PF relied on a synthesis of qualitative information from local people, including biologists and the harbormaster, because of the lack of small-scale, site-specific species density or abundance information for Tongass Narrows and nearby areas. Quantitative estimates of exposure were calculated using this qualitative information and are therefore not dependent on harassment zone sizes.

It is important to remember that Level B harassment zone sizes do not increase with use of multiple hammers or DTH drills within a day, and no additional Level B harassment exposures of marine mammals are anticipated to result from use of multiple pieces of equipment within a day. As discussed above, no additional exposures are anticipated to result from combinations of an impact hammer and a continuous noise source (vibratory hammer or DTH drill), because those zones are encompassed within the area of ensonification analyzed previously. Similarly, no additional exposures are anticipated to result due to combinations of impact hammers.

However, zones sizes that result from a combination of equipment that reaches a noise level of 167 dB rms or more (Tables 9, 10, 11, and 12) extend to the northeast of Tongass Narrows and into Clarence Strait, an area that was not considered ensonified under earlier construction scenarios analyzed in the proposed IHAs. The revised exposures estimates below are based on the simultaneous use of two or more vibratory hammers or DTH drills in combinations that exceed 167 dB rms.

ADOT&PF used 51 days as the estimated number of days when the 12,023-meter Level B harassment zone isopleth could be exceeded and exposure or take of marine mammals could occur in Clarence Strait. The total number of days of in-water pile installation and removal is now estimated at 101 days (instead of 144 days), a reduction of 43 days.

For most marine mammal species, abundance in Tongass Narrows is anticipated to be greater than abundance in Clarence Strait, and the reduction in days of ensonification in Tongass Narrows negates the increase in area in Clarence Strait. This is especially the case for species that have higher abundance in nearshore and shallow waters, and less so for species that regularly occur in deeper, more open waters. It is anticipated that the ensonified area that extends into Clarence Strait will be temporary and intermittent, lasting only for a few minutes up to a few hours per day.

Steller Sea Lion

Steller sea lion abundance in the Tongass Narrows area is not well known. No systematic studies of Steller sea lions have been conducted in or near the Tongass Narrows area. Steller sea lions are known to occur year-round and local residents report observing Steller sea lions about once or twice per week (based on communication outlined in Section 3 of the IHA application). Abundance appears to increase during herring runs (March to May) and salmon runs (July to

September). Group sizes are generally 6 to 10 individuals (Freitag 2017 as cited in 83 FR 37473) but have been reported to reach 80 animals (HDR 2003). Tongass Narrows represents an area of high anthropogenic activity that sea lions would normally avoid, but at least three seafood processing plants and two fish hatcheries may be attractants to these opportunistic scavengers and predators. Sea lions are generally unafraid of humans when food sources are available. For these reasons, NMFS proposed one group of 10 Steller sea lions may be present in the project area each day, but this occurrence rate may as much as double (20 Steller sea lions per day) during periods of increased abundance associated with the herring and salmon runs (March to May and July to September).

For Phase 1, we anticipate that one large group (10 individuals) may be present in the Level B harassment zone once per day. However, as discussed above, we anticipate that exposure may be as much as twice this rate during March, April, May, July, August, and September, due to the increased presence of prey during periods of increased abundance (*i.e.* herring and salmon). Therefore, we expect that two large groups (20 individuals) may be present in the Level B harassment zone each day during these months (approximately half of Phase 1). We estimate a total of 1,515 potential exposures of Steller sea lions (*i.e.,* one group of 10 sea lions per day × 50.5 days [or half of Phase 1] + two groups of 10 sea lions per day × 50.5 days = 1,515 sea lions) in Tongass Narrows.

Steller sea lions are known to swim across Clarence Strait and to use offshore areas with deeper waters, although no estimates of at-sea density or abundance in Clarence Strait are available. We estimate that a large group of 10 animals may occur in the ensonified portion of Clarence Strait each day (one group of 10 sea lions per day × 51 days = 510 individuals). Therefore, NMFS has authorized the take of 2,025 individuals (1,515 + 510 = 2,025 individuals) by Level B harassment in Tongass Narrows and Clarence Strait. This is a decrease from the 2,160 takes by Level B harassment proposed to be authorized in the proposed IHAs as concurrent driving reduced the number of anticipated driving days.

Take by Level A harassment is not expected for Steller sea lions in Phase 1, because of the small Level A harassment zones for otarrids (Table 16) and the expected effectiveness of the monitoring and mitigation measures discussed below.

During Phase 2, we anticipate Steller sea lions would be exposed at the same rate as during Phase 1. Phase 2 construction is planned to occur in the months of April, May and June. Therefore, we expect that one large group (10 individuals) may be present in the Level B harassment zone once per day for 9 days in June, with an increase to 2 large groups per day when fish runs occur for 9 days each month in April and May. Therefore, NMFS has authorized the take of 450 Steller sea lions by Level B harassment (*i.e.,* 1 group of 10 sea lions per day × 9 days in June + 2 groups of 10 sea lions per day × 9 days per month in both April and May = 450 sea lions) which is the same number of takes estimated in the proposed IHAs.

Take by Level A harassment is not expected for Steller sea lions in Phase 2, because of the small Level A harassment zones for otarrids (Table 16) and the expected effectiveness of the monitoring and mitigation measures discussed below.

Harbor Seal

Harbor seal densities in the Tongass Narrows area are not well known. No systematic studies of harbor seals have been conducted in or near Tongass Narrows. They are known to occur year-round with little seasonal variation in abundance (Freitag 2017 as cited in 83 FR 37473) and local experts estimate that there are about 1 to 3 harbor seals in Tongass Narrows every day, in addition to those that congregate near the seafood processing plants and fish hatcheries. Based on this knowledge, the expected maximum group size in Tongass Narrows is three individuals. Harbor seals are known to be curious and may approach novel activity. For these reasons we conservatively estimate that up to two groups of 3 harbor seals per group could be exposed to project-related underwater noise each day. Additionally, a smaller number of harbor seals could occasionally be present in the Level A harassment (PTS) zone and exposed to sound levels for a duration expected to result in take by Level A harassment. To account for these uncommon instances, ADOT&PF assumed and NMFS agrees that the equivalent of six groups of three individuals may be exposed in the Level A harassment zone during the whole of Phase 1, and the equivalent of three groups of three individuals may be exposed during the whole of Phase 2. Because of the nature of take by Level A harassment (small zone size, factoring in duration of exposure) and possibility for a marine mammal group to be spread over a relatively large area compared to the Level A harassment zone, take by Level A harassment will likely not occur to an entire group at once. Despite being expected to occur on an individual basis, these group size estimates still serve as the basis for take estimation for harbor seals.

During Phase 1, ADOT&PF and NMFS anticipate that two groups of 3 individuals (6 individuals) could be present in the Level B harassment zone once per day, for a total of 606 harbor seals (*i.e.,* 6 individuals per day × 101 days = 606 seals) exposed in Tongass Narrows.

Harbor seals are known to swim across Clarence Strait, although no estimates of at-sea density or abundance are available. It is likely that harbor seal abundance in Clarence Strait is lower than in Tongass Narrows, as harbor seals generally prefer nearshore waters. ADOT&PF and NMFS assumed that abundance of harbor seals in Clarence Strait is 5 individuals per day for a potential exposure of 255 harbor seals (5 harbor seals per day × 51 days = 255 individuals). Therefore, NMFS has authorized the take of 861 individuals by Level B harassment (606 + 255 = 861 individuals). This represents a slight increase in the number of takes estimated and proposed to be authorized in the proposed IHAs (846).

During Phase 1, it is possible, but unlikely, that harbor seals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take. As described above NMFS is authorizing take by Level A harassment for the equivalent of six groups (18 individuals) during Phase 1. This is the same number of takes estimated and proposed to be authorized in the proposed IHAs.

During Phase 2, ADOT&PF and NMFS anticipate that two groups of 3 individuals could be present in the Level B harassment zone once per day for a total of 162 takes of harbor seals by Level B harassment (*i.e.,* 6 individuals per day × 27 days = 162 seals). Therefore, NMFS has authorized the take of 162 individuals by Level B harassment, which is identical to the number estimated in the proposed IHAs.

During Phase 2, ADOT&PF and NMFS conservatively anticipate that the equivalent of three groups of 3 individuals may be present in the Level A harassment zone long enough to experience injury without detection by Protected Species Observers (PSOs). Therefore, NMFS is authorizing take by Level A harassment of 9 harbor seals during Phase 2. This is the same number estimated in the proposed IHAs.

Harbor Porpoise

Harbor porpoises are non-migratory; therefore, our occurrence estimates are not dependent on season. Freitag (2017 as cited in 83 FR 37473) observed harbor porpoises in Tongass Narrows zero to one time per month. Harbor porpoises observed in the project vicinity typically occur in groups of one to five animals with an estimated maximum group size of eight animals (83 FR 37473, August 1, 2018, Solstice 2018). For this take estimate, we are considering a group to consist of five animals, a value on the high end of the typical group size. Based on Freitag (2017), and supported by the reports of knowledgeable locals as described in the application, ADOT&PF and NMFS estimated that during Phase 1 two groups of 5 harbor porpoises could be exposed to project-related underwater noise above the Level B harassment threshold each month for a total of 90 harbor porpoises (*i.e.,* two groups of 5 per month × 9 months = 90 harbor porpoises). Nine months was assumed instead of the 12 months used in the proposed IHAs to reflect the 30 percent reduction in construction duration due to concurrent installation.

Additionally, harbor porpoises may rarely enter the applicable Level A harassment zone and be exposed to sound levels for a duration expected to result in take by Level A harassment, necessitating authorized take by Level A harassment.

Harbor porpoises are known to swim across Clarence Strait and to use other areas of deep, open waters. Dahlheim et al. (2015) estimated a density of 0.02 harbor porpoises/km^2 in an area that encompasses Clarence Strait, resulting in an estimate of 22 harbor porpoises (0.02 harbor porpoises/km^2 × 21.3 km^2 × 51 days = 21.7 harbor porpoises, rounded up to 22 individuals) that could be potentially exposed to project noise resulting in Level B harassment in that area. This estimate is likely high, given that the entire 21.3 km^2 area will rarely be ensonified.

NMFS, therefore, has authorized 112 harbor porpoise takes by Level B harassment (90 + 22 = 112 individuals) during Phase 1. In the proposed IHAs we had estimated and proposed to authorize 105 takes.

During Phase 1, we anticipate that 5 individuals (the equivalent of one group) may enter the Level A harassment zone undetected, and be exposed to sound levels for a duration expected to result in take by Level A harassment, approximately once during every 4 months of construction, for a total of 15 potential takes by Level A harassment. This is the same number estimated and proposed to be authorized in the proposed IHAs.

During Phase 2, NMFS estimates that two groups of harbor porpoises may be present in the Level B harassment zone each month. Therefore, NMFS has authorized a total of 30 takes by Level B harassment (*i.e.,* 2 groups of 5 per month × 3 months = 30 harbor porpoises) during Phase 2. This is the identical to the number estimated in the proposed IHAs.

During Phase 2, we anticipate that the equivalent of two groups of 5 individuals may enter the Level A harassment zone undetected, and be exposed to sound levels for a duration expected to result in take by Level A harassment, during the 3 months of construction. Therefore, NMFS has authorized 10 takes of harbor porpoise by Level A harassment which is also the same as the number in the proposed IHAs.

Dall's Porpoise

Dall's porpoises are expected to only occur in Tongass Narrows a few times per year. Their relative rarity is supported by Jefferson *et al.'*s (2019) presentation of historical survey data showing very few sightings in the Ketchikan area and conclusion that Dall's porpoise generally are rare in narrow waterways, like the Tongass Narrows. During Phase 1 in Tongass Narrows, we estimate that 135 Dall's porpoises could be present in the Level B harassment zone (*i.e.,* 15 individuals per month × 9 months of construction = 135 total potential exposures).

This species is more likely to occur in the waters of Clarence Strait, however, and the estimate of exposure for this species has increased in association with ensonification of that area. Jefferson et al. (2019) estimated an average density of 0.19 Dall's porpoises/km^2 in Southeast Alaska, resulting in an estimate of 207 Dall's porpoises (0.19 Dall's porpoises/km^2 × 21.3 km^2 × 51 days = 207 Dall's porpoises) that could be potentially exposed to project noise in that area resulting in Level B harassment. NMFS has therefore authorized 342 takes (135 + 207 = 342) of Dall's porpoise by Level B harassment during Phase 1. This is an increase from the 165 takes estimated and proposed to be authorized in the proposed IHAs.

Additionally Dall's porpoises may rarely be present in the applicable Level A harassment zone and be exposed to sound levels for a duration expected to result in take by Level A harassment. To account for this rare circumstance, ADOT&PF assumed and NMFS concurred that the equivalent of one group of 15 individuals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take during the whole of Phase 1. Therefore, NMFS has authorized 15 takes by Level A harassment, which is the same number that was estimated and proposed to be authorized in the proposed IHAs.

NMFS has authorized takes during Phase 2 that are identical to what was proposed to be authorized in the proposed IHAs. ADOT&PF estimated, and NMFS concurs, that 45 Dall's porpoises could be present in the Level B harassment zone (*i.e.,* 15 individuals per month × 3 months of construction = 45 takes by Level B harassment). ADOT&PF also estimated that the equivalent of one group of 15 individuals may be exposed to sound levels in the Level A harassment zone for a duration expected to result in take, resulting in take by Level A harassment of 15 individual Dall's porpoises. NMFS concurs with these estimates and has authorized take of 45 porpoises by Level B harassment and 15 porpoises by Level A harassment. These estimates are the same as those found in the proposed IHAs.

Pacific White-Sided Dolphin

Pacific white-sided dolphins do not generally occur in the shallow, inland waterways of Southeast Alaska. There are no records of this species occurring in Tongass Narrows, and it is uncommon for individuals to occur in the project area. However, historical sightings in nearby areas (Dahlheim and Towell 1994; Muto *et al.* 2018) and recent fluctuations in distribution and abundance mean it is possible the species could be present. To account for the possibility that this species may be present in the project area, NMFS conservatively estimated in the proposed IHAs that one large group (92 individuals) of dolphins may experience take by Level B harassment in Tongass Narrows during each phase of the activity. Pacific white-sided dolphins are uncommon in the Clarence Strait area and have not been observed for a few years; therefore, there is no change from the original proposed numbers of Pacific white-sided dolphins takes.

NMFS has therefore authorized 92 dolphin takes by Level B harassment for both Phase 1 and Phase 2.

Take by Level A harassment is not expected for Pacific white-sided dolphins in Phase 1 or Phase 2 because of the small Level A harassment zones for mid-frequency cetaceans and the expected effectiveness of the monitoring and mitigation measures discussed below.

Killer Whale

Killer whales are observed in Tongass Narrows irregularly with peaks in abundance between May and July. A previous incidental take authorization in the Ketchikan area estimated killer whale occurrence in Tongass Narrows at one pod per month (Freitag 2017 as cited in 83 FR 37473). During Phase 1, ADOT&PF and NMFS estimate that one pod of 12 individuals may be present and exposed to project-related underwater noise at or above the Level B harassment threshold every month except between May and July, when two pods of 12 individuals may be present and exposed. This methodology was applied to both Tongass Narrows and Clarence Strait areas. It is also likely that any animals moving through Tongass Narrows would likely be the same animals that use Clarence Strait.

Therefore, NMFS has authorized 144 killer whale takes by Level B harassment (12 exposures per month × 6 months + 24 exposures per month × 3 months = 144 killer whales). The authorized number of takes is less than the 180 takes estimated and proposed to be authorized in the proposed IHAs since pile driving activities will now occur over a shorter time period.

During Phase 2, we anticipate that construction would occur in April, May, and June. Therefore, NMFS has authorized 60 takes of killer whale by Level B harassment (*i.e.,* 12 exposures per month × 1 month (April) + 24 exposures per month × 2 months (May, June). There were 96 takes by Level B harassment estimated in the proposed IHAs. However, this figure was incorrect due to a mathematical error. The correct number should have been 60 takes.

Take by Level A harassment is not expected for killer whales in either Phase 1 or Phase 2, because of the small Level A harassment zones for mid-frequency cetaceans and the expected effectiveness of the monitoring and mitigation measures discussed below.

Humpback Whale

Humpback whales have been observed about once per week, on average, in Tongass Narrows according to local reports. Based on the estimated occurrence rate of one group of two individuals twice each week and an anticipated timeframe of pile driving to occur over the course of 144 days, NMFS proposed to authorize take of 82 humpback whales in the proposed IHAs. NMFS has used this same methodology in the final IHA to calculate that 58 (14.4 weeks × 2 groups × 2 animals/week) humpback whales could be exposed to project noise in Tongass Narrows over the anticipated 101 days of pile installation.

Local specialists agreed that about four humpback whales could pass through or near the ensonified area in Clarence Strait each day. This could result in up to 204 additional exposures of humpback whales (4 humpback whales × 51 days = 204 individuals). Therefore, NMFS has authorized take of 262 humpback whales by Level B harassment (204 + 58 = 262 humpback whales). This represents an increase of the 82 whales estimated in the proposed IHAs. Of the 262 humpback whales potentially exposed, an estimated 6.1 percent or 16 individuals (262 × 0.061 = 15.98, rounded up to 16 whales) could be from the ESA-listed Mexico Distinct Population Segment (DPS) of humpback whales based on the estimated proportion of humpback whales in Southeast Alaska that belong to the Mexico DPS (Wade *et al.* 2016). The proposed IHAs contained an estimate of 5 animals from the Mexico DPS.

For Phase 2, NMFS has authorized a total of 16 total exposures of whales in the Level B harassment zone. This is based on the estimated occurrence rate of 2 groups of 2 individuals every 7 days and an anticipated timeframe of Phase 2 pile driving to occur over the course of 27 days (27 days/7 days per week × 2 groups × 2 animals/group = 15.4 conservatively rounded up to 16). Based on the same estimated proportion of humpback whales in Southeast Alaska that belong to the ESA-listed Mexico DPS (Wade *et al.,* 2016), there would be an estimated take by Level B harassment of one Mexico DPS humpback whale in Phase 2 (16 × 0.061 = 0.97 rounded up to 1 whale). Therefore, the remaining 15 whales taken by Level B harassment would be from the Hawaii DPS. In the proposed IHAs it was estimated that there would be 1 take from the Mexico DPS and a larger number of 16 from the Hawaii DPS due to a rounding error.

Take by Level A harassment is not expected for humpback whales in Phase 1 or Phase 2 because of the expected effectiveness of the monitoring and mitigation measures and detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment.

Minke Whales

Minke whales may be present in Tongass Narrows and Clarence Strait year-round. Their abundance throughout Southeast Alaska is very low, and anecdotal reports have not included minke whales near the project area. However, minke whales are distributed throughout a wide variety of habitats and could occur near the project area. Minke whales are generally sighted as individuals (Dahlheim *et al.* 2009). Based on Freitag (2017 as cited in 83 FR 37473) it is estimated that three individual minke whales may occur in Tongass Narrows or Clarence Strait every 4 months.

Based on the estimated occurrence rate of three individuals every four months, NMFS has authorized 7 takes of minke whale by Level B harassment (3 animals in a group × 1 group every 4 months = 7 individuals in 9 months) during Phase 1. This represents a reduction from the 9 takes listed in the proposed IHAs since pile driving will occur over fewer months.

Based on the estimated occurrence rate of three individuals every 4 months, we have authorized 3 takes of minke whale by Level B harassment zone during the 3 month duration of Phase 2. This is a reduction from what was published in the proposed IHAs. Due to a mathematical error, 6 minke whale takes were initially proposed to be authorized.

Take by Level A harassment is not expected for minke whales in Phase 1 or Phase 2, because of the expected effectiveness of the monitoring and mitigation measures and detecting and avoiding take by Level A harassment via shutdowns of pile installation equipment. Additionally, minke whales are expected to be uncommon in the project area so they will likely not occur in the Level A harassment zone.

TABLE 19—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR PHASE 1

Species	DPS/stock	Estimated number of exposures to Level B harassment	Estimated number of exposures to Level A harassment	Total estimated exposures (Level A and Level B harassment)	Stock abundance	Instances of take as percentage of population
Steller sea lion	Eastern DPS	2,025	0	2,025	41,638	4.9
Harbor seal	Clarence Strait	861	18	879	31,634	2.8

TABLE 19—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR PHASE 1—Continued

Species	DPS/stock	Estimated number of exposures to Level B harassment	Estimated number of exposures to Level A harassment	Total estimated exposures (Level A and Level B harassment)	Stock abundance	Instances of take as percentage of population
Harbor porpoise	Southeast Alaska	112	15	127	11,146	1.1
Dall's porpoise	Alaska	327	15	342	83,400	0.4
Pacific white-sided dolphin	North Pacific	92	0	92	26,880	0.3
Killer whale	AK Resident	144	0	144	2,347	[a] 6.1
	Northern Resident				261	[a] 55.2
	West Coast Transient				243	[a] 59.3
Humpback whale	Hawaii DPS	246	0	246	11,398	[b] 2.2
	Mexico DPS	16	0	16	3,264	[b] 0.5
Minke whale	Alaska	7	0	7	Unknown	N/A

Note: DPS = distinct population segment.
[a] These percentages assume all takes come from the same killer whale stock, thus the percentage should be adjusted down if multiple stocks are actually affected.
[b] Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade *et al.* 2016).

TABLE 20—TAKE ESTIMATES AS A PERCENTAGE OF STOCK ABUNDANCE FOR PHASE 2

Species	DPS/stock	Estimated number of exposures to Level B harassment	Estimated number of exposures to Level A harassment	Total estimated exposures (Level A and Level B harassment)	Stock abundance	Instances of take as percentage of population
Steller sea lion	Eastern DPS	450	0	450	41,638	1.1
Harbor seal	Clarence Strait	162	9	171	31,634	0.5
Harbor porpoise	Southeast Alaska	30	10	40	11,146	0.4
Dall's porpoise	Alaska	45	15	60	83,400	<0.1
Pacific white-sided dolphin	North Pacific	92	0	92	26,880	0.3
Killer whale	Alaska resident	.....	.....	.....	2,347	[a] 2.5
	Northern Resident	60	0	60	261	[a] 22.9
	West Coast Transient	.....	.....	.....	243	[a] 24.6
Humpback whale	Hawaii DPS	15	0	15	11,398	[b] 0.1
	Mexico DPS	1	0	1	3,264	[b] <0.1
Minke whale	Alaska	3	0	3	Unknown	N/A

Note: DPS = distinct population segment.
[a] These percentages assume all takes come from the same killer whale stock, thus the percentage should be adjusted down if multiple stocks are actually impacted.
[b] Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade *et al.* 2016).

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. 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 the activity and 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, ADOT&PF must employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving/removal and drilling (*e.g.,* standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-

water pile installation/removal and drilling will shut down immediately when the animals are sighted;

- In the event that more than one contractor is working at the same time, they will maintain radio or cellular coordination in order to coordinate pile installation and removal and provide adequate monitoring by protected species observers; and
- If take by Level B harassment 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 of them.

The following specific mitigation measures will also apply to ADOT&PF's in-water construction activities:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. 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). Shutdown zones will vary based on the activity type, marine mammal hearing group, and in the case of impact pile driving, additional details about the activity including the expected number of pile strikes required, size of the pile, and number of piles to be driven during that day (See Table 21). Here, shutdown zones are generally larger than the calculated Level A harassment isopleths shown in Table 16 and Table 18. The largest shutdown zones are generally for low frequency and high frequency cetaceans as shown in Table 21. The placement of PSOs during all pile driving, pile removal, and drilling activities (described in detail in the *Monitoring and Reporting* Section) will ensure that the entire shutdown zone is visible during pile installation.

The shutdown zones shown in Table 21 apply when a single piece of equipment is in use. In addition, ADOT&PF will implement a shutdown zone of 100 meters for each vibratory hammer on days when it is anticipated that multiple vibratory hammers will be used. The ADOT&PF will also implement a shutdown zone of 100 meters for each DTH drill on days when it is anticipated that two DTH drills will be used. Since conservative Level A harassment isopleths calculated for various concurrent driving combinations (Table 18) do not exceed 100 meters, there is no take by Level A harassment associated with simultaneous use of multiple devices.

TABLE 21—SHUTDOWN ZONES DURING USE OF A SINGLE PIECE OF EQUIPMENT

Activity	Pile size (inches)	Minutes per pile or strikes per pile	Piles installed or removed per day	Level B harassment isopleth (m)	Shutdown distances (m)				
					LF	MF	HF	PW	OW
Vibratory Installation	30	30 min	3	6,310	50				
	24, 18	30 min	3	5,420					
	27.6 sheet pile, 30.3 sheet pile.	15 min	10	4,650					
Vibratory Removal	24, 16	30 min	5	5,420					
Drilling Rock Sockets	30	180 min	3	12,030	70	50	60	50	
	24, 18	120 min	3		60	50			
Impact Installation	30	50 strikes	3	2,160	250	50	250	150	50
			2		200		200	100	
			1		100		150	100	
		200 strikes	3		550		650	300	
			2		400		500	250	
			1		300		300	150	
	24	50 strikes	3	1,000	150		150	100	
			2		100		150	50	
			1		100		100	50	
		200 strikes	3		300		350	200	
			2		250		300	150	
			1		150		200	100	
	18	50 strikes	3		150		150	100	
			2		100		150	50	
			1		100		100	50	

Establishment of Monitoring Zones for Level B Harassment—ADOT&PF will establish monitoring zones, based on the Level B harassment zones which 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, vibratory removal, and drilling. Monitoring zones provide utility for observing marine mammals 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 isopleths for the Level B harassment zones are depicted in Tables 13 and 14. On days and at times when a single piece of pile installation or removal equipment will be used, the Level B harassment zone as shown in Table 13 for each pile will be monitored and implemented according to pile size, type, and installation method as outlined. The largest Level B harassment zone for both Phase 1 and Phase 2 extends to a radius of 12,023 meters in at least one direction up or down Tongass Narrows when a single piece of driving equipment is being utilized, making it impracticable for the PSOs to consistently view the entire harassment area. Due to this, takes by Level B harassment will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

When two or more pieces of equipment are used simultaneously, and the noise they produce is not continuous or is a combination of continuous and impulsive, Table 21 will be followed to define the Level A harassment and Level B harassment monitoring zones for each piece of equipment.

On days when multiple pieces of equipment that produce continuous noise are used simultaneously, source levels will be determined as shown in Table 9, Table 10, Table 11, and Table 12. The calculated source level will be used to determine the Level B harassment monitoring zones in accordance with values depicted in Table 14.

Soft Start—The use of a soft-start procedure provides 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 pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities. If a marine mammal is present within the Level A harassment zone, soft start will be delayed until the animal leaves the Level A harassment zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the Level A harassment zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a take by Level B harassment will be recorded. Soft start up may occur when these species are in the Level B harassment zone, whether they enter the Level B harassment zone from the Level A harassment zone or from outside the project area.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the PSO 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 left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, piling activities may begin and take by Level B harassment will be recorded. As stated above, if the entire Level B harassment 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 harassment and shutdown zone will commence.

Timing Restrictions—ADOT&PF plans to implement the Essential Fish Habitat (EFH) Conservation Recommendations developed by NMFS. These include a no in-water work timing window for three project components, Revilla New Ferry Berth and Upland Improvements, Gravina Airport Ferry Layup Facility, and Revilla Refurbish Existing Ferry Berth Facility, with no in-water work occurring between March 1 and June 15. Implementation of this timing window will likely reduce exposure/take of marine mammals to levels below what has been predicted, because some project locations will be able to install piles when other locations may not.

During Phase 2 in-water pile installation and removal on the Revilla Island side of the Narrows will be limited to no more than 2 hours that shall not coincide with in-water pile installation/removal activities on Gravina Island.

Based on our evaluation of the applicant's required measures NMFS has determined that the mitigation measures provide the means of 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 planned project 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.

Visual Monitoring

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 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 thirty minutes.

There will be at least one PSO present at or near each construction site during in-water pile installation and removal so that all Level A harassment zones and shutdown zones are monitored by a dedicated PSO at all times. PSOs will not perform duties for more than 12 hours in a 24-hour period. PSOs would be land-based observers, positioned at the best practical vantage points. At least one other PSO for each active worksite will begin at the central

worksite and travel along the Tongass Narrows until they have reached the edges of the monitoring zones, based on the Level B harassment zones. These PSOs will then monitor the edges of the monitoring zone and as much as possible of the rest of the monitoring zone, looking for animals entering the Level B harassment zone. If waters exceed a sea state that restricts the PSO's ability to make observations within the Level A harassment zones (*e.g.,* excessive wind or fog), pile installation and removal must cease. Pile driving must not be re-initiated until the entire relevant Level A harassment zones are visible.

When combinations of one DTH drill with a vibratory hammer, two DTH drills, or two DTH drills with a vibratory hammer are used simultaneously, creating a Level B harassment zone that is greater than 12,023 meters in radius, one additional PSO (at least two total) will be stationed at the northernmost land-based location at the entrance to Tongass Narrows. One PSO will focus on Tongass Narrows, specifically watching for marine mammals that could approach or enter Tongass Narrows and the project area. The second PSO will look out into Clarence Strait, watching for marine mammals that could swim through the ensonified area. This monitoring requirement for concurrent driving scenarios was not included in the proposed IHAs. No additional PSOs will be required at the southern-most monitoring location because the Level B harassment zones are truncated to the southeast by islands, which prevent propagation of sound in that direction beyond the confines of Tongass Narrows. Takes by Level B harassment will be recorded by PSOs and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

With this configuration, PSOs can have a full view of the Level A harassment zone and awareness of as much of the Level B harassment zone as possible. This monitoring will provide information on marine mammal occurrence within Tongass Narrows and how these marine mammals are impacted by pile installation and removal.

As part of monitoring, PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will 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. Each construction Contractor managing an active construction site and on-going in-water pile installation or removal will provide qualified, independent PSOs for their specific contract. The ADOT&PF environmental coordinator for the project will implement coordination between or among the PSO contractors. It will be a required component of their contracts that PSOs coordinate, collaborate, and otherwise work together to ensure compliance with project permits and authorizations. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.,* not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute experience or training for education;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- 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.

Reporting

NMFS has issued two distinct and consecutive IHAs for these activities. In recognition of the value of marine mammal monitoring in understanding the impacts of ADOT&PF's activity, NMFS is requiring that ADOT&PF submit a preliminary marine mammal monitoring report for Phase 1 of the project (2020 through 2021) at least 4 months prior to the effective date of the second IHA and initiation of Phase 2. This preliminary report must contain all items that would be included in the draft final report, listed below under ''Reporting''. This will allow NMFS to assess the impact of the activities relative to the analysis presented here, and modify the IHA for Phase 2 if the preliminary monitoring report shows unforeseen impacts on marine mammals in the area. If needed, NMFS will publish an amended proposed IHA, describing any changes but referencing the original IHA for Phase 2, and include an opportunity for the public to comment on the amended authorization.

In addition to the preliminary monitoring report discussed above, separate draft marine mammal monitoring reports must be submitted to NMFS within 90 days after the completion of both Phase 1 and Phase 2 pile driving, pile removal, and drilling activities. These reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins and 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;
- An estimate of total take based on proportion of the monitoring zone that was observed; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, ADOT&PF shall report the incident to the Office of Protected Resources (OPR), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analyses and Determinations

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).

To avoid repetition, our analysis applies to all species listed in Table 5 for which take could occur (*i.e.,* not including gray whales and fin whales, for which take was found to be unlikely), given that NMFS expects the anticipated effects of the planned pile driving/removal and drilling to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis. Additionally, the planned activity for both Phase 1 and Phase 2 is similar in nature, so the impacts are expected to be similar and are analyzed as such, unless otherwise noted.

NMFS does not anticipate that serious injury or mortality would occur as a result of ADOT&PF's planned activity. As stated in the mitigation section, shutdown zones that equal or exceed Level A harassment isopleths shown in Table 21 will be implemented. Take by Level A harassment is authorized for some species (harbor seals, harbor porpoises, and Dall's porpoises) to account for the slight possibility that these species escape observation by the PSOs within the shutdown zone. Further, any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving, pile removal, and drilling at the sites in Tongass Narrows are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and drilling would occur for only a portion of the project's two years and often on nonconsecutive days (101 days in Phase 1, or 27 days in Phase 2), any harassment occurring during either phase would be temporary. Additionally, many of the species present in Tongass Narrows or Clarence Strait would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

In addition, for all species except humpback whales, there are no known Biologically Important Areas (BIAs) near the project zone that would be impacted by ADOT&PF's planned activities. For humpback whales, the whole of Southeast Alaska is a seasonal BIA from spring through late fall (Ferguson *et al.,* 2015), however, Tongass Narrows and Clarence Strait are not important portions of this habitat due to development and human presence. Tongass Narrows is also a small passageway and represents a very small portion of the total available habitat. There is no ESA-designated critical habitat for humpback whales.

More generally, there are no known calving or rookery grounds within the project area, but anecdotal evidence from local experts shows that marine mammals are more prevalent in Tongass Narrows and Clarence Strait during spring and summer associated with feeding on aggregations of fish, meaning the area may play a role in foraging. Because ADOT&PF's activities, especially in Phase 1, could occur during any season, takes may occur during important feeding times. However, the project area represents a small portion of available foraging habitat and impacts on marine mammal feeding for all species, including humpback whales, should be minimal.

Any impacts on marine mammal prey that would occur during ADOT&PF's planned activity would have at most short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity, for both Phase 1 and Phase 2, are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- ADOT&PF will implement mitigation measures including soft-starts for impact pile driving and shutdown zones that exceed Level A harassment zones for most authorized species, which will help minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is at most a small degree of PTS;
- Level B harassment takes are not of a duration or intensity expected to result in impacts on reproduction or survival. Also, the only known area of specific biological importance covers a broad area of southeast Alaska for humpback whales, and the project area is a very small portion of that BIA. No other known areas of particular biological importance to any of the affected species or stocks are impacted by the activity; and
- The project area represents a very small portion of the available foraging area for all marine mammal species and anticipated habitat impacts are minor.

Phase 1—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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from ADOT&PF's planned Phase 1 activities will have a negligible impact on all affected marine mammal species or stocks.

Phase 2—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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from ADOT&PF's planned Phase 2 activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

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 that may be 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.

Table 19 and Table 20, in the *Marine Mammal Occurrence and Take Calculation and Estimation* section, present the number of instances that animals could be exposed to received noise levels that may result in take by Level A harassment or Level B harassment for both Phase 1 and Phase 2 of ADOT&PF's planned activities. The percentage of stock taken by harassment and is calculated by dividing the authorized number of takes by the best available stock population estimate. Our analysis of ADOT&PF's planned Phase 1 activity shows that for all but two of the three killer whale stocks mentioned above, less than seven percent of the best population estimates of each affected stock could be taken. Analysis of Phase 2 showed authorized takes represent less than 25 percent of all stocks, which NMFS considers ''small numbers.'' There are two stocks, Northern Resident killer whales and West Coast Transient killer whales, for which the estimated percentage of stock taken in Phase 1 appears high when compared to other stocks and species (Table 19). However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. Initial analysis (which assumes that all takes could accrue to any of the three stocks, and is very unlikely) of the West Coast Transient stock shows that in Phase 1, when instances of take (not individuals taken) are compared to the stock abundance, 59.3 percent of the stock could experience take. For the Northern Resident stock, the initial analysis shows that when instances of take (not individuals taken) are compared to the stock abundance, 55.2 percent of the stock could experience take. While these numbers appear high, the extensive ranges of both stocks compared to ADOT&PF's project area mean that realistically there will be multiple takes of a smaller number of individuals from these stocks, resulting in no more than a third of the individuals of any of these stocks being taken. The Northern Resident stock's range stretches from Washington State into southeast Alaska and the stock is frequently observed along British Columbia, Canada (Muto *et al.* 2018). The West Coast transient stock occurs in California, Oregon, Washington, British Columbia, and southeastern Alaska. In both cases, ADOT&PF is only impacting a small portion of the total range, and this impact is intermittent.

Further, the above percentages are based on analyzing the entire estimated take of killer whales as if it would occur to a single killer whale stock, which is extremely unlikely to occur, instead of apportioned among the three stocks that could occur in the area. Realistically, the take will be spread in some way among the stocks expected to be in the area (*i.e.,* 100 percent of the take cannot occur to each of the three stocks), further reducing the percentage of takes anticipated to come from any single stock. For example, if we assumed that the take were equally apportioned across the three stocks, the predicted percentages are both reduced to below one third of the population. When this is considered in combination with large ranges of the two stocks noted above, it is entirely unlikely that more than one third of the Northern Resident or West Coast Transient killer whale stocks would be taken in Phase 1 of the project.

For both Phase 1 and Phase 2, there was one stock, minke whale, where the lack of an accepted stock abundance value prevented us from calculating an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales for a portion of the Gulf of Alaska (Zerbini *et al.,* 2006). Given the estimated 7 authorized takes by Level B harassment for the stock in Phase 1, comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted. A similar analysis of Phase 2, with 3 takes of minke whale by Level B harassment authorized, in comparison to the best estimate of stock abundance shows less than 1 percent of the stock is expected to be impacted. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and ADOT&PF's project area impacts a small portion of this range. Therefore, the numbers of minke whales authorized to be taken are small relative to estimated survey abundance even if each estimated taking occurred to a new individual.

Phase 1—Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals for

Phase 1 of ADOT&PF's activity, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Phase 1 of the project.

Phase 2—Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals for Phase 2 of ADOT&PF's activity, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks in Phase 2 of the project.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Harbor seals are the marine mammal species most regularly harvested for subsistence by households in Ketchikan and Saxman (A community a few miles south of Ketchikan, on the Tongass Narrows). Eighty harbor seals were harvested by Ketchikan residents in 2007, which ranked fourth among all communities in Alaska that year for harvest of harbor seals. Thirteen harbor seals were harvested by Saxman residents in 2007. In 2008, two Steller sea lions were harvested by Ketchikan-based subsistence hunters, but this is the only record of sea lion harvest by residents of either Ketchikan or Saxman. In 2012, the community of Ketchikan had an estimated subsistence take of 22 harbor seals and 0 Steller sea lion (Wolf *et al.,* 2013). This is the most recent data available. Hunting usually occurs in October and November (ADF&G 2009), but there are also records of relatively high harvest in May (Wolfe *et al.,* 2013). The Alaska Department of Fish and Game (ADF&G) has not recorded harvest of cetaceans from either community (ADF&G 2018). All project activities will take place within the industrial area of Tongass Narrows immediately adjacent to Ketchikan where subsistence activities do not generally occur. The project also will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where these construction activities are not expected to take place. Some minor, short-term harassment of the harbor seals could occur, but any effects on subsistence harvest activities in the region will be minimal, and not have an adverse impact.

Phase 1—Based on the effects and location of the specified activity, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Phase 1 of ADOT&PF's planned activities.

Phase 2—Based on the effects and location of the specified activity, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Phase 2 of ADOT&PF's planned activities.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of incidental harassment authorizations) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHAs qualify to be categorically excluded from further NEPA review.

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' Office of Protected Resources consults internally, in this case with NMFS' Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing take of the Central North Pacific stock of humpback whales, of which a portion belong to the Mexico DPS of humpback whales, which are listed under the ESA.

The action agency are the Federal Highway Administration (FHA) and the NMFS Office of Protected Resources Permits and Conservation Division. On February 6, 2019, NMFS completed consultation with ADOT&PF for Tongass Narrows Project and issued a Biological Opinion with the FHA as an action agency. Reinitiation of formal consultation was required to add NMFS Permits and Conservation Division as an action agency and to analyze changes to the action that were not considered in the February 2019 opinion (PCTS# AKR–2018–9806/ECO# AKRO–2018–01287). The original opinion considered the effects of only one project component being constructed at a time and did not analyze potential effects of concurrent pile driving which may cause effects to the listed species that were not considered in the original opinion; therefore, reinitiation of formal consultation was required.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of IHAs to ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales.

Authorizations

NMFS has issued two separate, consecutive IHAs to ADOT&PF for incidental take resulting from pile ferry berth improvements and construction activities in Tongass Narrows, Alaska in 2020 through 2021 (Phase 1) and 2021 through 2022 (Phase 2), including the previously discussed mitigation, monitoring, and reporting requirements that have been incorporated.

Dated: December 20, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–00038 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Large Pelagic Fishing Survey

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: Written comments must be submitted on or before March 9, 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 John Foster, (301) 427–8130 or *john.foster@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) is responsible for monitoring and managing United States (U.S.) marine fisheries resources. Collection of information regarding fishing for large pelagic species (tunas, billfishes, swordfish, and sharks) is necessary to fulfill the following statutory requirements: Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and to meet administrative requirements of the National Marine Fisheries Service (NMFS) Marine Recreational Fishery Policy implemented to comply with Executive Order 12962 on Recreational Fisheries.

The Atlantic Tunas Convention Act at 16 U.S.C. 971d(c)(3)(I) provides the Secretary of Commerce the authority to ''require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of catch of a regulated species''. Section 303(a) of the Magnuson-Stevens Act specifies data and analyses to be included in Fishery Management Plans (FMPs), as well as pertinent data, which shall be submitted to the Secretary of Commerce under the plan. Recommendation One of the NMFS Marine Recreational Fishery (MRF) Policy focuses on developing ''a comprehensive data acquisition and analysis system (participation, catch, effort and socio-economic data) on a regular, continuing basis'' in support of the Executive Order 12962 requirement to assess the implementation and evaluate achievements of the ''Recreational Fishery Resources Conservation Plan.''

Because highly migratory species are only sought on a relatively small proportion of the total marine recreational angler fishing trips made, the fishing effort directed at such species, and the resulting angler catches are generally not estimated very precisely or accurately by general (all species) recreational surveys. Therefore, the Large Pelagics Survey (LPS) was designed as a specialized survey that would focus specifically on the recreational fishery directed at large pelagic, also called highly migratory, species. This specialization has allowed higher levels of sampling needed to provide more precise and accurate estimates of pelagic fishing effort and catches of large pelagic species.

The LPS consists of two complementary surveys: A directory frame telephone survey of tuna and/or HMS permit holders to obtain fishing effort information (Large Pelagic Telephone Survey or LPTS), and a dockside survey which collects catch information and also estimates the proportion of vessels fishing for large pelagics that are not on the telephone frame (Large Pelagic Intercept Survey or LPIS). Results from the two survey components are combined to estimate total landings of Highly Migratory Species. In addition, we are requesting approval to continue to implement the Large Pelagic Biological Survey (LPBS) to collect supplemental weight and length measurements of landed fish through independent dockside sampling, as well as LPIS Validation telephone calls to validate LPIS data. Implementation of certain components will depend on fiscal year funding and NMFS priorities.

NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies use the data in developing, implementing and monitoring fishery management programs. This collection has been the key source of data used to monitor recreational quotas for the harvest of bluefin tuna in the Mid-Atlantic and southern New England regions. Catch distributions, harvested size distributions, and other indices obtained in this data collection have formed the basis of fishery management plans and used in stock assessments for Atlantic highly migratory species such as tunas, billfish, swordfish and sharks.

II. Method of Collection

Dockside and telephone interviews are used. In lieu of telephone interviews, respondents may also provide information online via a web tool.

III. Data

OMB Control Number: 0648–0380.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 15,024.

Estimated Time per Response: 11 minutes for a telephone interview; 5 minutes for a dockside interview, 1½ minutes to respond to a follow-up validation call for dockside interviews; 1 minute for biological sampling of catch.

Estimated Total Annual Burden Hours: 3,608.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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. 2020–00004 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV170]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) and The Nature Conservancy are cosponsoring a two-day workshop: Developing Future Scenarios for Climate Change in the California Current Ecosystem, which is open to the public.

DATES: The meeting will be held on Wednesday, January 22 and Thursday, January 23, 2020, from 8 a.m. until the completion of business on each day.

ADDRESSES: The meeting will be held at the Hyatt Regency Orange County, Pacific Room, 11999 Harbor Blvd., Garden Grove, CA 92840; telephone: (714) 750–1234.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to create several alternative narratives (called scenarios) about what west coast fishing communities might look like in 2040. The scenarios will be developed by invited scientific experts, fishery experts, and stakeholders. The workshop is part of a broader Council effort to respond strategically to near-term climate shifts and long-term climate change, and identify strategies to increase the resiliency of west coast fisheries and fishing communities in line with an ongoing initiative of its Fishery Ecosystem Plan. Members of the public are asked to register in advance through the following link: *https://form.jotform.com/93296415530963.* This will help the organizers plan workshop activities.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2412, at least 10 business days prior to the meeting date.

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

Dated: January 2, 2020.

Diane M. DeJames-Daly,

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

[FR Doc. 2020–00013 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR085]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of a Hatchery and Genetic Management Plan (HGMP) for public comment.

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife (WDFW) and Public Utility District No. 1 of Douglas County (Douglas PUD) have provided a HGMP pursuant to the protective regulations promulgated for Pacific salmon and steelhead under the Endangered Species Act (ESA). The HGMP describes the release of one million summer Chinook salmon at the Wells Hatchery. This document serves to notify the public of the availability of the HGMP for comment prior to a decision by NMFS on whether to approve the proposed hatchery program.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. P.S.T. on February 6, 2020. Comments received after this date may not be considered.

ADDRESSES: Written responses to the addendum should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Wells Summer Chinook Hatchery Program.

FOR FURTHER INFORMATION CONTACT: Natasha Preston at (503) 231–2178 or by email at *natasha.preston@noaa.gov*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Upper Columbia River Spring-run Chinook (*Oncorhynchus tshawytscha*): Endangered, naturally produced and artificially propagated
- Upper Columbia River Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated

Background

The HGMP submitted by WDFW and Douglas PUD describes the release of one million subyearling summer Chinook salmon at the Wells Hatchery. The HGMP was submitted to NMFS for review under ESA Limit 5 of the 4(d) Rule. Douglas PUD's existing production of summer Chinook includes 320,000 yearlings and 484,000 subyearling Chinook. These two programs are implemented under the terms and conditions of ESA Section 10(a)(1)(B) Permit No. 23193. The HGMP describes broodstock collection, incubation, rearing, release, and monitoring and evaluation.

This increase in summer Chinook salmon production is proposed to support Washington State's Southern Resident Orca Task Force recommendation to increase the abundance of Chinook salmon in marine waters of Washington State.

Prior to approving an HGMP under limit 5 of the 4(d) Rule, NMFS must publish notification announcing the availability of the HGMP for public review and comment.

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: December 31, 2019.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28538 Filed 1–6–20; 8:45 am]

BILLING CODE 3510–22–P

ELECTION ASSISTANCE COMMISSION

Meeting: EAC 2020 Elections Summit

AGENCY: U.S. Election Assistance Commission.

ACTION: EAC 2020 Elections Summit.

DATES: Tuesday, January 14, 2020, 9:00 a.m.–4:00 p.m. (EDT).

ADDRESSES: The National Press Club, 529 14th Street NW, Washington, DC 20045.

Status: This summit will be open to the public.

FOR FURTHER INFORMATION CONTACT: Robin Sargent, Telephone: (301) 563–3937.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an open meeting to discuss important issues facing state and local election officials in 2020.

Agenda: The U.S. Election Assistance Commission (EAC) will host an all-day summit to highlight important issues facing state and local election officials as they work to prepare for the 2020 primaries and general elections. Panel discussions will cover the following topics: (1) Turnout; (2) Election Security; (3) Voting Accessibility; and (4) Poll Workers. The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

The summit will be livestreamed and recorded. The recording will be made available on the EAC website at a later date.

As space is limited, attendees are encouraged to register. Registration instructions and additional event information will be posted on the EAC event web page: *eac.gov/events/2020/01/14/us-election-assistance-commission-2020-elections-summit/.*

Nichelle S. Williams,

Director of Research, U.S. Election Assistance Commission.

[FR Doc. 2019–28418 Filed 1–6–20; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–372–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510798 releases eff 1–1–20 to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5005.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–373–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 510807 releases eff 1–1–20 to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5006.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–374–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Boston Gas 511109 releases eff 1–1–20 to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5007.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–375–000.
Applicants: Southern LNG Company, L.L.C.
Description: § 4(d) Rate Filing: Housekeeping Filing 2019 to be effective 2/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5012.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–376–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO Storage Ratchet Modification to be effective 2/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5065.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–377–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements (Amendments) to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5102.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–378–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jan 2020 to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5139.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: RP20–379–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol 2 Neg and Conforming Rate Agreements-Scout and Conexus FTS–P to be effective 1/1/2020.
Filed Date: 12/30/19.
Accession Number: 20191230–5175.
Comments Due: 5 p.m. ET 1/13/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 85.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00016 Filed 1–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–12–000]

CPV Fairview, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 30, 2019, the Commission issued an order in Docket No. EL20–12–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2018), instituting an investigation into whether CPV Fairview, LLC's rate schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *CPV Fairview, LLC,* 169 FERC 61,261 (2019).

The refund effective date in Docket No. EL20–12–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL20–12–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2019), within 21 days of the date of issuance of the order.

Dated: December 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00014 Filed 1–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–142–000.
Applicants: Energy Center Dover LLC, DB Energy Assets, LLC.
Description: Response to December 4, 2019 Deficiency Letter of DB Energy Assets, LLC.
Filed Date: 12/27/19.
Accession Number: 20191227–5115.
Comments Due: 5 p.m. ET 1/17/20.

Docket Numbers: EC20–28–000.
Applicants: Polaris Wind Energy LLC, DTE Electric Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Polaris Wind Energy LLC, et al.
Filed Date: 12/30/19.
Accession Number: 20191230–5256.
Comments Due: 5 p.m. ET 1/20/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2010–006.
Applicants: PPL Electric Utilities Corporation.
Description: Triennial Market-Based Rate Update of PPL Electric Utilities Corporation.
Filed Date: 12/31/19.
Accession Number: 20191231–5007.
Comments Due: 5 p.m. ET 3/2/20.

Docket Numbers: ER13–434–006; ER13–2100–004; ER13–2109–008; ER16–1750–005; ER16–2601–003; ER17–1604–002; ER17–2292–003; ER17–2381–002; ER19–1656–002.
Applicants: Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., Fowler Ridge Wind Farm LLC, Virginia Electric and Power Company, Eastern Shore Solar LLC, Summit Farms Solar, LLC, Southampton Solar LLC, Scott-II Solar LLC, Wilkinson Solar LLC.
Description: Updated Market Power Analysis for the Northeast Region of the Dominion Energy, Inc. subsidiaries.
Filed Date: 12/30/19.
Accession Number: 20191230–5259.
Comments Due: 5 p.m. ET 2/28/20.

Docket Numbers: ER17–2059–004; ER10–3097–009.
Applicants: Puget Sound Energy, Inc., Bruce Power Inc.
Description: Supplement to July 1, 2019 Updated Market Power Analysis in the Northwest Region for Puget Sound Energy, Inc., et al.
Filed Date: 12/19/19.
Accession Number: 20191219–5142.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER18–2487–001.
Applicants: Rail Splitter Wind Farm, LLC.
Description: Report Filing: Notice of Effective Date to be effective N/A.
Filed Date: 12/31/19.
Accession Number: 20191231–5066.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER19–585–001.
Applicants: Quilt Block Wind Farm LLC.
Description: Report Filing: Notice of Effective Date to be effective N/A.
Filed Date: 12/31/19.
Accession Number: 20191231–5064.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER19–708–002.
Applicants: GSG, LLC.
Description: Compliance filing: Compliance Filing Under Docket ER19–708–002 to be effective 2/26/2019.
Filed Date: 12/31/19.
Accession Number: 20191231–5104.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–714–000.
Applicants: Whitetail Solar 1, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 2/29/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5047.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–715–000.
Applicants: Central Hudson Gas & Electric Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: Central Hudson Highway Facilities Charge Hurley Ave System to be effective 3/2/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5055.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–716–000.
Applicants: LS Power Grid New York Corporation I, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205: LS Power Grid New York Corporation I Transmission Formula Rate to be effective 3/2/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5060.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–717–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT, Sch. 12-Appendices re: 2020 RTEP Annual Cost Allocations to be effective 1/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5069.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–718–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2019–12–31_SA 3410 AIC–SIPC Exclusive As-Available Service Agreement to be effective 3/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5073.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–719–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 5552; Queue No. AE1–013 to be effective 12/10/2019.
Filed Date: 12/30/19.
Accession Number: 20191230–5267.
Comments Due: 5 p.m. ET 1/20/20.

Docket Numbers: ER20–720–000.
Applicants: Plum Creek Wind, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority to be effective 3/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5090.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–721–000.
Applicants: Willow Creek Wind Power LLC.
Description: Baseline eTariff Filing: Application for MBR Authority to be effective 3/1/2020.
Filed Date: 12/31/19.
Accession Number: 20191231–5093.
Comments Due: 5 p.m. ET 1/21/20.

Docket Numbers: ER20–722–000.
Applicants: Baconton Power LLC.
Description: § 205(d) Rate Filing: Baconton Power LLC Revised MBR Tariff to be effective 12/21/2019.
Filed Date: 12/31/19.
Accession Number: 20191231–5106.
Comments Due: 5 p.m. ET 1/21/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00015 Filed 1–6–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–27–000]

North Baja Pipeline, LLC; Notice of Application

Take notice that on December 16, 2019, North Baja Pipeline, LLC (North Baja) 700 Louisiana Street, Suite 700, Houston, Texas 77002, filed in Docket No. CP20–27–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for authorization to construct and maintain its North Baja XPress Project. Specifically, the Project consists of installation of a new 31,900 ISO horsepower Titan 250 compressor unit at its existing Ehrenberg Compressor Station located in La Paz County, Arizona; and modifications to the infrastructure at North Baja's existing El Paso Meter Station in La Paz County, Arizona, and Ogilby Meter Station in Imperial County, California. Upon completion the proposed Project will create approximately 495,000 dekatherms per day of incremental firm delivery to the United States/Mexico border. North Baja estimates the total cost of the Project to be $127.2 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Robert Jackson, Manager, Certificates & Regulatory Administration, North Baja Pipeline, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002, at (832) 320–5487, or email: *robert_jackson@tcenergy.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 21, 2020.

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

Dated: December 31, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–00017 Filed 1–6–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–91-Region 1]

Notice of Availability of Draft NPDES Great Bay Total Nitrogen General Permit for Wastewater Treatment Facilities in New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft NPDES General Permit NHG58A000.

SUMMARY: The Director of the Water Division, U.S. Environmental Protection Agency—Region 1 (EPA), is providing a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) Great Bay Total Nitrogen General Permit for certain discharges from Wastewater Treatment Facilities (WWTFs) to certain waters of the State of New Hampshire. This Draft NPDES Great Bay Total Nitrogen General Permit (''Draft General Permit'') establishes effluent limitations and requirements, effluent and ambient monitoring requirements, reporting requirements and standard conditions for 13 eligible WWTFs in New Hampshire. The Draft General Permit is available on EPA Region 1's website at *https://www.epa.gov/npdes-permits/draft-great-bay-total-nitrogen-general-permit.* The Fact Sheet for the Draft General Permit sets forth principal facts and the significant factual, legal, methodological, and policy questions considered in the development of the Draft General Permit and is also available at this website. The Draft General Permit only authorizes the discharge of nitrogen from 13 eligible WWTFs. The discharge of all other pollutants from these WWTFs will continue to be authorized by each WWTF's respective individual NPDES permit.

DATES: Public comments must be received by March 9, 2020.

ADDRESSES: Written comments on the Draft General Permit may be mailed to U.S. EPA Region 1, Water Division, Attn: Michael Cobb, 5 Post Office Square, Suite 100, Mail Code 06–1, Boston, Massachusetts 02109–3912, or sent via email to: *Cobb.Michael@epa.gov.* No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Draft General Permit may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays from Michael Cobb, U.S. EPA Region 1, Water Division, 5 Post Office Square, Suite 100, Mail Code 06–1, Boston, MA 02109–3912; telephone: 617–918–1369; email: *Cobb.Michael@epa.gov.* The Draft General Permit is based on an administrative record available for review at U.S. EPA Region 1, Water Division, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912. A reasonable fee may be charged for copying requests.

SUPPLEMENTARY INFORMATION:

Public Comment Information: Interested persons may submit written comments on the Draft General Permit to EPA Region 1 at the address listed above. Additionally, pursuant to 40 CFR 124.12 EPA will hold a public hearing during the comment period for any interested persons to submit oral comments. EPA will post the details of the public hearing at EPA Region 1's website listed above and will notify via email the eligible Permittees and any other party who requests to be notified. In reaching a final decision on this Draft General Permit, the Regional Administrator will respond to all significant comments and make responses available to the public at EPA's Boston office. All comments must be postmarked or delivered by the close of the public comment period.

General Information: The Draft General Permit includes nitrogen effluent limitations and requirements based on water quality considerations. The effluent limits established in the Draft General Permit ensure that the surface water quality standards of the receiving water(s) will be attained and/or maintained. The permit also contains ambient monitoring requirements to ensure EPA has the information necessary to track the effectiveness of the permit in meeting water quality standards.

Obtaining Authorization: To obtain coverage under the Draft General Permit, facilities identified in Part 1.1 of this General Permit may submit a notice of intent (NOI) in accordance with 40 CFR 122.28(b)(2)(i) & (ii). The contents of the notice of intent shall include at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s) and be signed by the operator in accordance with the signatory requirements of 40 CFR 122.22. Alternately, based on 40 CFR 122.28(b)(2)(vi), the Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. EPA has determined that the 13 facilities identified in Part 1.1 all meet the eligibility requirements for coverage under the Draft General Permit and may be authorized to discharge under the General Permit by this type of notification.

Other Legal Requirements: In accordance with the Endangered Species Act (ESA), EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from sites seeking coverage under the Draft General Permit. Concurrently with the public notice of the Draft General Permit, EPA has submitted a letter to National Marine Fisheries Service (NMFS) summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats as a result of EPA's issuance of the Draft General Permit. In this document, EPA has preliminarily concluded that the proposed issuance of the Draft General Permit is not likely to adversely affect the shortnose sturgeon, Atlantic sturgeon, or designated critical habitat for Atlantic sturgeon. EPA has requested that NMFS review this submittal and inform EPA whether it concurs with this preliminary finding.

Concurrently with the public notice of the Draft General Permit, EPA has also submitted a letter to United States Fish and Wildlife Service (USFWS) summarizing the results of EPA's assessment of the potential effects to endangered and threatened species and their critical habitats as a result of EPA's issuance of the Draft General Permit. In this document, EPA has preliminarily concluded that the Draft General Permit will have no effect on the small whorled pogonia or Northern long-eared bat, and may affect, but is not likely to adversely affect roseate tern, red knot, or piping plover. EPA has requested that USFWS review this submittal and inform EPA whether it concurs with this preliminary finding.

National Historic Preservation Act (NHPA): Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the NHPA are not authorized to discharge under the Draft General Permit. Based on the nature and location of the discharges, EPA has determined that the 13 facilities eligible for authorization under the Draft General Permit do not have the potential

to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 19, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2019–28510 Filed 1–6–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0795; FRS 16371]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 9, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–0795.

Title: Associate WTB & PSHSB Call Sign & Antenna Registration Number With Licensee's FRN.

Form No.: FCC Form 606.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 5,000 respondents; 5,000 responses.

Estimated Time per Response: (15 minutes) 0.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,250 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case-by-case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this information collection to the OMB after this 60-day comment period as an extension (no change in reporting and/or third-party disclosure requirements) to obtain the full three-year clearance from them.

Licensees use FCC Form 606 to associate their FCC Registration Number (FRN) with their Wireless Telecommunications Bureau and Public Safety Homeland Security Bureau call signs and antenna structure registration numbers. The form must be submitted before filing any subsequent applications associated with the existing license or antenna structure registration that is not associated with an FRN.

The information collected in the FCC Form 606 is used to populate the Universal Licensing System (ULS) with the FRNs of licensees and antenna structure registration owners who interact with ULS.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–00037 Filed 1–6–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements of its Affiliate Marketing Rule, which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the provisions (subpart C) of the CFPB's Regulation V regarding other entities (''CFPB Rule''). The existing clearance expires on January 31, 2020.

DATES: Comments must be submitted on or before February 6, 2020.

ADDRESSES: Comments in response to this notice should be submitted to the OMB Desk Officer for the Federal Trade Commission within 30 days of this notice. You may submit comments using any of the following methods:

Electronic: Write ''Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-based form.

Email: MBX.OMB.OIRA.Submission@OMB.eop.gov.

Mail: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Katherine McCarron, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Room CC–8232, Washington, DC 20580, (202) 326–2333.

SUPPLEMENTARY INFORMATION:

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FTC has submitted to the Office of Management and Budget (''OMB'') this request for extension of the previously approved collection of information discussed below.

Title: Affiliate Marketing Rule (16 CFR 680).

OMB Control Number: 3084–0131.

Type of Review: Extension of currently approved collection.

Estimated Annual Burden:

The total estimated burden is 9,170 hours and $367,588 in associated labor costs. Commission staff estimates that the capital and non-labor costs associated with the Affiliate Marketing Rule's disclosure requirements are *de minimis,* because covered entities can consolidate affiliate marketing notices with other notices they already provide to their customers such as notices issued pursuant to the Commission's Gramm-Leach-Bliley Act Financial Privacy Rule (16 CFR 313).[1] For more details about the Rule requirements, the background behind these information collection provisions, and the basis for these calculations, *see* 84 FR 51163 (Sept. 27, 2019).

Request for Comment:

On September 27, 2019, the Commission sought comment on the information collection requirements associated with the Affiliate Marketing Rule and the Commission's shared enforcement with the CFPB of the affiliate marketing provisions of Regulation V subpart C (12 CFR 1022.21). 84 FR 51163 (Sept. 27, 2019). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2020–00008 Filed 1–6–20; 8:45 am]

BILLING CODE 6750–01–P

[1] We note, however, that some financial institutions may qualify for an exception and would not be required to send annual Gramm-Leach-Bliley privacy notices. See Fixing America's Surface Transportation Act (''FAST Act''), Public Law 114–94, 129 Stat. 1312, Section 75001 (Dec. 4, 2015).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0096; Docket No. 2019–0003; Sequence No. 32]

Submission for OMB Review; Patents

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding patents.

DATES: Submit comments on or before February 6, 2020.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0096, Patents.

Instructions: All items submitted must cite Information Collection 9000–0096, Patents. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0096, Patents.

B. Need and Uses

The patent coverage in Federal Acquisition Regulation (FAR) subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (FAR 52.227–2).

The contractor is also required to report all royalties anticipated or paid in excess of $250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and

number of units (FAR 52.227–6, and 52.227–9).

C. Annual Burden

Respondents: 158.
Total Annual Responses: 158.
Total Burden Hours: 238.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 57020, on October 24, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0096, Patents, in all correspondence.

Dated: December 31, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2020–00002 Filed 1–6–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for Members of the U.S. Preventive Services Task Force (USPSTF)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Solicits nominations for new members of the USPSTF.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites nominations of individuals qualified to serve as members of the U.S. Preventive Services Task Force (USPSTF).

DATES: Nominations must be received in writing or electronically by March 15th of a given year to be considered for appointment to begin in January of the following year.

ADDRESSES: Submit your responses either electronically or in writing to: *https://uspstfnominations.ahrq.gov/register,* Lydia Hill, ATTN: USPSTF Nominations, Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mailstop: 06E53A, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Lydia Hill at *coordinator@uspstf.net.*

SUPPLEMENTARY INFORMATION:

Arrangement for Public Inspection

Nominations and applications are kept on file at the Center for Evidence and Practice Improvement, AHRQ, and are available for review during business hours. AHRQ does not reply to individual nominations, but considers all nominations in selecting members. Information regarded as private and personal, such as a nominee's social security number, home and email addresses, home telephone and fax numbers, or names of family members will not be disclosed to the public in accord with the Freedom of Information Act. 5 U.S.C. 552(b)(6); 45 CFR 5.31(f).

Nomination Submissions

Nominations must be submitted electronically or in writing, and should include:

1. The applicant's current curriculum vitae and contact information, including mailing address, and email address; and
2. A letter explaining how this individual meets the qualification requirements and how he or she would contribute to the USPSTF. The letter should also attest to the nominee's willingness to serve as a member of the USPSTF.

AHRQ will later ask people under serious consideration for USPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest. Such information will concern matters such as financial holdings, consultancies, non-financial scientific interests, and research grants or contracts.

To obtain a diversity of perspectives, AHRQ particularly encourages nominations of women, members of minority populations, and persons with disabilities. Interested individuals can nominate themselves. Organizations and individuals may nominate one or more people qualified for membership on the USPSTF at any time. Individuals nominated prior to May 15, 2019, who continue to have interest in serving on the USPSTF should be re-nominated.

Qualification Requirements

To qualify for the USPSTF and support its mission, an applicant or nominee should, at a minimum, demonstrate knowledge, expertise and national leadership in the following areas:

1. The critical evaluation of research published in peer-reviewed literature and in the methods of evidence review;
2. Clinical prevention, health promotion and primary health care; and
3. Implementation of evidence-based recommendations in clinical practice including at the clinician-patient level, practice level, and health-system level.

Additionally, the Task Force benefits from members with expertise in the following areas:

- Public Health
- Health Equity and The Reduction Of Health Disparities
- Application of Science to Health Policy
- Dissemination and Implementation
- Behavioral Medicine/Clinical Health Psychology
- Communication of Scientific Findings to Multiple Audiences Including Health Care Professionals, Policy Makers and the General Public

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the USPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the USPSTF. Applicants must have adequate time to contribute substantively to the work products of the USPSTF.

Nominee Selection

Nominated individuals will be selected for the USPSTF on the basis of how well they meet the required qualifications and the current expertise needs of the USPSTF. It is anticipated that new members will be invited to serve on the USPSTF beginning in January, 2021. All nominated individuals will be considered; however, strongest consideration will be given to individuals with demonstrated training and expertise in the areas of Family Medicine, Internal Medicine, Pediatrics, and Obstetrics and Gynecology. AHRQ will retain and may consider for future vacancies nominations received this year and not selected during this cycle.

Some USPSTF members without primary health care clinical experience may be selected based on their expertise in methodological issues such as meta-analysis, analytic modeling or clinical epidemiology. For individuals with clinical expertise in primary health care, additional qualifications in methodology would enhance their candidacy.

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with

enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. 42 U.S.C. 299(b). AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including clinical prevention of diseases and other health conditions. See 42 U.S.C. 299(b).

The USPSTF, an independent body of experts in prevention and evidence-based medicine, works to improve the health of all Americans by making evidence-based recommendations about the effectiveness of clinical preventive services and health promotion. The recommendations made by the USPSTF address clinical preventive services for adults and children, and include screening tests, counseling services, and preventive medications.

The USPSTF was first established in 1984 under the auspices of the U.S. Public Health Service. Currently, the USPSTF is convened by the Director of AHRQ, and AHRQ provides ongoing scientific, administrative, and dissemination support for the USPSTF's operation. USPSTF members serve four year terms. New members are selected each year to replace those members who are completing their appointments.

The USPSTF is charged with rigorously evaluating the effectiveness, appropriateness and cost-effectiveness of clinical preventive services and formulating or updating recommendations regarding the appropriate provision of preventive services. See 42 U.S.C. 299b–4(a)(1). Current USPSTF recommendations and associated evidence reviews are available on the internet (*www.uspreventiveservicestaskforce.org*).

USPSTF members currently meet three times a year for two days in the Washington, DC area. A significant portion of the USPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include prioritizing topics, designing research plans, reviewing and commenting on systematic evidence reviews of evidence, discussing and making recommendations on preventive services, reviewing stakeholder comments, drafting final recommendation documents, and participating in workgroups on specific topics and methods. Members can expect to receive frequent emails, can expect to participate in multiple conference calls each month, and can expect to have periodic interaction with stakeholders. AHRQ estimates that members devote approximately 200 hours a year outside of in-person meetings to their USPSTF duties. The members are all volunteers and do not receive any compensation beyond support for travel to in person meetings.

Dated: January 2, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–00019 Filed 1–6–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0386]

Submission for OMB Review; Office of Community Services (OCS) Community Economic Development (CED) Standard Reporting Format

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS) is requesting a three-year extension of the semi-annual reporting format for Community Economic Development (CED) grantees, the Performance Progress Report (PPR), which collects information concerning the outcomes and management of CED projects (OMB #0970–0386, expiration 6/30/2020). There are no changes requested to the form.

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 *infocollection@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: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OCS will continue collecting key information about projects funded through the CED program. The legislative requirement for this program is in Title IV of the Community Opportunities, Accountability and Training and Educational Services Act (COATS Human Services Reauthorization Act) of October 27, 1998, Public Law 105–285, section 680(b) as amended. The PPR, collects information concerning the outcomes and management of CED projects. OCS will use the data to critically review the overall design and effectiveness of the program.

The PPR will continue to be administered to all active grantees of the CED program. Grantees will be required to use this reporting tool for their semi-annual reports to be submitted twice a year. The current PPR replaced both the annual questionnaire and other semi-annual reporting formats, which resulted in an overall reduction in burden for the grantees while significantly improving the quality of the data collected by OCS. OCS seeks to renew this PPR to continue to collect quality data from grantees. To ensure the burden on grantees is not increased, but that the information collected demonstrates the full impact of the program, OCS has conducted an in-depth review of the forms and requests no changes to the PPR.

Respondents: Active CED Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
PPR for Current OCS–CED Grantees	129	2	1.5	387

Estimated Total Annual Burden Hours: 387.

Authority: Section 680(a)(2) of the Community Services Block Grant (CSBG) Act, 42 U.S.C. 9921.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–00007 Filed 1–6–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3885]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Center for Tobacco Products, Food and Drug Administration Funded Trainee/Scholar Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 6, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Center for Tobacco Products, Food and Drug Administration Funded Trainee/Scholar Survey.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Center for Tobacco Products, Food and Drug Administration Funded Trainee/Scholar Survey

OMB Control Number 0910–NEW

The Tobacco Control Act (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act (FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors.

FDA's Center for Tobacco Products (CTP) and the National Institutes of Health maintain an interagency partnership to foster the development of the emerging field of tobacco regulatory science (TRS). This study will use the CTP, FDA Funded Trainee/Scholar Survey to gather data on the characteristics, activities, and impact of training programs funded by the CTP and other partners. This evaluation will also determine how CTP-funded research and associated training programs and activities increase knowledge and skills related to TRS and interest to pursue careers in a TRS-related field. This survey provides support to determine the extent to which programs and activities generate positive impacts to increase the number of researchers who focus on TRS and TRS-related topics, specifically within CTP's priority domains. The survey builds upon previous evaluations of trainees and training activities and provides necessary evidence to inform FDA decision making. The web survey will gather responses from Tobacco Centers of Regulatory Science (TCORS) trainees and other CTP-funded trainees and scholars. Results will provide insights and directions to support future training and funding investments.

FDA CTP will use findings from this study to determine whether its TRS training support investments lead to meaningful change that supports CTP aims, and to inform decisions about potential future investments. CTP's training support intends to build additional capacity for TRS that establishes an evidence base related to CTP's research priorities so that FDA regulations, communications, and application review are founded on rigorous, relevant scientific study.

Respondents include current and former TCORS or other CTP-funded trainees and trainee principal investigators (PIs) or training directors. PIs and training directors will be asked to provide trainee names and email addresses and encourage trainees to participate in the survey. Current and former trainees will be asked to read an informed consent and take a brief web-based survey.

In the **Federal Register** of September 12, 2019 (84 FR 48148), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Current or Former Trainee/Scholar					
Lead Letter	350	1	350	0.025 (2 minutes)	9
Email invitation	350	1	350	0.016 (1 minute)	6
Informed consent	298	1	298	0.033 (2 minutes)	10
Survey	298	1	298	0.16 (10 minutes)	48
Followup email	176	3	528	0.016 (1 minute)	8
PI or Training Director					
Trainee list email	350	1	350	0.16 (10 minutes)	56
Notification email	350	1	350	0.016 (1 minute)	6

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Type of respondent/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					143

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 summarizes the total annual burden hours estimated for this information collection. There is no cost to participants other than their time. The total estimated annualized burden hours are 143. A total of approximately 350 trainees will be invited to participate in the web survey. Burden hours were estimated based on experience with prior similar survey activities and information obtained from informal testing by contractor staff.

Dated: December 31, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00039 Filed 1–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0597]

Agency Information Collection Activities; Proposed Collection; Comment Request; Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our regulations related to public index listing of legally marketed unapproved new animal drugs for minor species of animals.

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2010–N–0597 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the

docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Index of Legally Marketed Unapproved New Animal Drugs for Minor Species—21 CFR Part 516

OMB Control Number 0910–0620—Extension

The Minor Use and Minor Species Animal Health Act of 2004 (the MUMS Act) (Pub. L. 108–282) added section 572 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360ccc–1), which authorizes FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats). In enacting the MUMS Act, Congress sought to encourage the development of these new animal drugs. Congress recognized that the markets for drugs intended to treat these species are so small that there are often insufficient economic incentives to motivate drug companies to develop data to support approvals. Further, Congress recognized that some minor species populations are too small or their management systems too diverse to make it practical to conduct traditional studies to demonstrate safety and effectiveness of animal drugs for such uses. As a result of these limitations, drug companies have generally not been willing or able to collect data to support legal marketing of drugs for these species. Consequently, Congress enacted the MUMS Act to provide incentives to develop new animal drugs for minor species, while still ensuring appropriate safeguards for animal and human health. Section 572 of the FD&C Act provides for a public index listing of legally marketed unapproved new animal drugs for minor species. FDA regulations in part 516 (21 CFR part 516) specify, among other things, the criteria and procedures for requesting eligibility for indexing and for requesting addition to the index, as well as the annual reporting requirements for index holders. The administrative procedures and criteria for indexing a new animal drug for use in a minor species are set forth in §§ 516.111 through 516.171. Section 516.165 sets forth the annual reporting requirements for index holders. FDA needs the information to determine: (1) The eligibility of a new animal drug for indexing; (2) that a qualified expert panel proposed to review certain information regarding the new animal drug meets the selection criteria listed in the regulations; (3) whether the Agency agrees with the recommendation of a qualified expert panel that a drug be added to the index; and (4) whether there may be grounds for removing a drug from the index.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
516.119; requires a foreign drug company to submit and update the name and address of a permanent U.S. resident agent	5	1	5	1	5
516.121; written request for a meeting with FDA to discuss the requirements for indexing a new animal drug	30	2	60	4	240
516.123; written request for an informal conference and a requestor's written response to an FDA initial decision denying a request	3	1	3	8	24
516.125; correspondence and information associated with investigational use of new animal drugs intended for indexing	2	3	6	20	120
516.129; content and format of a request for determination of eligibility for indexing	30	2	60	20	1,200
516.141; information to be submitted to FDA by a requestor seeking to establish a qualified expert panel	20	1	20	16	320
516.143; content and format of the written report of the qualified expert panel	20	1	20	120	2,400
516.145; content and format of a request for addition to the Index	20	1	20	20	400

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
516.161; content and format of a request for modification of an indexed drug	3	1	3	4	12
516.163; information to be contained in a request to FDA to transfer ownership of a drug's index file to another person	1	1	1	2	2
516.165; requires drug experience reports and distributor statements to be submitted to FDA	10	10	100	5	500
Total					5,223

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
516.141, requires the qualified expert panel leader to maintain a copy of the written report and all notes or minutes relating to panel deliberations that are submitted to the requestor for 2 years after the report is submitted.	30	2	60	0.5 (30 minutes)	30
516.165, requires the holder of an indexed drug to maintain records of all information pertinent to the safety or effectiveness of the indexed drug, from foreign and domestic sources.	10	2	20	1	20
Total					50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We based our estimates in tables 1 and 2 on our experience with the MUMS indexing program and the requests for eligibility for indexing and for addition to the index, as well as the periodic drug experience reports submitted during the past 3 years.

Our estimated burden for the information collection reflects an overall increase of 351 reporting hours and a corresponding increase of 85 responses. We attribute this adjustment, generally, to an increase in the number of submissions we received over the last few years. We also reduced our burden hour estimate for drug experience reports and distributor statements under § 516.165 from 8 hours per submission to 5 hours per submission based on our experience with this type of reporting.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00042 Filed 1–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5971]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recommendations To Reduce the Risk of Transfusion-Transmitted of Infection in Whole Blood and Blood Components; Agency Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments concerning establishment notification of a consignee and consignee notification of a recipient's physician of record regarding a possible increased risk of transfusion-transmitted infection.

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–5971 for ''Use of Serological Tests to Reduce the Risk of the Transfusion-Transmitted Infection in Whole Blood and Blood Components; Agency Guidance.'' Received comments, those filed in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recommendations To Reduce the Risk of Transfusion-Transmitted Infection in Whole Blood and Blood Components; Agency Guidance

OMB Control Number 0910–0681—Extension

Under § 630.3(h) (21 CFR 630.3(h)), a list is set forth of relevant transfusion-transmitted infections (RTTIs) (§ 630.3(h)(1)) and the conditions under which a transfusion-transmitted infection (TTI) would meet the definition of an RTTI (§ 630.3(h)(2)). The list of RTTIs under § 630.3(h)(1) includes, among other things, the following: *Trypanosoma cruzi* (Chagas), Creutzfeldt Jacob Disease (CJD)/variant Creutzfeldt Jacob Disease (vCJD), *plasmodium* species (malaria), and West Nile virus. The RTTIs FDA has identified thus far under § 630.3(h)(2) include Zika virus and babesiosis. In addition, FDA has determined Ebola virus to be a TTI identified under § 630.3(*l*). FDA has issued several guidance documents with recommendations regarding the RTTIs or TTIs including Chagas, babesiosis, Zika virus, West Nile virus Ebola virus, malaria, CJD and vCJD, human immunodeficiency virus (HIV) and human T-lymphotropic virus, types I and II (HTLV).

The Chagas, babesiosis, Zika virus and West Nile virus, and HTLV guidance documents provide recommendations for consignee and physician notification relating to donors that tested reactive for these infections.

In addition, a blood establishment may receive information from a donor following collection that reveals the donor had a risk factor for a RTTI or TTI at the time of collection and should have been deferred for the risk factor. FDA has recommended, in the following guidance documents, that such a blood collection establishment notify the consignee regarding the distributed blood components that are potentially at-risk for a RTTI or TTI. In some cases,

we recommend that if the blood was transfused, the consignee notify the transfusion recipient's physician of record regarding the potential risk. This recommendation is included in Ebola virus, malaria, CJD and vCJD, and HIV guidance documents. These guidance documents are available from our website at *https://www.fda.gov/vaccines-blood-biologics/biologics-guidances/blood-guidances.*

Although such notifications are rare, we believe that these notification practices would be part of the usual and customary business practice for blood establishments and consignees in addressing the RTTIs or TTIs under the regulations. In addition, we believe respondents would have already developed standard operating procedures for notifying consignees and the recipient's physician of record regarding distributed blood components potentially at risk for a TTI. Therefore, for the purpose of estimating burden under the PRA, we provide an estimate of one response and one burden hour annually.

As other relevant transfusion-transmitted infections are determined under § 630.3, we may continue to issue guidance accordingly, and, if approved, intend the information collections to be included under this OMB control number.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimates. These guidance documents, as applicable, also refer to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR parts 601 and 640, and Form FDA 356h have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116; the collections of information in 21 CFR 606.171 have been approved under OMB control number 0910–0458.

Dated: December 31, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00034 Filed 1–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0366]

Agency Information Collection Activities; Proposed Collection; Comment Request; Advisory Committee Nomination Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on advisory committee nomination Applications.

DATES: Submit either electronic or written comments on the collection of information by March 9, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–0366 for ''Advisory Committee Nomination Applications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Advisory Committee Membership Nominations

OMB Control Number 0910–0833

FDA chooses to select advisory committee members through a nomination process. (Appendix A to Subpart C of 41 CFR 102–3, the Federal Advisory Committee Management Final Rule notes that the Federal Advisory Committee Act (FACA, 5 U.S.C. App. 2) does not specify the manner in which advisory committee members and staff must be appointed.) A person can self-nominate or be nominated by another individual. In order to identify and select qualified individuals to serve on its advisory committees, FDA has established an online portal, the FDA Advisory Committee Membership Application, to accept nominations of potential advisory committee members.

The FDA Advisory Committee Membership Application accepts nominations for Academician/Practitioner, Consumer Representative, and Industry Representative membership types. Nominees who are nominated as scientific members should be technically qualified experts in the field (*e.g.,* clinical medicine, engineering, biological and physical sciences, biostatistics, food sciences) and have experience interpreting complex data. Candidates must be able to analyze detailed scientific data and understand its public health significance. The nomination process has recently been made electronic and is available at *http://accessdata.test.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.* To submit a nomination, nominators or prospective nominees should upload the following documents in PDF format (see 21 CFR 14.82(c)): (1) Curriculum vitae (CV); (2) a written confirmation that the nominee(s) is (are) aware of the nomination (unless self-nominated); and (3) letters of recommendation are also suggested. For Consumer Representative nominations, a cover letter that lists consumer or community organizations for which the candidate can demonstrate active participation is also recommended.

These documents are collected in order to determine if the nominee has the expertise in the subject matter with which the committee is concerned and has diverse professional education, training, and experience so that the committee will reflect a balanced composition of sufficient scientific expertise to handle the problems that come before it (21 CFR 14.80(b)(1)(i)). In the case of Industry and Consumer Representatives, information is collected to assess the candidate's ability to represent all interested persons within the class which the member is selected to represent (21 CFR 14.86).

Each nominee should be sure to review the Agency website for information on:

- Vacancies, qualifications, and experience for more details concerning vacancies on each committee and the qualifications and experience common for nominees. Vacancies are updated periodically; therefore, one or more vacancies listed may be in the nomination process or a final appointment may have been made.
- Potential conflicts of interest such as financial holdings, employment, and research grants and/or contracts in order to permit evaluation of possible sources of conflict of interest.

Also, FDA asks that prospective nominees inform us of how they heard about the FDA Advisory Committees (*e.g.,* attendance at a professional meeting, an article in a publication, our website, while speaking with a friend or colleague).

To further the Agency's goals of promoting transparency regarding the advisory committee process, FDA will also require that nominees to serve on advisory committees submit a consent form authorizing FDA to post, without removing or redacting any information, to FDA's public website (*http://www.fda.gov/AdvisoryCommittees*) the CV submitted as part of their nomination materials if the nominee is selected to serve on an advisory committee. The consent form requires that the nominee affirm that the CV does not include any confidential information, including information pertaining to third parties, that the nominee is not permitted to disclose. A nominee will be required to submit a signed consent form as a part of the nomination package for the nomination to be considered complete.

All nominations for new advisory committee members will be required to be submitted through FDA's website at *http://accessdata.test.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or any successor system, and the submission will be required to be accompanied by the consent form, on or after the date of OMB approval for this information collection.

We therefore estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Part 14; Subpart E—Members of Advisory Committees	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Advisory Committee Membership Nominations	391	1	391	0.25 (15 minutes)	98
Representative Member Submission of Updated Information.	54	1	54	0.25 (15 minutes)	14
Total			445		112

[1] There are no capital or operating and maintenance costs associated with the information collection.

Based on a review of data, we received 354 nominations for membership to FDA advisory committees in Fiscal Year (FY) 2015; we received 510 nominations in FY 2016; we received 500 nominations in FY 2017; we received 258 nominations in FY 2018; and we received 333 nominations in FY 2019. By averaging the number of nominations received annually over the past 5 years, we estimate there are approximately 391 respondents to the information collection. We estimate it takes respondents 15 minutes to complete an initial nomination, where accompanying documentation is already available or has been prepared in advance by respondents. Multiplying 15 minutes (0.25) by the number of respondents to the information collection (391) equals 97.75 (98 rounded) annual burden hours.

We have also included a burden estimate for members who currently serve on FDA advisory committees who are not Special Government and Regular Government Employees and who must submit an updated CV and an executed/completed consent form annually. Currently there are 54 authorized positions for these Representative members, mostly Industry Representatives. While some positions are vacant, we anticipate the positions will be filled during the year. The request for the updated CV and consent form will be made through email communications by the Designated Federal Officer of the committee. We anticipate that the burden to the respondent will be the same as that for new nominations. We estimate each response will require 15 minutes (0.25) for a total of 13.5 (14 rounded) annual hours.

Dated: January 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–00041 Filed 1–6–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–0661]

Enforcement Priorities for Electronic Nicotine Delivery Systems and Other Deemed Products on the Market Without Premarket Authorization; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled ''Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization.'' The guidance describes, among other things, how FDA intends to prioritize its enforcement resources with regard to the marketing of ENDS products that do not have premarket authorization.

DATES: The announcement of the guidance is published in the **Federal Register** on January 7, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–0661 for ''Marketing of Unauthorized Deemed Tobacco Products: Enforcement Priorities for Certain Deemed Products on the Market Without Premarket Authorization.'' 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.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization.''

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) granted FDA the authority to regulate the manufacture, marketing, and distribution of cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products to protect public health generally and to reduce tobacco use by minors. The Tobacco Control Act also gave FDA the authority to issue regulations deeming other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

In accordance with that authority, on May 10, 2016, FDA issued a final rule entitled ''Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products'' (the final deeming rule) deeming all products that meet the statutory definition of a tobacco product, except accessories of deemed tobacco products, to be subject to FDA's tobacco product authority. This included ENDS, cigars, waterpipe (hookah) tobacco, pipe tobacco, nicotine gels, and dissolvables that were not already subject to the FD&C Act (81 FR 28974 at 28976, May 10, 2016).

The requirements in chapter IX of the FD&C Act (21 U.S.C. 387 through 387u) now apply to deemed tobacco products. This includes section 910 (21 U.S.C. 387j), which imposes certain premarket review requirements for ''new tobacco products''—*i.e.,* those that were not commercially marketed in the United States as of February 15, 2007. Accordingly, after the rule's effective date, deemed new tobacco products were required to obtain premarket authorization under section 910 of the FD&C Act. Deemed new tobacco products that remain on the market without marketing authorization are marketed unlawfully in contravention of the Tobacco Control Act. In addition, the preamble to the final deeming rule explained that, for deemed tobacco products on the market as of August 8, 2016, FDA intended to defer enforcement for failure to have premarket authorization during two compliance periods: One for submission and FDA receipt of applications and one for obtaining premarket authorization (81 FR 28974 at 29011).

In May 2017, FDA published a guidance document entitled ''Three-Month Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule,'' under which the Agency, as a matter of enforcement discretion, stated its intention to defer enforcement of any future compliance dates for requirements under the final deeming rule for an additional 3 months. In July 2017, FDA announced a new comprehensive plan for tobacco and nicotine regulation that would serve as a multiyear roadmap in an effort to significantly reduce tobacco-related disease and death. One aspect of the plan involved striking a balance between regulation and encouraging development of innovative tobacco products that may be potentially less harmful than cigarettes. The Agency announced that it planned to issue an updated compliance policy further deferring some enforcement timelines described in the final deeming rule. In accordance with this comprehensive plan, in August 2017, FDA stated its intention to further extend the period during which it did not intend to initiate enforcement action for the premarket review requirements under the final deeming rule (''August 2017 Compliance Policy'').

In March 2018, in *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.,* the August 2017 Compliance Policy was challenged in the U.S. District Court for the District of Maryland, and on May 15, 2019, the court issued an order that vacated the guidance.[1] On July 12, 2019, the court issued a further order directing FDA to require that premarket authorization applications for all new deemed tobacco products be submitted to the Agency within 10 months, by May 12, 2020, and providing for a 1-year period during which products with timely applications might remain on the market pending FDA review.[2] As required by the court's order, deemed new tobacco products on the market as of August 8, 2016, for which premarket authorization applications are not filed by May 12, 2020, are subject to FDA enforcement actions, in the Agency's discretion. The court subsequently clarified that its order did not restrict FDA's authority to enforce the premarket review provisions against deemed products, or categories of

[1] *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.,* 379 F. Supp. 3d 461, 496 (D. Md. 2019).

[2] *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.,* No. 8:18–cv–883 (PWG), 2019 WL 3067492, at *7 (D. Md. July 12, 2019) (Dkt. No. 127).

deemed products, prior to May 12, 2020, or during the one-year review period.

Since issuing the August 2017 Compliance Policy, FDA has received information underscoring the problem of youth use of ENDS products, as well as evidence of other new and continued public health concerns related to ENDS products. For example, data from the 2018 National Youth Tobacco Survey (NYTS), as described throughout the guidance, documented a significant increase in youth use of ENDS products and revealed the magnitude of the problem. These data prompted FDA to issue a draft guidance regarding the continued marketing of deemed tobacco products that had not obtained premarket authorization, and to call on industry to do more to keep their products out of the hands of minors. In March 2019, FDA published a draft guidance entitled ''Modifications to Compliance Policy for Certain Deemed Tobacco Products'' (''March 2019 Draft Guidance''), which discussed the Agency's plan to modify the August 2017 Compliance Policy and prioritize enforcement of the premarket authorization requirements for certain deemed tobacco products.

Recent data show a second consecutive year with an alarming increase in youth use of ENDS products. In 2019, two of the largest surveys of tobacco use among youth found that e-cigarette use has reached the highest levels ever recorded. The 2019 Monitoring the Future Study shows that e-cigarette use among 8th, 10th, and 12th graders who had used ENDS products during the previous 12 months and those who had ever used ENDS products significantly increased from 2018 to 2019. Data from the 2019 NYTS also show that 2019 was the second consecutive year in which current (past 30-day) e-cigarette use among youth reached unprecedented levels. Evidence from the 2016–2017 (Wave 4) Population Assessment of Tobacco and Health Study and other studies, as described in the guidance, further confirms these trends, including that youth are particularly attracted to flavored ENDS products.

Moreover, recent data indicate that youth overwhelmingly prefer cartridge-based ENDS products, which FDA has found are easy to conceal, can be used discreetly, may have a high nicotine content, and are manufactured on a large scale. The 2019 NYTS survey instrument included a measure for the ''usual brand'' of e-cigarette used in the past 30 days, and the majority of youth who were current e-cigarette users reported a cartridge-based e-cigarette as their usual brand.

Finally, FDA remains concerned about health and safety issues connected to ENDS products—*e.g.,* cases of lung injuries associated with use of vaping products as well as battery explosions with ENDS products—particularly given that all of these products have been marketed without premarket authorization. These current public health issues affirm the importance of the premarket review process, as contemplated by the Tobacco Control Act, to scientifically evaluate products based on a public health standard. For example, FDA review of premarket tobacco product applications considers the risks and benefits of the product to the population as a whole, including tobacco product users and non-users. In reviewing premarket tobacco product applications, FDA will consider, among other things: The product's components, ingredients, additives, and properties; manufacturing practices; and any studies or investigations into the health risks of the tobacco product.

The Agency views the dramatic increase in youth use of these products as a problem that requires an urgent response. Accordingly, FDA is issuing this final guidance to communicate its enforcement priorities with respect to ENDS products. FDA would adopt these enforcement priorities for ENDS regardless of the decision of the U.S. District Court for the District of Maryland in *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.*[3] Additionally, as described in the guidance, consistent with the court's order, manufacturers of other deemed new tobacco products will be required to submit marketing applications for those products by May 12, 2020.[4]

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of the Agency's enforcement priorities for premarket review requirements for certain deemed tobacco products and describes how the Agency intends to prioritize its enforcement resources with regard to the marketing of certain deemed tobacco products that do not have premarket authorization. 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.

III. Paperwork Reduction Act of 1995

This final 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 1107.1(b) and (c) have been approved under OMB control number 0910–0684; the collections of information under section 910 of the FD&C Act have been approved under OMB control number 0910–0768. The collections of information in section 905(j) of the FD&C Act (21 U.S.C. 387e(j)) have been approved under OMB control number 0910–0673.

IV. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance at either *https://www.regulations.gov* or *https://www.fda.gov/tobacco-products/products-guidance-regulations/rules-regulations-and-guidance.*

Dated: December 31, 2019.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2019–28539 Filed 1–3–20; 8:45 am]

BILLING CODE 4164–01–P

[3] *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.,* 379 F. Supp. 3d 461, 496 (D. Md. 2019).

[4] *American Academy of Pediatrics, et al.* v. *Food and Drug Administration, et al.,* No. 8:18–cv–883 (PWG), 2019 WL 3067492, at *7 (D. Md. July 12, 2019) (Dkt. No. 127).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Update to the Women's Preventive Services Guidelines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On December 17, 2019, HRSA approved an update to the HRSA-supported Women's Preventive Services Guidelines (Guidelines) that addresses health needs specific to women. The Guidelines are based on clinical recommendations from the Women's Preventive Services Initiative. Preventive care and screenings for women provided for in comprehensive guidelines supported by HRSA are required to be covered without cost-sharing by non-grandfathered group health plans and health insurance

issuers offering non-grandfathered group or individual health insurance coverage. This 2019 update adds one additional service—Screening for Anxiety—to the HRSA-supported Women's Preventive Services Guidelines to the 11 preventive services that were last updated in 2017. The 11 services included in the 2017 update are: Breast Cancer Screening for Average Risk Women, Breastfeeding Services and Supplies, Screening for Cervical Cancer, Contraception, Screening for Gestational Diabetes Mellitus, Screening for Human Immunodeficiency Virus Infection, Screening for Interpersonal and Domestic Violence, Counseling for Sexually Transmitted Infections, Well-Woman Preventive Visits, Screening for Diabetes Mellitus after Pregnancy, and Screening for Urinary Incontinence. This notice serves as an announcement of the decision to update the guidelines as listed below. Please see *https://www.hrsa.gov/womens-guidelines/index.html* for additional information.

FOR FURTHER INFORMATION CONTACT: Ada Determan, Maternal and Child Health Bureau at email: *wellwomancare@hrsa.gov* or (301) 945–3057.

SUPPLEMENTARY INFORMATION: The updated 2019 HRSA-supported Women's Preventive Services Guidelines and information related to guideline development and implementation can be found on *https://www.hrsa.gov/womens-guidelines-2019/index.html.* Information regarding the new preventive service approved by the HRSA Administrator for inclusion in the comprehensive guidelines is set out below:

Screening for Anxiety

The Women's Preventive Services Initiative recommends screening for anxiety in adolescent and adult women, including those who are pregnant or postpartum. Optimal screening intervals are unknown and clinical judgement should be used to determine screening frequency. Given the high prevalence of anxiety disorders, lack of recognition in clinical practice, and multiple problems associated with untreated anxiety, clinicians should consider screening women who have not been recently screened.

HRSA-Supported Women's Preventive Services Guidelines

The HRSA-supported Women's Preventive Services Guidelines were originally established in 2011 based on recommendations from the Institute of Medicine, now known as the National Academy of Medicine (NAM), developed under a contract with HHS. Since then, there have been advancements in science and gaps identified in the existing guidelines, including a greater emphasis on practice-based clinical considerations. To address these, HRSA awarded a 5-year cooperative agreement in March 2016 to convene a coalition of clinician, academic, and consumer-focused health professional organizations and conduct a scientifically rigorous review to develop recommendations for updated Women's Preventive Services Guidelines in accordance with the model created by the NAM *Clinical Practice Guidelines We Can Trust.* The American College of Obstetricians and Gynecologists was awarded the cooperative agreement and formed an expert panel called the Women's Preventive Services Initiative to perform this work.

Under section 2713 of the Public Health Service Act, 42 U.S.C. 300gg–13, non-grandfathered group health plans and issuers of non-grandfathered group and individual health insurance coverage are required to cover specified preventive services without a copayment, coinsurance, deductible, or other cost sharing, including preventive care and screenings for women as provided for in comprehensive guidelines supported by HRSA for this purpose. Non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual coverage (generally plans or policies created or sold after March 23, 2010, or older plans or policies that have been changed in certain ways since that date) are required to provide coverage without cost sharing for preventive services listed in the updated HRSA-supported guidelines (which include the 11 preventive services last updated in 2017 as well as the one new service added in this update) beginning with the first plan year (in the individual market, policy year) that begins on or after December 17, 2020.

Dated: December 30, 2019.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–00035 Filed 1–6–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Alexander Neumeister, M.D. (Respondent), who was a Professor of Psychiatry and Radiology, Department of Psychiatry, New York University School of Medicine, Langone Medical Center (NYUSOM). Dr. Neumeister engaged in research misconduct in psychiatric clinical research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grants R01 MH096876, R01 MH102566, R21 MH094763, R21 MH096105, R21 MH102035, and R34 MH102871. The administrative actions, including debarment for a period of two (2) years, followed by supervision for a period of two (2) years, were implemented beginning on December 13, 2019, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Alexander Neumeister, M.D., New York University School of Medicine, Langone Medical Center: Based on the report of an investigation conducted by NYUSOM and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Alexander Neumeister, Professor of Psychiatry and Radiology, Department of Psychiatry, NYUSOM, engaged in research misconduct in psychiatric clinical research supported by NIMH, NIH, grants R01 MH096876, R01 MH102566, R21 MH094763, R21 MH096105, R21 MH102035, and R34 MH102871.

Respondent neither admits nor denies ORI's findings of research misconduct. The settlement is not an admission of liability on the part of the Respondent. The parties entered into a Voluntary Exclusion Agreement (Agreement) to conclude this matter without further expenditure of time, finances, or other resources.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, and/or recklessly falsifying and/or fabricating data in the clinical records of research supported by six (6) NIMH grants, resulting in the inclusion of falsified and/or fabricated research methods and results in four (4) published papers:

- Association of in vivo k-opioid receptor availability and the transdiagnostic dimensional expression of trauma-related psychopathology. *JAMA Psychiatry* 2014

Nov;71(11):1262–70. *Erratum* in: *JAMA Psychiatry* 2014 Nov 7;71(11):1301.

• Cannabinoid type 1 receptor availability in the amygdala mediates threat processing in trauma survivors. *Neuropsychopharmacology* 39(11):2519–28, 2014 Oct.

• Linking plasma cortisol levels to phenotypic heterogeneity of posttraumatic stress symptomatology. *Psychoneuroendocrinology* 2014 Jan;39:88–93.

• Association of posttraumatic stress disorder with reduced in vivo norepinephrine transporter availability in the locus coeruleus. *JAMA Psychiatry* 2013 Nov;70(11):1199–205.

Specifically, the Respondent misrepresented the characteristics of the subjects entered in the research record by:

- Combining data from multiple subjects to represent single subjects to justify financial payments
- changing and/or instructing his staff to change, omit, or ignore clinical and psychiatric assessment data contained in the electronic and/or written research records
- failing to conduct and/or document screening tests (*i.e.,* pregnancy tests, urine toxicology, electrocardiograms, blood alcohol levels) to determine eligibility for each protocol
- using outdated clinical and/or psychiatric assessments to determine eligibility for experimental and control groups
- reporting the utilization of trained and/or licensed personnel to perform clinical and psychiatric assessments, when the specific training, certification, and/or licensing had not been obtained
- including in subsequent clinical research trials and their associated publications, human research subjects' data that were previously reported in:

—Positron emission tomography shows elevated cannabinoid CB1 receptor binding in men with alcohol dependence. *Alcohol Clin. Exp. Res.* 2012 Dec;36(12):2104–9

This resulted in the inclusion of subjects in experimental and control groups who did not meet the criteria for entry, as specified in the protocols of the Respondent's funded grants, rendering the data and/or published results invalid in the four (4) papers. The grants are:

- R01 MH096876, ''CB1 Receptor PET Imaging Reveals Gender Differences in PTSD,'' project dates July 1, 2012–June 30, 2015
- R01 MH102566, ''KOR Depression,'' project dates June 1, 2014–June 30, 2015
- R21 MH094763, ''CB1 Receptor Imaging in Anorexia,'' project dates April 1, 2012–March 31, 2014
- R21 MH096105, ''Kappa Opioid Receptor Imaging in PTSD,'' project dates April 1, 2012–March 31, 2015
- R21 MH102035, ''Kappa Opioid Receptor Imaging in Anorexia,'' project dates August 20, 2013–June 30, 2015
- R34 MH102871, ''A mGlu2/3 agonist in the treatment of PTSD,'' project dates July 9, 2014–June 30, 2015

Dr. Neumeister entered into an Agreement and agreed:

(1) To exclude himself voluntarily for a period of two (2) years, beginning on December 13, 2019, from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); at the conclusion of the period of voluntary exclusion, Respondent agreed to have his research supervised for a period of two (2) years; Respondent agreed that prior to submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed supervision plan;

(2) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of four (4) years, beginning on December 13, 2019.

(3) as a condition of the Agreement, Respondent will utilize information provided by ORI to request that the following papers be corrected or retracted in accordance with 42 CFR 93.407(a)(1):

• *JAMA Psychiatry* 2014 Nov;71(11):1262–70.

• *Neuropsychopharmacology* 2014 Oct;39(11):2519–38.

• *Psychoneuroendocrinology* 2014 Jan;39:88–93.

• *JAMA Psychiatry* 2013 Nov;70(11):1199–205.

Respondent will copy ORI and the Research Integrity Officers at NYUSOM and Yale University on the correspondence.

Elisabeth A. Handley,

Interim Director, Office of Research Integrity.

[FR Doc. 2020–00036 Filed 1–6–20; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Research SEP.

Date: February 12, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite #672, Bethesda, Maryland 20892, 301–827–4639, *yun.mei@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 31, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28512 Filed 1–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.
Date: January 30–31, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bayside, 4875 North Harbor, Drive San Diego, CA 92106.
Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.
Date: January 30–31, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Review: Bioengineering Sciences and Technologies (R15).
Date: January 31, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.
Date: February 3–4, 2020.
Time: 7:30 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton La Jolla Hotel, 3299 Holiday Court, La Jolla, CA 92037.
Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 31, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28513 Filed 1–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Mental Health Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.
Date: February 4, 2020.
Closed: 8:00 a.m. to 9:00 a.m.
Agenda: To review and evaluate to review and evaluate the NIMH Division of Intramural Research Programs.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Open: 9:15 a.m. to 1:00 p.m.
Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Closed: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov.*

Name of Committee: National Advisory Mental Health Council.
Date: May 19, 2020.
Open: 9:00 a.m. to 1:00 p.m.
Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Closed: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov.*

Name of Committee: National Advisory Mental Health Council.
Date: September 15, 2020.
Open: 9:00 a.m. to 1:00 p.m.
Agenda: Presentation of the NIMH Director's Report and discussion of NIMH program.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Closed: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Blvd., Rockville, MD 20852.
Contact Person: Jean G. Noronha, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367, *jnoronha@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this

notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 31, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28511 Filed 1–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel: Conflicting F and K Applications of NRRC.

Date: January 28, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, Democracy One, 6701 Democracy Blvd., Bethesda, MD 22150 (Telephone Conference Call).

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing, Research Special Emphasis Panel: NINR Limited Competition R01 and Clinical Trial Planning R34 Grant Review Meeting.

Date: February 7, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel: Strategies to Improve Health Outcomes and Reduce Disparities in Rural Populations.

Date: March 5–6, 2020.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: December 31, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28514 Filed 1–6–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0879]

Cooperative Research and Development Agreement—Shipboard Information Technology Network Optimization

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a cooperative research and development agreement (CRADA) with several companies to evaluate the suitability of implementing Wide Area Network (WAN) optimization technology in a shipboard environment. The CRADA will explore WAN optimization technologies and how they can be implemented for shipboard use under a variety of scenarios. While the Coast Guard is currently considering partnering with SWISH DATA CORPORATION (SWISH), we are soliciting public comment on the possible participation of other parties in the proposed CRADA. The Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before February 6, 2020.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before February 6, 2020.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following website instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LCDR Grant Wyman, Project Official, IT and Networks Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2727, email *Grant.C.Wyman@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenter and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2019–0879 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal rulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast

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

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the Coast Guard's Research and Development Center (RDC) will collaborate with one or more non-Federal participants. Together, the RDC and the non-Federal participants will evaluate the suitability of WAN optimization technologies in a shipboard environment.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Develop a test plan for execution under the CRADA;

(2) Provide network access, data, facilities, and approvals required for work under the CRADA;

(3) Collect and analyze test plan data; and

(4) Develop a report documenting the methodologies, findings, conclusions, and recommendations related to this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide WAN optimization technologies to conduct work to be described in test plan;

(2) Provide required operators and technicians to perform work identified in the test plan;

(3) Provide technical data for the equipment and services to be utilized;

(4) Provide shipment and delivery of any equipment required;

(5) Provide travel and associated personnel and other expenses as required for subject work.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering SWISH, for participation in this CRADA. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology suitability effort. The goal of this CRADA is to evaluate the suitability of implementing WAN optimization technology in a shipboard environment. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: December 17, 2019.

Captain Gregory C. Rothrock,

Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2020–00033 Filed 1–6–20; 8:45 am]

BILLING CODE 9110–04–P

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

INTERNATIONAL TRADE COMMISSION

[USITC SE–20–001]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 14, 2020 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–622 and 731–TA–1448 (Final) (Dried Tart Cherries from Turkey). The Commission is currently scheduled to complete and file its determinations and views of the Commission by January 27, 2020.
5. *Outstanding action jackets:* None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 2, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–00081 Filed 1–3–20; 11:15 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Executive Committee (EC), pursuant to National Science Foundation regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Friday, January 10, 2020, from 3:30–4:30 p.m. EST.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to

nationalsciencebrd@nsf.gov at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; approval of Executive Committee minutes of October 23, 2019; and discuss issues and topics for an agenda of the NSB meetings scheduled for February 4–5, 2020.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: James Hamos, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703/292–8000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/notices/.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–00098 Filed 1–3–20; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the Committee on Strategy of the National Science Board, to be held Monday, January 13, 2020 from 4:00–5:00 p.m. EST.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; Approval of prior meeting minutes; Update on NSF's Fiscal Year 2021 budget passback and budget request to Congress.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Kathy Jacquart, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: (703) 292–7000. You may find meeting information and updates (time, place, subject matter or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website at *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–00097 Filed 1–3–20; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 6, 13, 20, 27, February 3, 10, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of January 6, 2020

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.

Week of January 27, 2020—Tentative

Tuesday, January 28, 2020

9:00 a.m. Discussion of Medical Uses of Radioactive Materials (Public Meeting) (Contact: Lisa Dimmick: 301–415–0694)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of February 3, 2020—Tentative

Thursday, February 6, 2020

9:00 a.m. Briefing on Advanced Reactors and New Reactor Topics (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of February 10, 2020—Tentative

There are no meetings scheduled for the week of February 10, 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 3rd day of January 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–00090 Filed 1–3–20; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0241]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of five amendment requests. The amendment requests are for Fermi 2; Oconee Nuclear Station, Units 1, 2, and 3; Center for Neutron Research Test Reactors; Joseph M.

Farley Nuclear Plant, Units 1 and 2; Watts Bar Nuclear Plant, Unit 2. For each amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI) and safeguards information (SGI) an order imposes procedures to obtain access to SUNSI and SGI for contention preparation.

DATES: Comments must be filed by February 6, 2020. A request for a hearing must be filed by March 9, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI and/or SGI is necessary to respond to this notice must request document access by January 17, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0241. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0241, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0241.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0241, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI and/or SGI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at

Hearing.Docket@nrc.gov, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: September 5, 2019. A publicly-available version is in ADAMS under Accession No. ML19248C679.

Description of amendment request: This amendment request contains SUNSI. The amendment would eliminate the license renewal license condition based upon a proposed alternative to install neutron absorbing inserts (*i.e.,* NETCO SNAP–IN® rack inserts) in the spent fuel pool (SFP) storage racks containing Boraflex. The amendment also requests revision of technical specification (TS) requirements associated with the SFP storage racks based on a new criticality safety analysis. In addition, approval of the new criticality safety analysis, including methodology, is being requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the Renewed Facility Operating License and TSs to reflect installation of NETCO SNAP–IN® rack inserts in SFP storage rack cells. The changes are necessary to ensure that, without credit for Boraflex as a neutron absorbing material as required by the License Renewal License Condition, the effective neutron multiplication factor, k-effective, is less than or equal to 0.95, if the spent fuel pool (SFP) is fully flooded with unborated water. Since the proposed changes pertain only to the SFP, only those accidents that are related to movement and storage of fuel assemblies in the SFP could potentially be affected by the proposed changes.

The installation of NETCO SNAP–IN® rack inserts and their credit in the criticality safety analysis does not result in a significant increase in the probability of an accident previously analyzed because there are no changes in the manner in which spent fuel is handled, moved, or stored in the rack cells. The probability that a fuel assembly would be dropped is unchanged by the installation of the NETCO SNAP–IN® rack inserts and their credit in the criticality safety analysis. These events involve failures of administrative controls, human performance, and equipment failures that are unaffected by the type of neutron absorbing material utilized in the SFP racks.

The installation of NETCO SNAP–IN® rack inserts and their credit in the criticality

safety analysis does not result in a significant increase in the consequences of an accident previously analyzed because there is no change to the fuel assemblies that provide the source term used in calculating the radiological consequences of a fuel handling accident. In addition, consistent with the current design, only one fuel assembly will be moved at a time. Thus, the consequences of dropping an insert with tooling or a fuel assembly onto any other fuel assembly or other structure remain bounded by the previously analyzed fuel handling accident. The proposed changes do not impact the effectiveness of the other engineered design features, such as isolation systems, that limit the dose consequences of a fuel handling accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Onsite storage of spent fuel assemblies in the Fermi 2 SFP is a normal activity for which Fermi 2 has been designed and licensed. As part of assuring that this normal activity can be performed without endangering the public health and safety, the ability to safely accommodate different possible accidents in the SFP have been previously analyzed. These analyses address accidents such as radiological releases due to dropping a fuel assembly; potential inadvertent criticality due to misloading a fuel assembly. The proposed SFP storage configuration utilizing the NETCO SNAP–IN® rack inserts does not change the method of fuel movement or spent fuel storage and does not create the potential for a new accident. The proposed changes also allow for the continued use of SFP storage rack cells with Boraflex within those SFP storage rack cells; however, no credit is taken for Boraflex as a neutron absorbing material.

The rack inserts are passive devices. These devices, when inside a SFP storage rack cell, perform the same function as the previously licensed Boraflex neutron absorber panels in that cell. The NETCO SNAP–IN® rack inserts do not add any limiting structural loads or adversely affect the removal of decay heat from the assemblies. No change in total heat load in the spent fuel pool is being made. The insert devices will be monitored to ensure they maintain their design function over the life of the spent fuel pool. The existing fuel handling accident, which assumes the drop of a fuel assembly and refueling mast, bounds the drop of a rack insert and associated tools. This proposed change does not create the possibility of misloading an assembly into a SFP storage rack cell. Inadvertent removal of an insert, although largely precluded by design and administrative controls, does not challenge subcriticality requirements as explicitly demonstrated by the criticality safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The NETCO SNAP–IN® rack inserts are being installed to maintain the margin of safety in the SFP criticality safety analysis. The NETCO SNAP–IN® rack inserts, once approved and installed, will replace the existing Boraflex as the credited neutron absorber for controlling spent fuel pool reactivity, even though the Boraflex material will remain in place.

Fermi 2 TS 4.3, ''Fuel Storage,'' Specification 4.3.1.b requires the SFP storage racks to maintain the effective neutron multiplication factor, k-effective, less than or equal to 0.95 when fully flooded with unborated water, which includes an allowance for uncertainties. Therefore, for SFP criticality safety considerations, the required safety margin is 5 percent.

The proposed changes ensure, as verified by the new criticality safety analysis, that k-effective continues to be less than or equal to 0.95, thus preserving the required safety margin of 5 percent.

In addition, the radiological consequences of a dropped fuel assembly, considering the installed NETCO SNAP–IN® rack inserts, remain unchanged as the anticipated fuel damage due to a fuel handling accident is unaffected by the addition of the inserts in the SFP storage cells. The proposed changes also do not increase the capacity of the SFP.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, DTE Electric Company concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: Nancy L. Salgado.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station (ONS), Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 28, 2019. A publicly-available version is in ADAMS under Accession No. ML19240A925.

Description of amendment request: This amendment request contains SUNSI. The amendment would revise the current licensing basis for ONS, Units 1, 2, and 3, regarding high energy line breaks (HELBs) outside of the containment building. The license amendment request (LAR) also includes revisions to the updated final safety analysis report (UFSAR) in support of the revised HELB licensing basis. The proposed change will establish normal plant systems, protected service water (PSW), and/or the standby shutdown facility (SSF) as the assured mitigation path following a HELB.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

A HELB does not constitute a previously-evaluated accident. HELB is a design criterion that is required to be considered in the design of structures, systems, or components and is not a design basis accident or design basis event. The possibility of HELBs is approximately considered in the UFSAR and Duke Energy has concluded that the proposed changes do not increase the possibility that a HELB will occur or increase the consequences from a HELB. This LAR provides an overview of the HELB reanalysis, description of station modifications that will be made because of the HELB reanalysis, and the proposed mitigation strategies which now includes normal plant equipment, the protected service water (PSW) system, and the standby shutdown facility (SSF). The PSW and SSF systems are designed as standby systems for use under emergency conditions. With the exception of testing, the systems are not normally pressurized. The duration of the test configuration is short as compared to the total plant (unit) operating time. Due to the combination of the infrequent testing and short duration of the test, pipe ruptures are not postulated or evaluated for these systems.

Other systems have also been excluded based on the infrequency of those systems operating at high energy conditions. Considerations of HELBs is excluded (both breaks and cracks) if a high energy system operates less than 1% of the total unit operating time such as emergency feedwater or reactor building spray or if the operating time of a system at high energy conditions is less than approximately 2% of total system operating time such as low-pressure injection. This is acceptable based on the very low probability of a HELB occurring during the limited operating time of these systems at high energy conditions. Gas and oil systems have been evaluated, since these systems also possess limited energy.

The modifications associated with the HELB licensing basis will be designed and installed in accordance with applicable quality standards to ensure that no new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing basis are introduced.

For Turbine Building HELBs that could adversely affect equipment needed to stabilize and cooldown the units, the PSW system or SSF provides assurance that safe shutdown can be established and maintained. For Auxiliary Building HELBs, normal plant systems or the SSF provides assurance that safe shutdown can be established and maintained.

As noted in Section 3.4 [of the LAR], Oconee Nuclear Station plans to adopt the provisions of Branch Technical Position (BTP) Mechanical Engineering Branch (MEB) 3–1, [''NRC Generic Letter 87–11, Relaxation in Arbitrary Intermediated Pipe Rupture Requirements,''] regarding the elimination of arbitrary intermediate breaks for analyzed lines that include seismic loading. Guidance in the BTP MEB 3–1 is used to define crack locations in analyzed lines that include seismic loading. Adoption of this provision allows Oconee Nuclear Station to focus attention to those high stress areas that have a higher potential for catastrophic pipe failure. In absence of additional guidance, Duke Energy uses NUREG/CR–2913 to define the zone of influence for breaks and critical cracks that meet the range of operating parameters listed in NUREG/CR–2913. NUREG/CR–2913 provides an analytical model for predicting two-phase, water jet loadings on axisymmetric targets that did not exist prior in the Giambusso/Schwencer requirements.

In conclusion, the changes proposed will increase assurance that safe shutdown can be achieved following a HELB. The changes will also collectively enhance the station's overall design, safety, and risk margin; therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A HELB does not constitute a previously-evaluated accident. HELB is a design criterion that is required to be considered in the design of structures, systems or components and is not a design basis accident or design basis event. The possibility of HELBs is approximately considered in the UFSAR and Duke Energy has concluded that the proposed changes do not increase the possibility that a HELB will create a new or different kind of accident. This LAR provides an overview of the HELB analysis, descriptions of station modifications that will be made because of the HELB reanalysis, and the proposed mitigation strategies which now include normal plant equipment, the PSW system, and the SSF.

In conclusion, the changes proposed will increase assurance that safe shutdown can be achieved following a HELB. The changes will also collectively enhance the station's overall design, safety, and risk margin; therefore, the proposed does create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in margin of safety?

Response: No.

A HELB does not constitute a previously-evaluated accident. HELB is a design criterion that is required to be considered in the design of structures, systems, or components and is not a design basis accident or design basis event. The possibility of HELBs is appropriately considered in the UFSAR and Duke Energy has concluded that the proposed changes do not involve a reduction in the margin of safety. This LAR provides an overview of the HELB analysis, descriptions of station modifications that will be made because of the HELB reanalysis, and the proposed mitigation strategies which now include normal plant equipment, the PSW system, and the SSF.

The changes described above provide a HELB licensing basis and have no effect on the plant safety margins that have been established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the TSs. Therefore, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate Nolan, Deputy General Counsel, Duke Energy Carolinas, 550 South Tryon Street, Charlotte, North Carolina 28202.

NRC Branch Chief: Michael T. Markley.

National Institute of Standards and Technology (NIST), Docket No. 50–184, Center for Neutron Research Test Reactor, Montgomery County, Maryland

Date of amendment request: July 5, 2019, as supplemented by letter dated October 11, 2019. Publicly-available versions are in ADAMS under Accession Nos. ML19197A045 and ML19289A494, respectively.

Description of amendment request: This amendment request contains SGI. The amendment would revise the NIST security plan regarding its physical security personnel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment only proposes slight changes to security personnel and does not increase the probability or consequences of any accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possible changes to security personnel do not create a new type of accident.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is reduced by this proposed change in security personnel, as the number of security personnel either remains the same or increased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer Nist, Deputy Chief Counsel for NIST, National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899.

NRC Branch Chief: Greg Casto.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: September 30, 2019. A publicly-available version is in ADAMS under Package Accession No. ML19275E393.

Description of amendment request: This amendment request contains SUNSI. The proposed amendment would modify the TS 3.7.15 ''Spent Fuel Assembly Storage'' and TS 4.3 ''Fuel Storage.'' The purpose of the proposed changes is to update the spent fuel pool criticality safety analysis and to account for the impact on the spent fuel for a future measurement uncertainty recapture power uprate amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment was evaluated for impact on the following criticality events and accidents and no impacts were identified: (1) Loss of spent fuel pool cooling system, (2) dropping a fuel assembly into an already loaded storage cell, and (3) the misloading of a single fuel assembly or multiple fuel assemblies into a cell for which the restrictions on location, enrichment, or burnup are not satisfied.

Operation in accordance with the proposed amendment will not change the probability

of a loss of spent fuel pool cooling because the changes in the criticality safety analysis have no bearing on the systems, structures, and components involved in initiating such an event. A criticality safety analysis of the limiting fuel loading configuration confirmed that the condition would remain subcritical for a range of normal and accident conditions. The effects of the accident conditions are bounded by the multiple fuel assembly misload accident.

Operation in accordance with the proposed amendment will not change the probability of a fuel assembly being dropped into an already loaded storage cell because fuel movement will continue to be controlled by approved fuel handling procedures. The consequences of a dropped fuel assembly are not changed; there will continue to be significant separation between the dropped fuel assembly and the active regions of the fuel assemblies. The effects of this accident are bounded by the multiple fuel assembly misload accident.

Operation in accordance with the proposed amendment will not change the probability of a fuel assembly misloading because fuel movement will continue to be controlled by approved fuel selection and fuel handling procedures. These procedures continue to require identification of the initial and target locations for each fuel assembly and fuel assembly insert that is moved. The consequences of a fuel misloading event are not changed because the reactivity analysis demonstrates that the same subcriticality criteria and requirements continue to be met for the multiple fuel assembly misload accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a criticality accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The potential for criticality in the spent fuel pool is not a new or different type of accident. Storage configurations allowed by TSs 3.7.15 and 4.3 have been analyzed to demonstrate that the pool remains subcritical.

The new criticality safety analysis includes analysis of a multiple misload accident scenario; only single misload events were previously analyzed. The inclusion of this analysis does not imply the creation of the possibility of a new accident, but simply expands the boundaries of the analyzed accident conditions to ensure that all potential accidents are properly considered.

There is no significant change in plant configuration, equipment design or usage of plant equipment. The updated criticality safety analysis assures that the pool will continue to remain subcritical.

Therefore; the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change was evaluated for its effect on current margins of safety as they relate to criticality. The margin of safety for subcriticality required by Amendment No. 133 to Facility Operating License No. NPF–2 and Amendment No. 125 to Facility Operating License, No. NPF–8 for Joseph M. Farley Nuclear Plant, Units 1 and 2 (Accession No. ML013130226) is unchanged. The updated criticality safety analysis confirms that operation in accordance with the proposed amendment continues to meet the required subcriticality margin.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., P.O. Box 1295, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority (TVA), Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: September 30, 2019. A publicly-available version is in ADAMS under Accession No. ML19274C003.

Description of amendment request: This amendment request contains SUNSI. The amendment would revise WBN, Unit 2, TS 3.4.17, ''Steam Generator (SG) Tube Integrity''; TS 5.7.2.12, ''Steam Generator (SG) Program''; and TS 5.9.9, ''Steam Generator Tube Inspection Report,'' to allow the use of Westinghouse leak-limiting non-nickel banded Alloy 800 sleeves to repair degraded SG tubes as an alternative to plugging the tubes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The Westinghouse non-nickel banded Alloy 800 leak-limiting repair sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code; therefore, they meet the design objectives of the original SG tubing. The applied stresses and fatigue usage for the repair sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits. The acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' Burst testing of sleeve/tube assemblies has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The Alloy 800 repair sleeve depth-based structural limit is determined using the RG 1.121 guidance and the pressure stress equation of ASME Code, Section III with additional margin added to account for configuration of long axial cracks. A bounding detection threshold value has been conservatively identified and statistically established to account for growth and determine the repair sleeve/tube assembly plugging limit. A sleeved tube is plugged on detection of degradation in the sleeve/tube assembly.

Evaluation of the repaired SG tube testing and analysis indicates no detrimental effects on the sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at WBN Unit 2. Corrosion testing and historical performance of sleeve/tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeve/tube assembly is bounded by the current SG tube rupture (SGTR) analysis described in the WBN dual-unit UFSAR. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the SGTR analysis and; therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feedwater line break will not cause a SGTR because the sleeves are analyzed for a maximum accident differential pressure greater that that predicted in the WBN Unit 2 safety analysis. The minimal leakage that could occur during repair of the sleeve/tube assembly during plant operation is well within the TS leakage limits when grouped with current alternate plugging criteria calculated leakage values.

Therefore, TVA has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the WBN dual-unit UFSAR.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Alloy 800 leak-limiting repair sleeves are designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator

tubing. As a result, the functions of the SG will not be significantly affected by the installation of the proposed sleeve. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR accident analysis. The continued integrity of the installed sleeve/tube assembly is periodically verified by the TS requirements and the sleeved tube plugged on detection of degradation.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, TVA concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The repair of degraded SG tubes with Alloy 800 leak-limiting repair sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions and thereby maintains current core cooling margin as opposed to plugging the tube and taking it out of service. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Code used in the original SG design. The portions of the installed sleeve/tube assembly that represent the reactor coolant pressure boundary can be monitored for the initiation of sleeve/tube wall degradation and affected tube plugged on detection. Use of the previously identified design criteria and design verification testing assures that the margin to safety is not different from the original SG tubes.

Therefore, TVA concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

National Institute of Standards and Technology, Docket No. 50–184, Center for Neutron Research Test Reactor, Montgomery County, Maryland

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the Electronic Questionnaires for Investigations Processing website, a secure website that is owned and operated by the Office of Personnel Management (OPM). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Administrative Services, Mail Services Center, Mail Stop P1–37, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *MAILSVC.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an Federal Bureau of Investigation identification and criminal history records check.

(d) A check or money order payable in the amount of $357.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, ATTN: Personnel Security Branch, Mail Stop TWFN–07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the OPMs adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 10th of December 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified NonSafeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) Need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). *Note:* Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87877; File No. SR–EMERALD–2019–39]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 31, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt the Exchange's system connectivity fees.

The Exchange previously filed the proposal on October 22, 2019 (SR–EMERALD–2019–35). That filing has been withdrawn and replaced with the current filing (SR–EMERALD–2019–39).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule to increase the Exchange's network connectivity fees, in order to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion.

The Exchange had previously supplemented its connectivity fee filings in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange previously refiled its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3]

In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statement, the relevant section of which is attached hereto [sic] as Exhibit 3, which is publicly available as part of the Exchange's Form 1 Amendment.[4] The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fees are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (the ''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statement of MIAX Emerald, LLC, as of December 31, 2018, which is listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to adopt the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members [5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to adopt network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections (with the exception of the 10Gb ULL) are shared connections (collectively, the ''Shared Connections''), and thus can be utilized to access the Exchange and both of the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX PEARL''). The 10Gb ULL connection is a dedicated connection (''Dedicated Connection''), which provides network connectivity solely to the trading platforms, market data systems, and test system facilities of MIAX Emerald. These proposed fees are collectively referred to herein as the ''Proposed Fees.'' The amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL.[6] While the Exchange is new and only launched trading on March 1, 2019, since: (i) All of the Proposed Fees (except for the fee relating to the 10Gb ULL connection) relate to Shared Connections, and thus are the same amounts as are currently in place at MIAX and MIAX PEARL; (ii) all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections (without paying any new incremental connectivity fees), the Exchange is providing similar information to that which was provided in the MIAX and PEARL Fee Filings, including providing detail about the market participants impacted by the Proposed Fees, as well as the costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

The Exchange initially filed the Proposed Fees on March 1, 2019, designating the Proposed Fees immediately effective.[7] The First Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[8] The First Proposed Rule Change provided information about the market participants impacted by the Proposed Fees, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide transparency and support relating to the Exchange's belief that the Proposed Fees are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fees are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[9] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the First Proposed Rule Change.[10]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the Proposed Fees. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its First Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the First Proposed Rule Change. Despite the objection to the Proposed Fees, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [11] The IEX Letter specifically argued that the Proposed Fees were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX Emerald and its affiliates considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the First Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fees. Specifically, the Second Healthy Markets Letter stated that the First Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

> The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* SR–MIAX–2019–46 and SR–PEARL–2019–33 (the ''MIAX and PEARL Fee Filings'').

[7] *See* Securities Exchange Act Release No. 85316 (March 14, 2019), 84 FR 10350 (March 20, 2019) (SR–EMERALD–2019–11) (the ''First Proposed Rule Change'').

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019) (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[10] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (the ''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (the ''Second Healthy Markets Letter'').

[11] *See* IEX Letter, pg. 1.

provide what the Commission and staff seek.[12]

On April 29, 2019, the Exchange withdrew the First Proposed Rule Change.[13]

The Exchange refiled the Proposed Fees on April 30, 2019, designating the Proposed Fees immediately effective.[14] The Second Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[15] The Second Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fees are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fees are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[16]

The Commission received two comment letters on the Second Proposed Rule Change, after the Guidance was released.[17] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Second Proposed Rule Change to justify the Proposed Fees based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Second Proposed Rule Change. Also, Healthy Markets did not comment on the Second Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Second Proposed Rule Change.[18]

The Exchange refiled the Proposed Fees on June 26, 2019, designating the Proposed Fees immediately effective.[19] The Third Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[20] The Third Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fees are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Second Proposed Rule Change.

The Commission received three comment letters on the Third Proposed Rule Change.[21]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Third Proposed Rule Change.[22]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[23] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[24] The Fourth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Fourth Proposed Rule Change, twelve days after the comment period deadline ended.[25] Of note, no member of the Exchange commented on the Fourth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Fourth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Fourth Proposed Rule Change. Also, no operator of an options market commented on the Fourth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Fourth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market structure and resulting network demands are fundamentally different from those in the options markets),[26] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[27]

The Exchange refiled the Proposed Fees on October 22, 2019, designating the Proposed Fees immediately effective.[28] The Fifth Proposed Rule Change was published for comment in

[12] *See* Second Healthy Markets Letter, pg. 2.

[13] *See* SR–EMERALD–2019–11.

[14] *See* Securities Exchange Act Release No. 85839 (May 10, 2019), 84 FR 22192 (May 16, 2019) (SR–EMERALD–2019–20) (the ''Second Proposed Rule Change'') (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt System Connectivity Fees).

[15] *Id.*

[16] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[17] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[18] *See* SR–EMERALD–2019–20.

[19] *See* Securities Exchange Act Release No. 86344 (July 10, 2019), 84 FR 34030 (July 16, 2019) (SR–EMERALD–2019–24) (the ''Third Proposed Rule Change'').

[20] *Id.*

[21] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (the ''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Fourth SIFMA Letter'').

[22] *See* SR–EMERALD–2019–24.

[23] *See* Securities Exchange Act Release No. 86839 (August 30, 2019), 84 FR 47009 (September 6, 2019) (SR–EMERALD–2019–31) (the ''Fourth Proposed Rule Change'').

[24] *Id.*

[25] *See supra* note 3.

[26] *See infra* pages 17 to 19 (describing the differences in equity market structure and options market structure).

[27] *See* SR–EMERALD–2019–31.

[28] *See* Securities Exchange Act Release No. 87433 (October 31, 2019), 84 FR 59878 (November 6, 2019) (SR–EMERALD–2019–35) (the ''Fifth Proposed Rule Change'').

the **Federal Register** on November 6, 2019.[29] The Fifth Proposed Rule Change provided additional analysis of the Exchange's baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Fifth Proposed Rule Change also addressed certain points raised in the Third IEX Letter.

On December 20, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[30] The Exchange notes that the Fifth Proposed Rule Change did not receive any comment letters, however the Exchange has determined to refile the Proposed Fees to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange of providing network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion. The Exchange believes that the Proposed Fees are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fees are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange also offers to both Members and non-Members various bandwidth alternatives for connectivity to the Exchange, to its disaster recovery facility, consisting of a 1Gb fiber connection and a 10Gb connection.

For the Shared Connections, the Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange and its affiliates, MIAX and MIAX PEARL, via a single, shared connection. Any Member or non-Member can purchase a Shared Connection.

For the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. Accordingly, the Exchange is able to offer to its Members 10Gb ULL connectivity at a lower price point than is offered on MIAX and MIAX PEARL, the price difference being reflective of the lower cost to the Exchange.

For the Shared Connections, Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange, MIAX, and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection. Thus, since all of the Members of MIAX Emerald are also members of either MIAX and/or MIAX PEARL, and most of those Members already have connectivity to the Exchange via existing Shared Connections, most Members of MIAX Emerald have instant connectivity to the Exchange without paying any new incremental connectivity fees, as more fully-detailed below.

The Exchange proposes to establish the monthly network connectivity fees for such connections for both Members and non-Members. As discussed above, the amounts of the Proposed Fees for the Shared Connections are the same amounts that are currently in place at MIAX and MIAX PEARL. The amount of the Proposed Fee for the Dedicated Connection is offered at a substantial discount to the amount currently in place at MIAX and MIAX PEARL. The reasons for the substantial discount are that the Dedicated Connection offers access to only a single market (the Exchange), whereas the 10Gb ULL connection offered by MIAX and MIAX PEARL offers access to two markets (MIAX and MIAX PEARL), as well as cost savings the Exchange was able to achieve (and thus pass through to its Members) as a result of a dedicated architecture. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be as follows: (a) 1,400 for the 1Gb connection; and (b) $6,000 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be as follows: (a) $550 for the 1Gb connection; and (b) $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[31] in general, and furthers the objectives of Section 6(b)(4) of the Act[32] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[33] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In

[29] *Id.*

[30] *See* SR–EMERALD–2019–35.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(4).

[33] 15 U.S.C. 78f(b)(5).

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.'' [34]

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fees are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX Emerald as compared to the much greater number of members at other options exchanges (as further detailed below). MIAX Emerald is a brand new exchange, having only commenced operations in March 2019. Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. Further, of the number of Members that connect directly to MIAX Emerald, many such Members do not purchase market data from MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchanges but not Members of MIAX Emerald. For example, the following are not Members of MIAX Emerald: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX Emerald, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than market makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX Emerald or its affiliates, MIAX and MIAX PEARL, they do not purchase connectivity to MIAX Emerald, and they do not purchase market data from MIAX Emerald. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX Emerald, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[35] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase a 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX Emerald notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX Emerald and its affiliates. MIAX Emerald competes with eight (8) non-Members, who resell MIAX Emerald connectivity. These are resellers of MIAX Emerald connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX Emerald (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX Emerald does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX Emerald to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. In fact, there are currently seven (7) non-Members that purchase 1Gb direct connectivity that are able to access MIAX Emerald, MIAX and MIAX PEARL. Those non-Members resell that connectivity to eight (8) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eight (8) customers also purchase connectivity directly from MIAX

[34] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[35] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

Emerald and/or its affiliates, MIAX and MIAX PEARL. Accordingly, indirect connectivity is a viable alternative used by non-Members of MIAX Emerald, constraining the price that MIAX Emerald is able to charge for connectivity to its Exchange.

The Exchange,[36] MIAX,[37] and MIAX PEARL [38] are comprised of 41 distinct members amongst all three exchanges, excluding any additional affiliates of such members that are also members of the Exchange, MIAX, MIAX PEARL, or any combination thereof. Of those 41 distinct members, 28 of those distinct members are Members of MIAX Emerald. (Currently, there are no Members of MIAX Emerald that are not also members of MIAX or MIAX PEARL, or both.) Of those 28 distinct Members of MIAX Emerald, there are 6 Members that have no connectivity to the Exchange. Members are not forced to purchase connectivity to the Exchange, and these Members have elected not to purchase such connectivity. Of note, these same 6 Members also do not have connectivity to either MIAX or MIAX PEARL. These Members either trade indirectly through other Members or non-Members that have connectivity to the Exchange, or do not trade and conduct another type of business on the Exchange. Of the remaining 22 distinct Members of MIAX Emerald, *all 22* of those distinct Members already had connectivity to the Exchange via existing Shared Connections, thus providing all such 22 MIAX Emerald Members with instant connectivity to the Exchange without paying any new incremental connectivity fees.

Further, of those 22 Members, 14 of such Members elected to purchase additional connectivity to the Exchange, including additional Shared Connections and additional Dedicated Connections. The Exchange made available in advance to all of its prospective Members its proposed connectivity pricing (subject to regulatory clearance), in order for those prospective Members to make an informed decision about whether to become a Member of the Exchange and whether to purchase connectivity to the Exchange. Accordingly, each such Member made the decision to become a Member of the Exchange and to purchase connectivity to the Exchange, knowing in advance the connectivity pricing. And the vast majority of the additional connectivity purchased by those Members were for Dedicated Connections, the most expensive connectivity option.

As a result, of those 22 Members, through existing Shared Connections, newly purchased Shared Connections, and newly purchased Dedicated Connections: 14 Members have 1Gb (primary/secondary) connections; 13 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 10 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections. All such Members with those Shared Connections and Dedicated Connections trade on MIAX Emerald.

The 6 Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 6 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

In addition, there are 5 non-Member service bureaus that already have connectivity to the Exchange via existing Shared Connections, thus providing all 5 of those non-Member service bureaus with instant connectivity to the Exchange without paying any new incremental connectivity fees. These non-Members freely purchased their connectivity from one of the Exchange's affiliates, either MIAX or MIAX PEARL, in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options.

The Exchange believes that the Proposed Fees are reasonable, equitable and not unfairly discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers two direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX Emerald recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb ULL direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX Emerald, MIAX and MIAX PEARL Members that connect (15 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fees ($6,000 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pay the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 1Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates

[36] The Exchange has 28 distinct Members, excluding affiliated entities. *See* MIAX Emerald Exchange Member Directory, available at *https://www.miaxoptions.com.*

[37] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com.*

[38] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com.*

to increased costs to the Exchange. The Exchange made a decision to not offer 10Gb connections, like its affiliates MIAX and MIAX PEARL, offer for business reasons.

The Exchange launched trading on March 1, 2019. Thus, at the time that the 14 Members who elected to purchase connectivity to the Exchange, the Exchange was untested and unproven, and had 0% market share of the U.S. options industry. With respect to options trading, the Exchange had only a 0.92% market share of the U.S. options industry in November 2019 in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC.[39] For November 2019, the Exchange's affiliate, MIAX, had only 4.32% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[40] For November 2019, the Exchange's affiliate, MIAX PEARL, had only 4.78% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[41] The Exchange is not aware of any evidence that a combined market share of approximately 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition. Certainly, an untested and unproven exchange, with less than 1% market share in any month, and no rule or requirement that a market participant must join or connect to it, does not have anti-competitive pricing power, with respect to setting the pricing for the Dedicated Connections or the Shared Connections. If the Exchange were to attempt to establish unreasonable connectivity pricing, then no market participant would join or connect. Therefore, since 28 distinct Members joined MIAX Emerald and 14 of those distinct Members purchased additional connectivity to the Exchange, all knowing, in advance, the connectivity fees, the Exchange believes the Proposed Fees are reasonable, equitable, and not unfairly discriminatory.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX Emerald must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[42] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants are proposing to access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 34 total Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[43] Nasdaq ISE, LLC has approximately 100 members,[44] and NYSE American LLC has over 80 members.[45] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 34 Members.

Further, since there are 41 distinct members amongst all three exchanges, and only 28 of those distinct members decided to become Members of MIAX Emerald, there were 13 distinct members that decided *not* to become Members of MIAX Emerald. This further reinforces the fact that all market participants are not required to be Members of the Exchange and are not required to connect to the Exchange. It is a choice whether to join and it is a choice to connect. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

With respect to the now MIAX Emerald Members that had Shared Connections in place as of August 1, 2018 (via a previously purchased Shared Connection from MIAX or MIAX PEARL), the Exchange finds it compelling that all of those Members continued to purchase those Shared Connections after August 1, 2018, when MIAX and MIAX PEARL increased the connectivity fees for the Shared Connections to the current amounts proposed by the Exchange herein. In particular, the Exchange believes that the Proposed Fees for the Shared Connections are reasonable because MIAX and MIAX PEARL, which charge the same amount for the Shared Connections, did not lose any Members (or the number of Shared Connections each Member purchased) or non-Member Shared Connections when MIAX and MIAX PEARL proposed to increase the connectivity fees for the Shared Connections on August 1, 2018. For example, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, 12 Members purchased 1Gb connections. The vast majority of those Members purchased multiple such connections, the number of connections depending on their throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same 12 Members purchased 1Gb connections. Furthermore, the total number of connections did not decrease from July to August.

Further, with respect to the Shared Connections maintained by now Members of MIAX Emerald who had Shared Connections in place as of July 2018, of those Members and non-Members that bought multiple connections, no firm dropped any

[39] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[40] *Id.*

[41] *Id.*

[42] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[43] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[44] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf).*

[45] *See https://www.nyse.com/markets/american-options/membership#directory.*

connections beginning August 1, 2018, when MIAX and MIAX PEARL increased its fees. Furthermore, the Exchange understands that MIAX and MIAX PEARL did not receive any official comment letters or complaints from any now Members of MIAX Emerald who had Shared Connections in place as of July 2018 regarding the increased fees regarding how the change was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[46] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fees are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fees are equitably allocated among Members and non-Members, as evidenced by the fact that the fees are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—14 Members have 1Gb (primary/secondary) connections; 14 Members have 10Gb ULL (primary/secondary) connections; 3 Members have 10Gb (disaster recovery) connections; and 11 Members have 1Gb (disaster recovery) connections, or some combination of multiple various connections.

The Exchange further believes that the Proposed Fees, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange. For example, for November 2019, Exchange: (i) Members and non-Members that purchased 10Gb ULL connections accounted for approximately 95% of the total network connectivity revenue collected by the Exchange from all connectivity alternatives; and (ii) Members and non-Members that purchased 1Gb connections accounted for approximately 5% of the revenue collected by the Exchange from all connectivity alternatives. (The Exchange notes that it does not offer a 10Gb connectivity alternative.) As described above, the Exchange believes the Proposed Fees are equitably allocated because 10Gb ULL purchasers (while they account for the vast majority of the Exchange's total connectivity revenue—approximately 95%): (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity alternatives, compared to the cost to provide a 1Gb connectivity alternative (as further described in the Exchange's cost discussion, below).

The Exchange believes that the connectivity fees are equitably allocated among users of the network connectivity alternatives, as the users of the 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 18 million quote messages per second. On an average day, the Exchange handles approximately 3,000,000,500,000 total messages. Of those, users of the 10Gb ULL connections generate approximately 3 billion messages, and users of the 1Gb connections generate 500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of the 10Gb ULL connectivity account for approximately 75% of the volume on the Exchange. For example, for all of November 2019, 2.5 million contracts of the 3.3 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. This overall volume percentage (75% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (95% of total Exchange connectivity revenue).

The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to

[46] *See supra* note 42.

continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fees will permit recovery of the Exchange's costs and will not result in excessive or supra-competitive profit. The Proposed Fees will allow the Exchange to recover a portion (less than all) of the costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other infrastructure as well as network monitoring and support services in order to provide the network connectivity services. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

The costs associated with making the network accessible to Exchange Members and non-Members, through the expansion associated with new Shared Connections and Dedicated Connections, as well as the general expansion of a state-of-the-art infrastructure, are extensive, have increased year-over-year in the past two years, and are projected to increase year-over-year in the future. This is due to several factors, including costs associated with maintaining and expanding a team of highly-skilled network engineers, fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

In order to provide more detail and to quantify the Exchange's costs, the Exchange notes that costs are associated with the infrastructure and headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with its network technology. Additionally, the Exchange incurred costs in the expansion/buildout of the network leading up to the launch of operations, and the network maintenance costs continue to increase year-over-year. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX Emerald and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX Emerald and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX Emerald and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX Emerald and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million.

A more detailed breakdown of the expense increases since the initial phases of the buildout of the Exchange over two years ago include the following: With respect to the network, there has been an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in datacenter costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee cost, this is the cost associated with MIAX Emerald consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX Emerald to effectively pay its competitors for this connectivity.

There was also significant capital expenditures over this same period to upgrade and enhance the underlying technology components. The Exchange believes that it is reasonable and appropriate to establish its fees charged for use of its connectivity at a level that will partially offset the costs to the Exchange associated with the buildout, maintenance, and enhancement of its network infrastructure.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own/operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset costs such costs.

Further, the Exchange invests significant resources in network R&D to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The Exchange also incurs costs associated with the maintenance

and improvement of existing tools and the development of new tools.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, routine R&D projects to improve the performance of the network's hardware infrastructure result in additional cost. As an example, in the last year, R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that also increases year-over-year, and thus the Exchange believes that it is reasonable to offset a portion of those costs through establishing network connectivity fees, which are designed to recover those costs, as proposed herein. Overall, the Proposed Fees are projected to offset only a portion of the Exchange's network connectivity costs. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. In fact, the Exchange often receives inquiries from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including inquiries from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitute the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX Emerald associated with providing network connectivity services versus the total projected annual revenue of the Exchange associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services for MIAX Emerald was approximately $4.7 million. The $4.7 million in total annual expense is comprised of the following, all of which are directly related to the provision of network connectivity services by MIAX Emerald to its respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to MIAX Emerald's 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $4.7 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 18 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[47]

For 2018, total third-party expense, relating to fees paid by MIAX Emerald to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $728,246. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX Emerald trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX Emerald's office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[48] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide

[47] *See* Third IEX Letter, pg. 5.

[48] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire information technology and communication costs to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure, which enables the provision of network connectivity services. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 68% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX Emerald with its affiliates, MIAX PEARL and MIAX, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Zayo expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 62% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 17% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 54% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

For 2018, total internal expense, relating to the internal costs of MIAX Emerald to provide the network connectivity services, was $4,031,491. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support connectivity for trading; and (3) occupancy costs for leased office space for staff that support network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX Emerald does not allocate its entire costs contained in those line items to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such internal expense

described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, MIAX Emerald's employee compensation and benefits expense relating to providing network connectivity services was $3,262,226, which is only a portion of the $10,193,837 total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the operation and support of the network. Without these employees, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 32% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX Emerald's depreciation and amortization expense relating to providing network connectivity services was $416,807, which is only a portion of the $616,785 total expense for depreciation and amortization that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 68% of the total depreciation and amortization expense, as connectivity services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX Emerald's occupancy expense relating to providing network connectivity services was $352,458, which is only a portion of the $732,720 total expense for occupancy that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing network connectivity services. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (NOC) and Security Operations Center (SOC) from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has 130 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the network. Without this office space, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and connectivity services. The Exchange did not allocate all of the occupancy expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting network connectivity services, approximately 48% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The total projected MIAX Emerald revenue for providing network connectivity services, on a full year run rate, is $3.0 million. However, since MIAX Emerald was launched on March 1, 2019, it did not start collecting revenue for network connectivity services until March 1, 2019. Thus, for 2018, MIAX Emerald's expense for providing network connectivity services was approximately $4.7 million, while its revenue for providing network connectivity services was $0. For 2019, MIAX Emerald projects 10 full months of revenue for network connectivity services (March 1–December 31), of $2.5 million, however it also projects increased expense for providing network connectivity services for 2019, as compared to 2018. Nevertheless, utilizing 2018 expense figures, for 2019, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $2.5 million. On a fully annualized basis, utilizing 2018 expense figures and 2019 projected revenue extrapolated out to a full year run rate, MIAX Emerald's expense for providing network connectivity services would be approximately $4.7 million, while its revenue for providing network connectivity services would be $3 million. Accordingly, for both 2018 and 2019, the total MIAX Emerald projected revenue for providing network connectivity services during 2018 ($0) and during 2019 ($2.5 million) is less than total actual and projected MIAX Emerald expense for providing network connectivity services for 2018 ($4.7 million) and 2019 (greater than $4.7 million).

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX Emerald. Stated differently, no expense amount of the Exchange is allocated twice.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing network connectivity services, because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network, including providing network connectivity to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing network connectivity services to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. Network connectivity fees are intended to recover the Exchange's costs of operating and supporting the network.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange also believes its proposal to offer 10Gb ULL connections as dedicated connections furthers the objectives of Section 6(b)(5) of the Act [49] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. In particular, for the Dedicated Connection, the Exchange's MENI is configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of the Exchange. Any Member or non-Member can purchase a Dedicated Connection. The Exchange determined to design its network architecture in a manner that offered 10Gb ULL connections as dedicated connections (as opposed to shared connections) in order to provide cost saving opportunities for itself and for its Members, by reducing the amount of equipment that the Exchange would have to purchase and to which the Members would have to connect. A dedicated 10Gb ULL connection does not offer any unfair advantage over a shared 10GB ULL connection, as is being offered solely as a cost-saving measure to the Exchange and its Members.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[50] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities,[51] however the Exchange also notes that the Exchange's 10Gb ULL connection is dedicated solely to one market (the Exchange) whereas the Exchange believes that other exchanges offer a shared 10Gb ULL connection to multiple markets. While MIAX Emerald's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX Emerald believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX Emerald believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[52]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fees are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fees do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fees reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not

[49] 15 U.S.C. 78f(b)(5).

[50] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[51] *Id.*

[52] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX Emerald have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX Emerald. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX Emerald. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[53] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[54] and Rule 19b–4(f)(2) [55] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2019–39 and should be submitted on or before January 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28537 Filed 1–6–20; 8:45 am]

BILLING CODE 8011–01–P

[53] *See supra* note 50.

[54] 15 U.S.C. 78s(b)(3)(A)(ii).

[55] 17 CFR 240.19b–4(f)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87879; File No. SR–DTC–2019–009]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Amend the Redemptions Guide Relating to the Call Lottery Process for Partial Redemptions

January 2, 2020.

I. Introduction

On October 31, 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–2019–009. The proposed rule change was published for comment in the **Federal Register** on November 19, 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

DTC proposes to modify its Procedures [4] set forth in the DTC Corporate Actions Redemptions Service Guide (''Redemptions Guide'') [5] in order to amend its call lottery process relating to the processing of partial redemptions (''Partial Calls'') with respect to allocations made for odd lot positions in a called Security held by a Participant.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 87526 (November 13, 2019), 84 FR 63915 (November 19, 2019) (SR–DTC–2019–009) (''Notice'').

[4] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[5] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Redemptions.pdf.*

A. Background

Partial Calls and the Call Lottery

An issuer of a Security may be allowed under the terms of the issue to call a portion of the par value of the issue outstanding for redemption at certain times during the life of the issue, *i.e.,* a Partial Call.[6] In such case, some investors may have all or a portion of their position redeemed by the issuer, while others may not have any portion of their position redeemed.

When an issuer initiates a Partial Call, DTC's Procedures require the trustee for the issue to publish notice of such event or mail notice of the event, including the specific amount to be redeemed, to the registered holders.[7] After DTC receives or collects notice of the Partial Call, DTC creates an announcement through its redemptions service,[8] and preliminary call notice information is made available to Participants.[9]

Under DTC's Procedures set forth in the Redemptions Guide relating to a Partial Call, DTC allocates the called Securities among Participants that hold the applicable Security by means of an impartial lottery, based upon Participants' net long positions as of the close of business on the day prior to the publication of the call notice.[10] Upon performing the call lottery, DTC reports the results to Participants.[11]

Odd Lots

An odd lot occurs when a Participant holds a position in a Security that is not within the stated increments of the Security, *i.e.,* the par value at which, pursuant to the terms of the issue, the Security can be purchased and traded. For example, a bond contract for a Security may provide that all purchases must be made in authorized denominations equal to a multiple of $5,000, the minimum incremental value. Therefore, any amount held by a Participant that is not a multiple of $5,000, such as a position with a value of $5,001, would be an odd lot.[12] DTC states that running the lottery with the odd lot position intact could result in another Participant being driven into an odd lot position.[13]

B. Proposed Change

DTC proposes to amend its Redemptions Guide to revise its call lottery process such that, for issues where the incremental value is $5,000 or less, Participants with odd lot positions would have their positions adjusted down to the nearest value that is divisible by the minimum incremental value for purposes of the lottery. However, the Participant would continue to hold the Securities reduced from its position for this purpose in its Account. Thus, the Participant with the initial odd lot for issues where the incremental value is $5,000 or less would continue to maintain an odd lot position after the lottery is run, and no new odd lot positions would be created.

In addition, a copyright date in the text of the Redemptions Guide is currently shown as 1999–2014. DTC proposes to revise the text of the Redemptions Guide to reflect a copyright date of 1999–2019.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[14] 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.[15]

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.[16]

As described above, the proposal would prevent the creation of new odd lot positions during the lottery process for issues where the incremental value is $5,000 or less, which would facilitate the allocation of positions that are more amenable to trading for transactions that are processed and settled through DTC's system. Therefore, the proposal should promote the prompt and accurate clearance and settlement of securities transactions that are processed and settled through DTC's system.

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[17] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[18] that proposed rule change SR–DTC–2019–009, be, and hereby is, approved.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00031 Filed 1–6–20; 8:45 am]

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[6] *See id.* at 19.

[7] *See id.*

[8] DTC's redemptions service includes announcing, collecting, allocating, and reporting redemption and maturity payments on behalf of its Participants holding Eligible Securities. *See id.* at 7.

[9] *See id.* at 19.

[10] *See id.*

[11] *See id.* at 21.

[12] An odd lot position may be created, for example, as a result of a beneficial holder's account at a Participant being split into two accounts as a result of divorce or the administration of the estate of the beneficial holder. If the division of the assets in the beneficial holder's account at the Participant ultimately results in a portion of the beneficial holder's position in the subject Security being transferred to another Participant, and the remaining balance of the Security in the beneficial holder's account at the Participant that held the full position prior to the split is not in a par value amount that is a multiple of the authorized denomination, then an odd lot amount could be created in the Participant's DTC account.

[13] DTC states that odd lot positions are more difficult to trade due to the terms of the issue requiring trades to be made only in multiples of the incremental value. *Supra* note 3, at 4.

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] *Id.*

[17] 15 U.S.C. 78q–1.

[18] 15 U.S.C. 78s(b)(2).

[19] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87880; File No. SR–ICEEU–2019–029]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Clearing Member Charges and Rates of Return on Cash and Collateral in Relation to Margin Deposits and Guaranty Fund Contributions for All Clearing Member House and Customer Accounts

January 2, 2020.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

20, 2019, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise Clearing Member Charges and Rates of Return on cash and collateral in relation to margin deposits and Guaranty Fund contributions for all Clearing Member House and Customer Accounts. The revisions do not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

The purpose of the proposed rule changes are for ICE Clear Europe to: (i) Reduce the Rate of Return paid to Clearing Members on cash balances; and (ii) increase the charges levied on Clearing Members in relation to collateral in respect of margin deposits and Guaranty Fund contributions.

Attached [sic] as Exhibit 5 are the tables listing the new Clearing Member Charges and Rates of Return that will be included in a Circular in advance of the effective date. The new Clearing Member Charges and Rates of Return are expected to come into effect on January 1, 2020. The proposed revisions to the Clearing Member Charges and Rates of Return are set forth in Exhibit 5 hereto, and described in detail as follows.

Currently, ICEU pays a rate of return on cash deposited by Clearing Members in respect of margin deposits and Guaranty Fund contributions referred to as the ICE Deposit Rate (''IDR''). IDR is calculated daily and applied to cash balances held at the close of business on the previous business day in respect of three currencies, U.S. Dollar, Euro and Pound Sterling. It is calculated as follows: The net income earned on cash deposits (positive or negative) less a charge of 12.5 basis points (out of which the Clearing House shall cover external investment management expenses). ICEU proposes to increase this charge to 15 basis points.

ICEU also proposes to increase the Clearing House charges for Collateral and Triparty Collateral as per Exhibit 5.

	Cash	Collateral	Triparty collateral
Margin Deposits			
House and Affiliate Accounts (''H'', ''F'' and ''R'').	Clearing House pays IDR.	Clearing House charges *8.33* [7.5] basis points.	Clearing House charges *8.33* [7.5] basis points.
Segregated Customer Accounts (''C'', ''E'', ''K'', ''S'', ''T'', ''W'' and ''Z'').	Clearing House pays IDR.	Clearing House charges *8.33* [7.5] basis points.	Clearing House charges *8.33* [7.5] basis points.
Standard Omnibus Indirect Customer Accounts (O'', ''P'', ''X'' and ''Y'').	Clearing House pays IDR.	Clearing House charges *8.33* [7.5] basis points.	Clearing House charges *8.33* [7.5] basis points.
Gross Omnibus Indirect Customer Accounts (''A'' and ''B'').	Clearing House pays IDR minus 15 bps.	Clearing House charges *10.33* [9.5] basis points.	Clearing House charges *10.33* [9.5] basis points.
Individually Segregated Operationally Comingled (''ISOC'') Account (''I'' and ''J'' Account).	Clearing House pays IDR minus 15 bps.	Clearing House charges *10.33* [9.5] basis points.	Clearing House charges *10.33* [9.5] basis points.
Individually Segregated Sponsored Account (''Sponsored Principal'').	Clearing House pays IDR minus 20 bps.	Clearing House charges *13.33* [12.5] basis points.	Clearing House charges *13.33* [12.5] basis points.
Guaranty Fund			
All Clearing Members	Clearing House pays IDR.	Clearing House charges *8.33* [7.5] basis points.	N/A.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of the Act, including Section 17A of the Act[6] and regulations thereunder applicable to it. More specifically ICE Clear Europe has determined that imposing such Charges and Rates of Return uniformly across all market participants thus provides for the equitable allocation of reasonable dues, fees, and other charges among its Clearing Members, within the meaning of Section 17A(b)(3)(D) of the Act.[7] As such, the proposed changes are appropriately filed pursuant to Section 19(b)(3)(A)[8] of the Act and paragraph (f)(2) of Rule 19b–4[9] thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(D). Under this provision, ''[a] clearing agency shall not be registered unless the Commission determines that—(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.''

[8] 15 U.S.C 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

appropriate in furtherance of the purpose of the Act because the changes to the Clearing Member Charges and Rates of Return will apply uniformly across all market participants. ICE Clear Europe does not believe that the amendments would adversely affect the ability of such Clearing Members or other market participants generally to engage in cleared transactions or to access clearing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice 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–ICEEU–2019–029 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–ICEEU–2019–029. 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, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2019–029 and should be submitted on or before January 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00032 Filed 1–6–20; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87873; File No. SR–CBOE–2019–127]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

December 31, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt certain linkage fee codes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Fees Schedule currently provides for fee codes for Routing Fees. In particular, the Fees Schedule currently lists fee codes and their corresponding transaction fee for routed Customer orders to other options exchanges specifically in Exchange Traded Funds (''ETF'') and equity options, and for non-Customer orders routed in Penny and Non-Penny options classes. The Exchange notes that in connection with a recent technology migration (including the migration of the Exchange's billing system to a new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

billing system), the Exchange amended and updated a majority of its Fees Schedule,[3] which became effective upon the technology migration.[4] Prior to the migration-related amendments and updates, the Fees Schedule had provided for a general transaction fee assessed for all routed Customer orders in all options classes. More specifically, it had provided that for Customer orders, in addition to the customary Cboe Options execution charges for each Customer order that is routed, the Exchange passed through the actual transaction fee assessed by the exchange(s) to which the order was routed plus an additional $0.15 per contract.

In light of the migration, the Exchange amended, among other things, the general routing fee for Customer orders to instead provide for an exact charge for routing per specific types of transaction and a particular corresponding fee code, which currently exists in the Fees Schedule today. The Exchange, however, inadvertently did not adopt a fee code for Customer orders routed in index options, which the Exchange had intended to adopt in the migration-related Fee Schedule amendments along with the fee codes currently in place for Customer orders routed in ETF and equity options, as the general routing fee for Customer orders contained in the Fees Schedule prior to migration was assessed for orders in all option classes. As such, the Exchange now proposes to adopt fee codes and reinstate fees in connection with Customer orders routed in index options. Particularly, the Exchange proposes to adopt fee code ''RX'', which would be appended to Customer orders routed in Mini-SPX Index (''XSP'') options[5] and assessed a fee of $0.19, and fee code ''RS'', which would be appended to Customer orders routed in all other index options[6] and assessed a fee of $0.48. The Exchange notes that the routing rates for routed Customer orders in index options, as proposed, would not change from when such fees were in place prior to the migration-related amendments to the Fees Schedule, but rather, would be expressed as their specific, single rates by combining the $0.15 per contract fee plus the customary Cboe Options Customer execution charges (*i.e.,* $0.04 for XSP options and $0.18 in all other index options) and the actual transaction fee assessed by the Exchange to which the order was routed (*i.e.,* $0.00 for EDGX Options, to which orders in XSP options may be routed, and $0.15 for C2 and BZX Options, to which orders in all other index options may be routed).[7] The Exchange also notes that this specific single rate is consistent with the manner in which fee codes for Customer orders in ETF and equity options are currently provided in the Fees Schedule. The Exchange notes that other exchanges, including its affiliated exchanges, assess routing fees expressed as a single fee for routed Customer orders and that the proposed fees are in line with, and generally lower than, those fees.[8]

In addition, the Exchange also proposes to amend certain language in the Fees Schedule under the Frequent Trader Program table. Specifically, the Fees Schedule currently provides that the Exchange will disperse a customer's rebates pursuant to the customer's instructions, which may include receiving the rebates as a direct payment or via a distribution to one or more of its Clearing Trading Permit Holders. The Exchange notes that the integrated post-migration billing system does not currently offer distribution to Clearing Trading Permit Holder, therefore the Exchange proposed to remove this payment method in connection with the Frequent Trader Program. As such, the proposed change is designed to amend language in the Fees Schedule in order to accurately reflect the manner in which the billing system currently functions. Additionally, the Exchange notes that prior to the migration-related changes made to the billing system the Exchange generally dispersed all customers' rebates as direct payments.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange also believes the proposed fee codes for Customer orders routed in index options are reasonable and equitable because such fees would be reinstated for the same amount they were previously assessed in the Fees Schedule, as the Exchange inadvertently omitted such fees, which were prior in place, when it made migration-related amendments and updates to a majority of its Fees Schedule. As a result, the proposed fee codes would alleviate potential confusion and provide clarity for market participants by ensuring the continuation of fees that were not intended, nor announced, to be discontinued. As stated, the manner in which the proposed single fee rates for Customer orders routed in index options would be provided in the Fees Schedule is consistent with the manner in which the routed fee rates are currently provided for Customer orders routed in ETF and equity options. The Exchange also believes its proposed fees in connection with Customer orders routed in index options are reasonable as the

[3] *See* Securities and Exchange Act Release No. 87495 (November 8, 2019), 84 FR 63701 (November 18, 2019) (SR–CBOE–2019–106).

[4] In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges on October 7, 2019.

[5] The Exchange notes the XPS options may be routed to its affiliated exchange, Cboe EDGX Exchange, Inc. (''EDGX Options''), as EDGX Options also lists XSP options.

[6] The Exchange notes that all other index options include Russell 2000 Index (''RUT'') and Dow Jones Industrial Average Index (''DJX'') options. Orders in RUT options may be routed to the Exchange's affiliates, Cboe C2 Exchange, Inc. (''C2'') and Cboe BZX Exchange, Inc. (''BZX Options''), as these exchanges also list RUT options, and orders in DJX options may be routed to C2, as C2 also lists RUT options.

[7] *See supra* note 5 and 6.

[8] *See* Cboe C2 Options Exchange Fee Schedule, which assesses a fee of $0.85 per routed Customer order in both RUT and DJX options; Cboe BZX Options Exchange Fee Schedule, which also assesses a fee of $0.85 per routed Customer order in RUT options; Cboe EDGX Exchange Fee Schedule, which assesses a fee of $0.25 for routed Customer orders in XSP options. *See also* MIAX Options Fees Schedule which assesses $0.65 per routed Customer order in penny classes and $0.15 in non-penny classes.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

proposed fees take into account routing costs, as they did when previously in place, and are in line with amounts assessed and presented as single fee rates by other exchanges, including its affiliated exchanges.[12]

The Exchange believes the proposed routing fees are equitable and not unfairly discriminatory because the proposed fees apply equally to all Customers who choose to use the Exchange to route orders in index options (either in XSP or all other index options). The Exchange highlights that routing through the Exchange is voluntary and that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

Additionally, the Exchange believes that the proposed change to remove the Frequent Trader Program payment method in connection with distributions to Clearing Trading Permit Holders is reasonable because it is intended to accurately reflect the payment methods currently offered by the billing system post-migration, thereby providing for clarity in the Fees Schedule and mitigating any potential confusion surrounding the Frequent Trader Program payment options. The Exchange also notes that the proposed change would not significantly impact investors as prior to the migration the Exchange generally only dispersed customer's rebates as a direct payment. The proposed change would have no impact on the ability of customer's to receive their payments. The Exchange further believes that the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the same payment method would apply equally to all Frequent Trader Program customer rebates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed change to the payment methods in connection with its Frequent Trader Program does not involve or impact trading on the Exchange, and is merely intended to clarify the manner in which the Exchange's billing system currently functions.

Further, the Exchange does not believe that the proposed fee codes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would, again, be applied equally to all Customer orders routed in index options. As stated, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change would merely reinstate an inadvertently omitted fee in order to continue to reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes enhances market quality to the benefit of all TPHs. The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee codes are not intended as a competitive change, as these fees were prior in place in the Fees Schedule and recently removed inadvertently. As such, the proposed rule change is corrective and clarifying in nature.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f) of Rule 19b–4 [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–127 and should be submitted on or before January 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28534 Filed 1–6–20; 8:45 am]

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[12] *See supra* note 5 [sic].

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87876; File No. SR–PEARL–2019–36]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

December 31, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on October 22, 2019 (SR–PEARL–2019–33). That filing has been withdrawn and replaced with the current filing (SR–PEARL–2019–36).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule to increase the Exchange's network connectivity fees, in order to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion.

The Exchange had previously supplemented its connectivity fee filings in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange previously refiled its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3]

In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statements, the relevant sections of which are attached hereto [sic] as Exhibit 3, which are publicly available as part of the Exchange's Form 1 Amendment.[4] The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[6] The First

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statements of MIAX PEARL, LLC, LLC as of December 31, 2018, and the Audited Unconsolidated Financial Statements of Miami International Securities Exchange, LLC as of December 31, 2018, which are listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

[5] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018)(SR–PEARL–2018–16) (the ''First Proposed Rule Change'').

Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[7] The Commission received one comment letter on the proposal.[8] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[9] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[10]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[11] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[12] On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[13] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[14] The Commission received one comment letter on the proposal.[15] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[16]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are reasonable.

On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[17]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[18] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[19] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[20] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[21]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [22] The

[7] *Id.*

[8] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Healthy Markets''), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[9] *See* Securities Exchange Act Release No. 84177 (September 17, 2018), 83 FR 47953 (September 21, 2018)(SR–PEARL–2018–16) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018)(SR–PEARL–2018–19) (Notice of Filing of a Proposed Rule Change to Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change) (the ''Second Proposed Rule Change'').

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018)(SR–PEARL–2018–16) (Notice of Withdrawal of a Proposed Rule Change to Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[14] *See supra* note 11.

[15] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (the ''SIFMA Letter'').

[16] *See supra* note 11.

[17] *See* Securities Exchange Act Release No. 84651 (November 26, 2018), 83 FR 61687 (November 30, 2018)(SR–PEARL–2018–19) (Notice of Withdrawal of a Proposed Rule Change to Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[18] *See* Securities Exchange Act Release No. 85317 (March 14, 2019), 84 FR 10380 (March 20, 2019)(SR–PEARL–2019–08) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule) (the ''Third Proposed Rule Change'').

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019)(SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[21] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (the ''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (the ''Second Healthy Markets Letter'').

[22] *See* IEX Letter, pg. 1.

IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[23]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[24]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[25] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[26] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[27]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[28] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[29]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases immediately effective.[30] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[31] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[32]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX [PEARL] is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[33]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[34] The Sixth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[35] The Sixth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Sixth Proposed Rule Change, twelve days after the comment period deadline ended.[36] Of note, no member of the Exchange commented on the Sixth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no operator of an options market commented on the Sixth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Sixth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market

[23] *See* Second Healthy Markets Letter, pg. 2.

[24] *See* SR–PEARL–2019–08.

[25] *See* Securities Exchange Act Release No. 85837 (May 10, 2019), 84 FR 22214 (May 16, 2019)(SR–PEARL–2019–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule) (the ''Fourth Proposed Rule Change'').

[26] *Id.*

[27] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[28] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[29] *See* SR–PEARL–2019–17.

[30] *See* Securities Exchange Act Release No. 86343 (July 10, 2019), 84 FR 34003 (July 16, 2019)(SR–PEARL–2019–21) (the ''Fifth Proposed Rule Change'').

[31] *Id.*

[32] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (the ''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Fourth SIFMA Letter'').

[33] *See* SR–PEARL–2019–21.

[34] *See* Securities Exchange Act Release No. 86837 (August 30, 2019), 84 FR 46988 (September 6, 2019)(SR–PEARL–2019–25) (the ''Sixth Proposed Rule Change'').

[35] *Id.*

[36] *See supra* note 3.

structure and resulting network demands are fundamentally different from those in the options markets),[37] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Sixth Proposed Rule Change.[38]

The Exchange refiled the Proposed Fee Increases on October 22, 2019, designating the Proposed Fee Increases immediately effective.[39] The Seventh Proposed Rule Change was published for comment in the **Federal Register** on November 6, 2019.[40] The Seventh Proposed Rule Change provided additional analysis of the Exchange's baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Seventh Proposed Rule Change also addressed certain points raised in the Third IEX Letter.

On December 20, 2019, the Exchange withdrew the Seventh Proposed Rule Change.[41] The Exchange notes that the Seventh Proposed Rule Change did not receive any comment letters, however the Exchange has determined to refile the Proposed Fee Increases to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange of providing network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[42] in general, and furthers the objectives of Section 6(b)(4) of the Act[43] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[44] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[45]

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not

[37] *See infra* pages 19 to 20 (describing the differences in equity market structure and options market structure).

[38] *See* SR–PEARL–2019–25.

[39] *See* Securities Exchange Act Release No. 87432 (October 31, 2019), 84 FR 59889 (November 6, 2019)(SR–PEARL–2019–33) (the ''Seventh Proposed Rule Change'').

[40] *Id.*

[41] *See* SR–PEARL–2019–33.

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

[45] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. Further, of the number of Members that connect directly to MIAX PEARL, many such Members do not purchase market data from MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. For example, the following are not Members of MIAX PEARL: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX PEARL, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than Market Makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX PEARL or its affiliates, MIAX and MIAX Emerald, they do not purchase connectivity to MIAX PEARL, and they do not purchase market data from MIAX PEARL. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX PEARL, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[46] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX PEARL notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX PEARL and its affiliates. MIAX PEARL competes with nine (9) non-Members who resell MIAX PEARL connectivity. These are resellers of MIAX PEARL connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX PEARL (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX PEARL does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX PEARL to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX PEARL and/or MIAX. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX PEARL and/or MIAX. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX PEARL, constraining the price that MIAX PEARL is able to charge for connectivity to its Exchange.

The Exchange[47] and MIAX[48] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX PEARL, MIAX, or both. Of those

[46] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

[47] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[48] MIAX has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are reasonable, equitable and not unfairly discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX PEARL recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX PEARL and MIAX Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pays the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative. 10Gb connections are less costly to provide than 10Gb ULL connections, which require greater network support services.

With respect to options trading, the Exchange had only a 4.78% market share of the U.S. options industry in November 2019 in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC.[49] For November 2019, the Exchange's affiliate, MIAX, had only a 4.32% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[50] For November 2019, the Exchange's affiliate, MIAX Emerald, had only a 0.92% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[51] The Exchange is not aware of any evidence that a combined market share of approximately 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX PEARL must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[52] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 41 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[53] Nasdaq ISE, LLC has approximately 100 members,[54] and NYSE American LLC has over 80 members.[55] If all market

[49] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[50] *Id.*

[51] *Id.*

[52] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[53] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002831.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[54] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf*).

[55] *See https://www.nyse.com/markets/american-options/membership#directory.*

participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 41 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[56] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX PEARL and MIAX; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[57] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX PEARL did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[58] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the actual costs to the Exchange to provide network connectivity and the respective connection options, including the costs associated with providing the different levels of service associated with the respective connections.

The Exchange further believes that the Proposed Fee Increases, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange. For example, for November 2019, between the Exchange and MIAX: (i) Members and non-Members that purchased 10Gb ULL connections accounted for approximately 80% of the total network connectivity revenue collected by the Exchange and MIAX from all connectivity alternatives; (ii) Members and non-Members that purchased 10Gb connections accounted for approximately 15% of the total network connectivity revenue collected by the Exchange and MIAX from all connectivity alternatives; and (iii) Members and non-Members that purchased 1Gb connections accounted for approximately 5% of the revenue collected by the Exchange and MIAX from all connectivity alternatives. As described above, the Exchange believes the Proposed Fee Increases are equitably allocated because 10Gb and 10Gb ULL purchasers (while they account for the vast majority of the Exchange's total connectivity revenue—approximately 95%): (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity alternatives, compared to the cost to provide a 1Gb connectivity alternative (as further described in the Exchange's cost discussion, below).

The Exchange believes that the connectivity fees are equitably allocated among users of the three network connectivity alternatives, as the users of the 10Gb and 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than

[56] See *supra note* 52.

[57] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

[58] See *supra note* 52.

99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb and 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to three distinct options markets and the capacity to handle approximately 10.7 million quote messages per second. On an average day, the Exchange and MIAX handle approximately 8,304,500,000 total messages. Of those, users of the 10Gb and 10Gb ULL connections generate approximately 8,300,000,000 messages, and users of the 1Gb connections generate 4,500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb and 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb and 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the three network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of 10Gb ULL connectivity account for approximately 78% of the volume on the Exchange. For example, for all of November 2019, approximately 13.4 million contracts of the 17.1 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. This overall volume percentage (78% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (80% of total Exchange connectivity revenue).

The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb or 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb/10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb/10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb/10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb/10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 10.7 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb and 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure as well as network monitoring and support services in order to provide the network connectivity services, since the Exchange launched operations in February 2017. Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it became operational in February 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the

number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX PEARL and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX PEARL and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX PEARL and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX PEARL and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the Exchange became operational in February 2017. As these network connectivity-related expenses increase, MIAX PEARL and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since February 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in data center costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with MIAX PEARL consuming connectivity/content from the equities markets in order to operate the Exchange, causing MIAX PEARL to effectively pay its competitors for this connectivity. While the Exchange and MIAX have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX PEARL and MIAX. Accordingly, the total projected MIAX PEARL and MIAX connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX PEARL and MIAX connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the increase in actual costs to the Exchange (since February 2017) versus the projected increase in annual revenue. The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives calls from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including calls from regulators, because the Exchange has a superior, state-of the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since February 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, which are designed to recover those costs, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: Transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX PEARL and MIAX associated with providing network connectivity services versus the

total projected annual revenue of both exchanges associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX PEARL and MIAX, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX PEARL and MIAX to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to the MIAX PEARL and MIAX 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $19.3 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[59]

For 2018, total third-party expense, relating to fees paid by MIAX PEARL and MIAX to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX PEARL and MIAX trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX PEARL and MIAX office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[60] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services and no expense amount is allocated twice). Accordingly, MIAX PEARL and MIAX do not allocate their entire information technology and communication costs to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure, which enables the provision of network connectivity services. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 68% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides

[59] *See* Third IEX Letter, pg. 5.

[60] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

the internet, fiber and bandwidth connections with respect to the network, linking MIAX PEARL with its affiliates, MIAX and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Zayo expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 62% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 89% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 54% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review. For 2018, total internal expense, relating to the internal costs of MIAX PEARL and MIAX to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice). Accordingly, MIAX PEARL and MIAX do not allocate their entire costs contained in those line items to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, MIAX PEARL's and MIAX's combined employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the operation and support of the network. Without these employees, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 26% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX's and MIAX PEARL's combined depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers,

computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 75% of the total depreciation and amortization expense, as connectivity services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing network connectivity services. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (NOC) and Security Operations Center (SOC) from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has 130 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the network. Without this office space, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and connectivity services. The Exchange did not allocate all of the occupancy expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting network connectivity services, approximately 48% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review. Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX PEARL and MIAX combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX PEARL and MIAX project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX PEARL and MIAX. Stated differently, no expense amount of the Exchange is allocated twice.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing network connectivity services, because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network, including providing network connectivity to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing network connectivity services to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. Network connectivity fees are intended to recover the Exchange's costs of operating and supporting the network.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[61] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary and secondary facilities.[62] While MIAX PEARL's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX PEARL believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX PEARL believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[63]

[61] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

[62] *Id.*

[63] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage. The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX PEARL as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX PEARL have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX PEARL. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX PEARL. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[64] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect. While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[65] and Rule 19b–4(f)(2)[66] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–36 and should be submitted on or before January 28, 2020.

(charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[64] *See supra* note 61.

[65] 15 U.S.C. 78s(b)(3)(A)(ii).

[66] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28536 Filed 1–6–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87875; File No. SR–MIAX–2019–51]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 31, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to modify certain of the Exchange's system connectivity fees.

The Exchange previously filed the proposal on October 22, 2019 (SR–MIAX–2019–46). That filing has been withdrawn and replaced with the current filing (SR–MIAX–2019–51).

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is refiling its proposal to amend the Fee Schedule to increase the Exchange's network connectivity fees, in order to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange to provide network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion.

The Exchange had previously supplemented its connectivity fee filings in order to provide additional analysis of its baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Exchange previously refiled its proposal in order to address certain points raised in the only comment letter received by the Commission on the Exchange's prior proposal to increase connectivity fees.[3]

In order to determine the Exchange's baseline costs associated with providing network connectivity services, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services. (For the avoidance of doubt, no expense amount was allocated twice.) The Exchange is presenting the results of its cost review in a way that corresponds directly with the Exchange's 2018 Audited Unconsolidated Financial Statements, the relevant sections of which are attached hereto [sic] as Exhibit 3, which are publicly available as part of the Exchange's Form 1 Amendment.[4] The purpose of presenting it in this manner is to provide greater transparency into the Exchange's actual and expected revenues, costs, and profitability associated with providing network connectivity services. Based on this analysis, the Exchange believes that its proposed fee increases are fair and reasonable because they will permit recovery of less than all of the Exchange's costs for providing the network connectivity services and will not result in excessive pricing or supra-competitive profit, when comparing the Exchange's total annual expense associated with providing the network connectivity services versus the total projected annual revenue the Exchange projects to collect for providing the network connectivity services.

Specifically, the Exchange proposes to amend Sections 5(a) and (b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit (''Gb'') fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency (''ULL'') fiber connection, which are charged to both Members[5] and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, MIAX PEARL, LLC (''MIAX PEARL''). These proposed fee increases are collectively referred to herein as the ''Proposed Fee Increases.''

[67] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (''IEX''), to Vanessa Countryman, Secretary, Commission, dated October 9, 2019 (''Third IEX Letter,'' as further described below).

[4] *See* the complete Audited Unconsolidated Financial Statements of Miami International Securities Exchange, LLC as of December 31, 2018, and the Audited Unconsolidated Financial Statements of MIAX PEARL, LLC as of December 31, 2018, which are listed under Exhibit D of MIAX Form 1 Amendment 2019–7 Annual Filing at *https://www.sec.gov/Archives/edgar/vprr/1900/19003680.pdf.*

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.[6] The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.[7] The Commission received one comment letter on the proposal.[8] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Suspension Order'') issued by the Commission on September 17, 2018.[9] The Suspension Order also instituted proceedings to determine whether to approve or disapprove the First Proposed Rule Change.[10]

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are consistent with the Act.

The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.[11] The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'') issued by the Commission on October 3, 2018.[12] On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.[13] The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.[14] The Commission received one comment letter on the proposal.[15] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposed Rule Change.[16]

The SIFMA Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the SIFMA Letter objected to the Exchange's reliance on the fees of other exchanges to justify its own fee increases. In addition, the SIFMA Letter argued that the Exchange did not offer any details to support its basis for asserting that the proposed fee increases are reasonable.

On November 23, 2018, the Exchange withdrew the Second Proposed Rule Change.[17]

The Exchange refiled the Proposed Fee Increases on March 1, 2019, designating the Proposed Fee Increases immediately effective.[18] The Third Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2019.[19] The Third Proposed Rule Change provided new information, including additional detail about the market participants impacted by the Proposed Fee Increases, as well as the additional costs incurred by the Exchange associated with providing the connectivity alternatives, in order to provide more transparency and support relating to the Exchange's belief that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and to provide sufficient information for the Commission to determine that the Proposed Fee Increases are consistent with the Act.

On March 29, 2019, the Commission issued its Order Disapproving Proposed Rule Changes to Amend the Fee Schedule on the BOX Market LLC Options Facility to Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network (the ''BOX Order'').[20] In the BOX Order, the Commission highlighted a number of deficiencies it found in three separate rule filings by BOX Exchange LLC (''BOX'') to increase BOX's connectivity fees that prevented the Commission from finding that BOX's proposed connectivity fees were consistent with the Act. These deficiencies relate to topics that the Commission believes should be discussed in a connectivity fee filing.

After the BOX Order was issued, the Commission received four comment letters on the Third Proposed Rule Change.[21]

The Second SIFMA Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission after further review of the proposed fee increases. Specifically, the Second SIFMA Letter argued that the Exchange's market data fees and connectivity fees were not constrained by competitive forces, the Exchange's filing lacked sufficient information regarding cost and competition, and that the Commission should establish a framework for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces.

The IEX Letter argued that the Exchange did not provide sufficient information in its Third Proposed Rule Change to support a finding that the proposal should be approved by the Commission and that the Commission should extend the time for public

[6] *See* Securities Exchange Act Release No. 83786 (August 7, 2018), 83 FR 40106 (August 13, 2018)(SR–MIAX–2018–19) (the ''First Proposed Rule Change'').

[7] *Id.*

[8] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association (''Healthy Markets''), to Brent J. Fields, Secretary, Commission, dated September 4, 2018 (''Healthy Markets Letter'').

[9] *See* Securities Exchange Act Release No. 84175 (September 17, 2018), 83 FR 47955 (September 21, 2018)(SR–MIAX–2018–19) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018)(SR–MIAX–2018–25) (Notice of Filing of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change) (the ''Second Proposed Rule Change'').

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 84398 (October 10, 2018), 83 FR 52264 (October 16, 2018)(SR–MIAX–2018–19) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[14] *See supra* note 11.

[15] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director Financial Services Operations, The Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (the ''SIFMA Letter'').

[16] *See supra* note 11.

[17] *See* Securities Exchange Act Release No. 84650 (November 26, 2018), 83 FR 61705 (November 30, 2018)(SR–MIAX–2018–25) (Notice of Withdrawal of a Proposed Rule Change To Amend the Fee Schedule Regarding Connectivity Fees for Members and Non-Members).

[18] *See* Securities Exchange Act Release No. 85318 (March 14, 2019), 84 FR 10363 (March 20, 2019)(SR–MIAX–2019–10) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule) (the ''Third Proposed Rule Change'').

[19] *Id.*

[20] *See* Securities Exchange Act Release No. 85459 (March 29, 2019), 84 FR 13363 (April 4, 2019)(SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).

[21] *See* Letter from Joseph W. Ferraro III, SVP & Deputy General Counsel, MIAX, to Vanessa Countryman, Acting Secretary, Commission, dated April 5, 2019 (the ''MIAX Letter''); Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''Second SIFMA Letter''); Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated April 10, 2019 (the ''IEX Letter''); and Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Brent J. Fields, Secretary, Commission, dated April 18, 2019 (the ''Second Healthy Markets Letter'').

comment on the Third Proposed Rule Change. Despite the objection to the Proposed Fee Increases, the IEX Letter did find that ''MIAX has provided more transparency and analysis in these filings than other exchanges have sought to do for their own fee increases.'' [22] The IEX Letter specifically argued that the Proposed Fee Increases were not constrained by competition, the Exchange should provide data on the Exchange's actual costs and how those costs relate to the product or service in question, and whether and how MIAX considered changes to transaction fees as an alternative to offsetting exchange costs.

The Second Healthy Markets Letter did not object to the Third Proposed Rule Change and the information provided by the Exchange in support of the Proposed Fee Increases. Specifically, the Second Healthy Markets Letter stated that the Third Proposed Rule Change was ''remarkably different,'' and went on to further state as follows:

The instant MIAX filings—along with their April 5th supplement—provide much greater detail regarding users of connectivity, the market for connectivity, and costs than the Initial MIAX Filings. They also appear to address many of the issues raised by the Commission staff's BOX disapproval order. This third round of MIAX filings suggests that MIAX is operating in good faith to provide what the Commission and staff seek.[23]

On April 29, 2019, the Exchange withdrew the Third Proposed Rule Change.[24]

The Exchange refiled the Proposed Fee Increases on April 30, 2019, designating the Proposed Fee Increases immediately effective.[25] The Fourth Proposed Rule Change was published for comment in the **Federal Register** on May 16, 2019.[26] The Fourth Proposed Rule Change provided further cost analysis information to squarely and comprehensively address each and every topic raised for discussion in the BOX Order, the IEX Letter and the Second SIFMA Letter to ensure that the Proposed Fee Increases are reasonable, equitable, and non-discriminatory, and that the Commission should find that the Proposed Fee Increases are consistent with the Act.

On May 21, 2019, the Commission issued the Staff Guidance on SRO Rule Filings Relating to Fees.[27]

The Commission received two comment letters on the Fourth Proposed Rule Change, after the Guidance was released.[28] The Second IEX Letter and the Third SIFMA Letter argued that the Exchange did not provide sufficient information in its Fourth Proposed Rule Change to justify the Proposed Fee Increases based on the Guidance and the BOX Order. Of note, however, is that unlike their previous comment letter, the Third SIFMA Letter did not call for the Commission to suspend the Fourth Proposed Rule Change. Also, Healthy Markets did not comment on the Fourth Proposed Rule Change.

On June 26, 2019, the Exchange withdrew the Fourth Proposed Rule Change.[29]

The Exchange refiled the Proposed Fee Increases on June 26, 2019, designating the Proposed Fee Increases immediately effective.[30] The Fifth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[31] The Fifth Proposed Rule Change bolstered the Exchange's previous cost-based discussion to support its claim that the Proposed Fee Increases are fair and reasonable because they will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit, in light of the Guidance issued by Commission staff subsequent to the Fourth Proposed Rule Change, and primarily through the inclusion of anticipated revenue figures associated with the provision of network connectivity services.

The Commission received three comment letters on the Fifth Proposed Rule Change.[32]

Neither the Third Healthy Markets Letter nor the Fourth SIFMA Letter called for the Commission to suspend or disapprove the Proposed Fee Increases. In fact, the Third Healthy Markets Letter acknowledged that ''it appears as though MIAX is operating in good faith to provide what the Commission, its staff, and market participants the information needed to appropriately assess the filings.'' The Third IEX Letter only reiterated points from the Second IEX Letter and failed to address any of the new information in the Fifth Proposed Rule Change concerning the Exchange's revenue figures, cost allocation or that the Proposed Fee Increases did not result in excessive pricing or a supra-competitive profit for the Exchange.

On August 23, 2019, the Exchange withdrew the Fifth Proposed Rule Change.[33]

The Exchange refiled the Proposed Fee Increases on August 23, 2019, designating the Proposed Fee Increases immediately effective.[34] The Sixth Proposed Rule Change was published for comment in the **Federal Register** on July 16, 2019.[35] The Sixth Proposed Rule Change provided greater detail and clarity concerning the Exchange's cost methodology as it pertains to the Exchange's expenses for network connectivity services, using a line-by-line analysis of the Exchange's general expense ledger to determine what, if any, portion of those expenses supports the provision of network connectivity services.

The Commission received only one comment letter on the Sixth Proposed Rule Change, twelve days after the comment period deadline ended.[36] Of note, no member of the Exchange commented on the Sixth Proposed Rule Change. Also, no issuer or other person using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no industry group that represents members, issuers, or other persons using the facilities of the Exchange commented on the Sixth Proposed Rule Change. Also, no operator of an options market

[22] *See* IEX Letter, pg. 1.

[23] *See* Second Healthy Markets Letter, pg. 2.

[24] *See* SR–MIAX–2019–10.

[25] *See* Securities Exchange Act Release No. 85836 (May 10, 2019), 84 FR 22205 (May 16, 2019)(SR–MIAX–2019–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule) (the ''Fourth Proposed Rule Change'').

[26] *Id.*

[27] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[28] *See* Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (the ''Second IEX Letter'') and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated June 6, 2019 (the ''Third SIFMA Letter'').

[29] *See* SR–MIAX–2019–23.

[30] *See* Securities Exchange Act Release No. 86342 (July 10, 2019), 84 FR 34012 (July 16, 2019)(SR–MIAX–2019–31) (the ''Fifth Proposed Rule Change'').

[31] *Id.*

[32] *See* Letter from John Ramsay, Chief Market Policy Officer, IEX, to Vanessa Countryman, Acting Secretary, Commission, dated August 8, 2019 (the ''Third IEX Letter''); Letter from Tyler Gellasch, Executive Director, Healthy Markets, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Third Healthy Markets Letter''); and Letter from Theodore R. Lazo, Managing Director and Associate General Counsel and Ellen Greene, Managing Director Financial Services Operations, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated August 5, 2019 (the ''Fourth SIFMA Letter'').

[33] *See* SR–MIAX–2019–31.

[34] *See* Securities Exchange Act Release No. 86836 (August 30, 2019), 84 FR 46997 (September 6, 2019)(SR–MIAX–2019–38) (the ''Sixth Proposed Rule Change'').

[35] *Id.*

[36] *See supra* note 3.

commented on the Sixth Proposed Rule Change. Also, no operator of a high performance, ultra-low latency network, which network can support access to three distinct exchanges and provides premium network monitoring and reporting services to customers, commented on the Sixth Proposed Rule Change. Rather, the only comment letter came from an operator of a single equities market (equities market structure and resulting network demands are fundamentally different from those in the options markets),[37] which operator also has a fundamentally different business model (and agenda) than does the Exchange. That letter—the Third IEX Letter—called for, among other things, the Exchange to explain its basis for concluding that it incurred substantially higher costs to provide lower-latency connections and further describe the nature and closeness of the relationship between the identified costs and connectivity products and services as stated in the Exchange's cost allocation analysis.

On October 22, 2019, the Exchange withdrew the Sixth Proposed Rule Change.[38]

The Exchange refiled the Proposed Fee Increases on October 22, 2019, designating the Proposed Fee Increases immediately effective.[39] The Seventh Proposed Rule Change was published for comment in the **Federal Register** on November 6, 2019.[40] The Seventh Proposed Rule Change provided additional analysis of the Exchange's baseline revenues, costs, and profitability (before the proposed fee change) and the Exchange's expected revenues, costs, and profitability (following the proposed fee change) for its network connectivity services. This additional analysis includes information regarding its methodology for determining the baseline costs and revenues, as well as expected costs and revenues, for its network connectivity services. The Seventh Proposed Rule Change also addressed certain points raised in the Third IEX Letter.

On December 20, 2019, the Exchange withdrew the Seventh Proposed Rule Change.[41] The Exchange notes that the Seventh Proposed Rule Change did not receive any comment letters, however the Exchange has determined to refile the Proposed Fee Increases to provide further clarification regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to the Exchange of providing network connectivity services. The Exchange is also bolstering its equitable allocation of fees discussion. The Exchange believes that the Proposed Fee Increases are consistent with the Act because they (i) are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition; (ii) comply with the BOX Order and the Guidance; (iii) are supported by evidence (including data and analysis), constrained by significant competitive forces; and (iv) are supported by specific information (including quantitative information), fair and reasonable because they will permit recovery of the Exchange's costs (less than all) and will not result in excessive pricing or supra-competitive profit. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with the Act. The proposed rule change is immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.

The Exchange currently offers various bandwidth alternatives for connectivity to the Exchange, to its primary and secondary facilities, consisting of a 1Gb fiber connection, a 10Gb fiber connection, and a 10Gb ULL fiber connection. The 10Gb ULL offering uses an ultra-low latency switch, which provides faster processing of messages sent to it in comparison to the switch used for the other types of connectivity. The Exchange currently assesses the following monthly network connectivity fees to both Members and non-Members for connectivity to the Exchange's primary/secondary facility: (a) $1,100 for the 1Gb connection; (b) $5,500 for the 10Gb connection; and (c) $8,500 for the 10Gb ULL connection. The Exchange also assesses to both Members and non-Members a monthly per connection network connectivity fee of $500 for each 1Gb connection to the disaster recovery facility and a monthly per connection network connectivity fee of $2,500 for each 10Gb connection to the disaster recovery facility.

The Exchange's MIAX Express Network Interconnect (''MENI'') can be configured to provide Members and non-Members of the Exchange network connectivity to the trading platforms, market data systems, test systems, and disaster recovery facilities of both the Exchange and its affiliate, MIAX PEARL, via a single, shared connection. Members and non-Members utilizing the MENI to connect to the trading platforms, market data systems, test systems and disaster recovery facilities of the Exchange and MIAX PEARL via a single, shared connection are assessed only one monthly network connectivity fee per connection, regardless of the trading platforms, market data systems, test systems, and disaster recovery facilities accessed via such connection.

The Exchange proposes to increase the monthly network connectivity fees for such connections for both Members and non-Members. The network connectivity fees for connectivity to the Exchange's primary/secondary facility will be increased as follows: (a) From $1,100 to $1,400 for the 1Gb connection; (b) from $5,500 to $6,100 for the 10Gb connection; and (c) from $8,500 to $9,300 for the 10Gb ULL connection. The network connectivity fees for connectivity to the Exchange's disaster recovery facility will be increased as follows: (a) From $500 to $550 for the 1Gb connection; and (b) from $2,500 to $2,750 for the 10Gb connection.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[42] in general, and furthers the objectives of Section 6(b)(4) of the Act[43] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[44] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that

[37] *See infra* pages 19 to 20 (describing the differences in equity market structure and options market structure).

[38] *See* SR–MIAX–2019–38.

[39] *See* Securities Exchange Act Release No. 87431 (October 31, 2019), 84 FR 59855 (November 6, 2019)(SR–MIAX–2019–46) (the ''Seventh Proposed Rule Change'').

[40] *Id.*

[41] *See* SR–MIAX–2019–46.

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

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.'' [45]

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act, in that the Proposed Fee Increases are fair, equitable and not unreasonably discriminatory, because the fees for the connectivity alternatives available on the Exchange, as proposed to be increased, are constrained by significant competitive forces. The U.S. options markets are highly competitive (there are currently 16 options markets) and a reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices.

The Exchange acknowledges that there is no regulatory requirement that any market participant connect to the Exchange, or that any participant connect at any specific connection speed. The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as further detailed below). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. Further, of the number of Members that connect directly to MIAX, many such Members do not purchase market data from MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. For example, the following are not Members of MIAX: The D. E. Shaw Group, CTC, XR Trading LLC, Hardcastle Trading AG, Ronin Capital LLC, Belvedere Trading, LLC, Bluefin Trading, and HAP Capital LLC. In addition, of the market makers that are connected to MIAX, it is the individual needs of the market maker that require whether they need one connection or multiple connections to the Exchange. The Exchange has market maker Members that only purchase one connection (10Gb or 10Gb ULL) and the Exchange has market maker Members that purchase multiple connections. It is all driven by the business needs of the market maker. Market makers that are consolidators that target resting order flow tend to purchase more connectivity than Market Makers that simply quote all symbols on the Exchange. Even though non-Members purchase and resell 10Gb and 10Gb ULL connections to both Members and non-Members, no market makers currently connect to the Exchange indirectly through such resellers.

The argument that all broker-dealers are required to connect to all exchanges is not true in the options markets. The options markets have evolved differently than the equities markets both in terms of market structure and functionality. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. In addition, in the options markets there is a single SIP (OPRA) versus two SIPs in the equities markets, resulting in fewer hops and thus alleviating the need to connect directly to all the options exchanges. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of MIAX or its affiliates, MIAX PEARL and MIAX Emerald, they do not purchase connectivity to MIAX, and they do not purchase market data from MIAX. The Exchange further recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs.

To assist prospective Members or firms considering connecting to MIAX, the Exchange provides information about the Exchange's available connectivity alternatives in a Connectivity Guide, which contains detailed specifications regarding, among other things, throughput and latency for each available connection.[46] The decision of which type of connectivity to purchase, or whether to purchase connectivity at all for a particular exchange, is based on the business needs of the firm. For example, if the firm wants to receive the top-of-market data feed product or depth data feed product, due to the amount/size of data contained in those feeds, such firm would need to purchase either the 10Gb or 10Gb ULL connection. The 1Gb connection is too small to support those data feed products. MIAX notes that there are twelve (12) Members that only purchase the 1Gb connectivity alternative. Thus, while there is a meaningful percentage of purchasers of only 1Gb connections (12 of 33), by definition, those twelve (12) members purchase connectivity that cannot support the top-of-market data feed product or depth data feed product and thus they do not purchase such data feed products. Accordingly, purchasing market data is a business decision/choice, and thus the pricing for it is constrained by competition.

There is competition for connectivity to MIAX and its affiliates. MIAX competes with nine (9) non-Members who resell MIAX connectivity. These are resellers of MIAX connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over that same connection, including both Members and non-Members of MIAX (typically extranets and service bureaus). When connectivity is re-sold by a third-party, MIAX does not receive any connectivity revenue from that sale. It is entirely between the third-party and the purchaser, thus constraining the ability of MIAX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity. There are currently nine (9) non-Members that purchase connectivity to MIAX and/or MIAX PEARL. Those non-Members resell that connectivity to eleven (11) customers, some of whom are agency broker-dealers that have tens of customers of their own. Some of those eleven (11) customers also purchase connectivity directly from MIAX and/or MIAX PEARL. Accordingly, indirect connectivity is a viable alternative that is already being used by non-Members of MIAX, constraining the price that MIAX is able to charge for connectivity to its Exchange.

[45] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[46] *See* the MIAX Connectivity Guide at *https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Connectivity_Guide_v3.6_01142019.pdf.*

The Exchange[47] and MIAX PEARL[48] are comprised of 41 distinct Members between the two exchanges, excluding any additional affiliates of such Members that are also Members of MIAX, MIAX PEARL, or both. Of those 41 distinct Members, 33 Members have purchased the 1Gb, 10Gb, 10Gb ULL connections or some combination of multiple various connections. Furthermore, every Member who has purchased at least one connection also trades on the Exchange, MIAX PEARL, or both. The 8 remaining Members who have not purchased any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member service bureaus that are connected. These 8 Members who have not purchased connectivity are not forced or compelled to purchase connectivity, and they retain all of the other benefits of Membership with the Exchange. Accordingly, Members have the choice to purchase connectivity and are not compelled to do so in any way.

The Exchange believes that the Proposed Fee Increases are reasonable, equitable and not unfairly discriminatory because the connectivity pricing is directly related to the relative costs to the Exchange to provide those respective services, and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers three direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above. MIAX recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The 1Gb direct connectivity alternative is 1/10th the size of the 10Gb direct connectivity alternative. Because it is 1/10th of the size, it does not offer access to many of the products and services offered by the Exchange, such as the ability to quote or receive certain market data products. Approximately just less than half of MIAX and MIAX PEARL Members that connect (14 out of 33) purchase 1Gb connections. The 1Gb direct connection can support the sending of orders and the consumption of all market data feed products, other than the top-of-market data feed product or depth data feed product (which require a 10Gb connection). The 1Gb direct connection is generally purchased by market participants that utilize less bandwidth and also generally do not require the high touch network support services provided by the Exchange. Accordingly, these connections consume the least resources of the Exchange and are the least costly to the Exchange to provide. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth and also generally do require the high touch network support services provided by the Exchange. Accordingly, these connections consume the most resources of the Exchange and are the most costly to the Exchange to provide. Accordingly, the Exchange believes the allocation of the Proposed Fee Increases ($9,300 for a 10Gb ULL connection versus $1,400 for a 1Gb connection) are reasonable based on the resources consumed by the respective type of connection—lowest resource consuming members pay the least, and highest resource consuming members pays the most, particularly since higher resource consumption translates directly to higher costs to the Exchange. The 10Gb ULL connection offers optimized connectivity for latency sensitive participants and is approximately single digit microseconds faster in round trip time for connection oriented traffic to the Exchange than the 10Gb connection. This lower latency is achieved through more advanced network equipment, such as advanced hardware and switching components, which translates to increased costs to the Exchange. Market participants that are less latency sensitive can purchase 10Gb direct connections and quote in all products on the Exchange and consume all market data feeds, and such 10Gb direct connections are priced lower than the 10Gb ULL direct connections, offering smaller sized market makers a lower cost alternative. 10Gb connections are less costly to provide than 10Gb ULL connections, which require greater network support services.

With respect to options trading, the Exchange had only a 4.32% market share of the U.S. options industry in November 2019 in Equity/Exchange Traded Fund (''ETF'') classes according to the OCC.[49] For November 2019, the Exchange's affiliate, MIAX PEARL, had only a 4.78% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[50] For November 2019, the Exchange's affiliate, MIAX Emerald, had only a 0.92% market share of the U.S. options industry in Equity/ETF classes according to the OCC.[51] The Exchange is not aware of any evidence that a combined market share of approximately 10% provides the Exchange with anti-competitive pricing power. This, in addition to the fact that not all broker-dealers are required to connect to all options exchanges, supports the Exchange's conclusion that its pricing is constrained by competition.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive price increases for its connectivity alternatives. Market participants choose to connect to a particular exchange and because it is a choice, MIAX must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity. No options market participant is required by rule, regulation, or competitive forces to be a Member of the Exchange. As evidence of the fact that market participants can and do disconnect from exchanges based on connectivity pricing, R2G Services LLC (''R2G'') filed a comment letter after BOX's proposed rule changes to increase its connectivity fees (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04).[52] The R2G Letter stated, ''[w]hen BOX instituted a $10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn't make any sense for us at those new levels.'' Accordingly, this example shows that if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the exchange.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange has only 45 Members (including all such Members' affiliate Members). However, Cboe Exchange, Inc. (''Cboe'') has over 200 members,[53]

[47] The Exchange has 38 distinct Members, excluding affiliated entities. *See* MIAX Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members.*

[48] MIAX PEARL has 36 distinct Members, excluding affiliated entities. *See* MIAX PEARL Exchange Member Directory, available at *https://www.miaxoptions.com/exchange-members/pearl.*

[49] *See* Exchange Market Share of Equity Products—2019, The Options Clearing Corporation, available at *https://www.theocc.com/webapps/exchange-volume.*

[50] *Id.*

[51] *Id.*

[52] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (the ''R2G Letter'').

[53] *See* Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/*

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Nasdaq ISE, LLC has approximately 100 members,[54] and NYSE American LLC has over 80 members.[55] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 200 Members, in line with Cboe's total membership. But it does not. The Exchange only has 45 Members (inclusive of Members' affiliates).

The Exchange finds it compelling that all of the Exchange's existing Members continued to purchase the Exchange's connectivity services during the period for which the Proposed Fee Increases took effect in August 2018, particularly in light of the R2G disconnection example cited above.[56] In particular, the Exchange believes that the Proposed Fee Increases are reasonable because the Exchange did not lose any Members (or the number of connections each Member purchased) or non-Member connections due to the Exchange increasing its connectivity fees through the First Proposed Rule Change, which fee increase became effective August 1, 2018. For example, in July 2018, fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, and fifteen (15) Members purchased 10Gb ULL connections. (The Exchange notes that 1Gb connections are purchased primarily by EEM Members; 10Gb ULL connections are purchased primarily by higher volume Market Makers quoting all products across both MIAX and MIAX PEARL; and 10Gb connections are purchased by higher volume EEMs and lower volume Market Makers.) The vast majority of those Members purchased multiple such connections with the actual number of connections depending on the Member's throughput requirements based on the volume of their quote/order traffic and market data needs associated with their business model. After the fee increase, beginning August 1, 2018, the same number of Members purchased the same number of connections.[57] Furthermore, the total number of connections did not decrease from July to August 2018, and in fact one Member even purchased two (2) additional 10Gb ULL connections in August 2018, after the fee increase.

Also, in July 2018, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. After the fee increase, beginning August 1, 2018, the same non-Members purchased the same number of connections across all available alternatives and two (2) additional non-Members purchased three (3) more connections after the fee increase. These non-Members freely purchased their connectivity with the Exchange in order to offer trading services to other firms and customers, as well as access to the market data services that their connections to the Exchange provide them, but they are not required or compelled to purchase any of the Exchange's connectivity options. MIAX did not experience any noticeable change (increase or decrease) in order flow sent by its market participants as a result of the fee increase.

Of those Members and non-Members that bought multiple connections, no firm dropped any connections beginning August 1, 2018, when the Exchange increased its fees. Nor did the Exchange lose any Members. Furthermore, the Exchange did not receive any comment letters or official complaints from any Member or non-Member purchaser of connectivity regarding the increased fees regarding how the fee increase was unreasonable, unduly burdensome, or would negatively impact their competitiveness amongst other market participants. These facts, coupled with the discussion above, showing that it is not necessary to join and/or connect to all options exchanges and market participants can disconnect if pricing is set too high (the R2G example),[58] demonstrate that the Exchange's fees are constrained by competition and are reasonable and not contrary to the Law of Demand. Therefore, the Exchange believes that the Proposed Fee Increases are fair, equitable, and non-discriminatory, as the fees are competitive.

The Exchange believes that the Proposed Fee Increases are equitably allocated among Members and non-Members, as evidenced by the fact that the fee increases are allocated across all connectivity alternatives according to the Exchange's costs to provide such alternatives, and there is not a disproportionate number of Members purchasing any alternative—fourteen (14) Members purchased 1Gb connections, ten (10) Members purchased 10Gb connections, fifteen (15) Members purchased 10Gb ULL connections, four (4) non-Members purchased 1Gb connections, two (2) non-Members purchased 10Gb connections, and one (1) non-Member purchased 10Gb ULL connections. The Exchange recognizes that the relative fee increases are 27% for the 1Gb connection, 10.9% for the 10Gb connection, and 9.4% for the 10Gb ULL connection, but the Exchange believes that percentage increase differentiation is appropriate, given the actual costs to the Exchange to provide network connectivity and the respective connection options, including the costs associated with providing the different levels of service associated with the respective connections.

The Exchange further believes that the Proposed Fee Increases, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange. For example, for November 2019, between the Exchange and MIAX PEARL: (i) Members and non-Members that purchased 10Gb ULL connections accounted for approximately 80% of the total network connectivity revenue collected by the Exchange and MIAX PEARL from all connectivity alternatives; (ii) Members and non-Members that purchased 10Gb connections accounted for approximately 15% of the total network connectivity revenue collected by the Exchange and MIAX PEARL from all connectivity alternatives; and (iii) Members and non-Members that purchased 1Gb connections accounted for approximately 5% of the revenue collected by the Exchange and MIAX PEARL from all connectivity alternatives. As described above, the Exchange believes the Proposed Fee Increases are equitably allocated because 10Gb and 10Gb ULL purchasers (while they account for the vast majority of the Exchange's total connectivity revenue—approximately 95%): (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring,

18002831.pdf); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002833.pdf*); Form 1/A, filed July 24, 2018 (*https://www.sec.gov/Archives/edgar/vprr/1800/18002781.pdf*); Form 1/A, filed August 30, 2018 (*https://www.sec.gov/Archives/edgar/data/1473845/999999999718007832/9999999997-18-007832-index.htm*).

[54] *See* Form 1/A, filed July 1, 2016 (*https://www.sec.gov/Archives/edgar/vprr/1601/16019243.pdf).*

[55] *See https://www.nyse.com/markets/american-options/membership#directory.*

[56] *See supra* note 52.

[57] The Exchange notes that one Member downgraded one connection in July of 2018, however such downgrade was done well ahead of notice of the Proposed Fee Increase and was the result of a change to the Member's business operation that was completely independent of, and unrelated to, the Proposed Fee Increases.

[58] *See supra* note 52.

reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity alternatives, compared to the cost to provide a 1Gb connectivity alternative (as further described in the Exchange's cost discussion, below).

The Exchange believes that the connectivity fees are equitably allocated among users of the three network connectivity alternatives, as the users of the 10Gb and 10Gb ULL connections consume the most bandwidth and resources of the network. Specifically, the Exchange notes that these users account for approximately greater than 99% of message traffic over the network, while the users of the 1Gb connections account for approximately less than 1% of message traffic over the network. In the Exchange's experience, users of the 1Gb connections do not have a business need for the high performance network solutions required by 10Gb and 10Gb ULL users. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput with the network ability to support access to three distinct options markets and the capacity to handle approximately 38 million quote messages per second. On an average day, the Exchange and MIAX PEARL handle approximately 8,304,500,000 total messages. Of those, users of the 10Gb and 10Gb ULL connections generate 8,300,000,000 messages, and users of the 1Gb connections generate 4,500,000 messages. However, in order to achieve a consistent, premium network performance, the Exchange must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall network connectivity expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that the 10Gb and 10Gb ULL users pay for the vast majority of the shared network resources from which all Member and non-Member users benefit, but is designed and maintained from a capacity standpoint to specifically handle the message rate and performance requirements of 10Gb and 10Gb ULL users.

The Exchange also believes that the connectivity fees are equitably allocated amongst users of the three network connectivity alternatives, when these fees are viewed in the context of the overall trading volume on the Exchange. To illustrate, the purchasers of 10Gb ULL connectivity account for approximately 75% of the volume on the Exchange. For example, for all of November 2019, approximately 4.4 million contracts of the 5.8 million contracts executed were done by the top market making firms on the Exchange in simple (non-complex) volume. This overall volume percentage (75% of total Exchange volume) is in line with the amount of network connectivity revenue collected from 10Gb ULL purchasers (80% of total Exchange connectivity revenue).

The Exchange further believes that the fees are equitably allocated, as the amount of the fees for the various connectivity alternatives are directly related to the actual costs associated with providing the respective connectivity alternatives. That is, the cost to the Exchange of providing a 1Gb network connection is significantly lower than the cost to the Exchange of providing a 10Gb or 10Gb ULL network connection. Pursuant to its extensive cost review described above, the Exchange believes that the average cost to provide a 10Gb/10Gb ULL network connection is approximately 4 to 6 times more than the average cost to provide a 1Gb connection. The simple hardware and software component costs alone of a 10Gb/10Gb ULL connection are not 4 to 6 times more than the 1Gb connection. Rather, it is the associated premium-product level network monitoring, reporting, and support services costs that accompany a 10Gb/10Gb ULL connection which cause it to be 4 to 6 times more costly to provide than the 1Gb connection. Accordingly, the Exchange believes it is equitable to allocate those network infrastructure costs that accompany a 10Gb/10Gb ULL connection to the purchasers of those connections, and not to purchasers of 1Gb connections.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. There is a significant, quantifiable amount of research and development (''R&D'') effort, employee compensation and benefits expense, and other expense associated with providing the high touch network monitoring and reporting services that are utilized by the 10Gb and 10Gb ULL connections offered by the Exchange. These value add services are fully-discussed herein, and the actual costs associated with providing these services are the basis for the differentiated amount of the fees for the various connectivity alternatives.

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the Proposed Fee Increases will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit. The Proposed Fee Increases will allow the Exchange to recover a portion (less than all) of the increased costs incurred by the Exchange associated with providing and maintaining the necessary hardware and other network infrastructure as well as network monitoring and support services in order to provide the network connectivity services, since it last filed to increase its connectivity fees in December 2016, which became effective on January 1, 2017.[59] Put simply, the costs of the Exchange to provide these services have increased considerably over this time, as more fully-detailed and quantified below. The Exchange believes that it is reasonable and appropriate to increase its fees charged for use of its connectivity to partially offset the increased costs the Exchange incurred during this time associated with maintaining and enhancing a state-of-the-art exchange network infrastructure in the U.S. options industry.

In particular, the Exchange's increased costs associated with supporting its network are due to several factors, including increased costs associated with maintaining and expanding a team of highly-skilled network engineers (the Exchange also hired additional network engineering staff in 2017 and 2018), increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability, through the Exchange's R&D efforts.

[59] *See* Securities Exchange Act Release No. 79666 (December 22, 2016), 81 FR 96133 (December 29, 2016) (SR–MIAX–2016–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Modify the Exchange's Connectivity Fees).

In order to provide more detail and to quantify the Exchange's increased costs, the Exchange notes that increased costs are associated with the infrastructure and increased headcount to fully-support the advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. Additional technology expenses were incurred related to expanding its Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes associated with network technology. All of these additional expenses have been incurred by the Exchange since it last increased its connectivity fees on January 1, 2017.

Additionally, while some of the expense is fixed, much of the expense is not fixed, and thus increases as the number of connections increase. For example, new 1Gb, 10Gb, and 10Gb ULL connections require the purchase of additional hardware to support those connections as well as enhanced monitoring and reporting of customer performance that MIAX and its affiliates provide. And 10Gb ULL connections require the purchase of specialized, more costly hardware. Further, as the total number of all connections increase, MIAX and its affiliates need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to MIAX and its affiliates is not entirely fixed. Just the initial fixed cost buildout of the network infrastructure of MIAX and its affiliates, including both primary/secondary sites and disaster recovery, was over $30 million. These costs have increased over 10% since the last time the Exchange increased its connectivity fees on January 1, 2017. As these network connectivity-related expenses increase, MIAX and its affiliates look to offset those costs through increased connectivity fees.

A more detailed breakdown of the expense increases since January 1, 2017 include an approximate 70% increase in technology-related personnel costs in infrastructure, due to expansion of services/support (increase of approximately $800,000); an approximate 10% increase in data center costs due to price increases and footprint expansion (increase of approximately $500,000); an approximate 5% increase in vendor-supplied dark fiber due to price increases and expanded capabilities (increase of approximately $25,000); and a 30% increase in market data connectivity fees (increase of approximately $200,000). Of note, regarding market data connectivity fee increased cost, this is the cost associated with the Exchange consuming connectivity/content from the equities markets in order to operate the Exchange, causing the Exchange to effectively pay its competitors for this connectivity. While the Exchange and MIAX PEARL have incurred a total increase in connectivity expenses since January 2017 (the last time connectivity fees were raised) of approximately $1.5 million per year (as described above), the total increase in connectivity revenue amount as a result of the Proposed Fee Increases is projected to be approximately $1.2 million per year for MIAX and MIAX PEARL. Accordingly, the total projected MIAX and MIAX PEARL connectivity revenue as a result of the proposed increase, on an annualized basis, is less than the total annual actual MIAX and MIAX PEARL connectivity expense. Accordingly, the Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the increase in actual costs to the Exchange (since January 2017) versus the projected increase in annual revenue.

The Exchange also incurred additional significant capital expenditures over this same period to upgrade and enhance the underlying technology components, as more fully-detailed below.

Further, because the costs of operating a data center are significant and not economically feasible for the Exchange, the Exchange does not operate its own data centers, and instead contracts with a third-party data center provider. The Exchange notes that larger, dominant exchange operators own and operate their data centers, which offers them greater control over their data center costs. Because those exchanges own and operate their data centers as profit centers, the Exchange is subject to additional costs. As a result, the Exchange is subject to fee increases from its data center provider, which the Exchange experienced in 2017 and 2018 of approximately 10%, as cited above. Connectivity fees, which are charged for accessing the Exchange's data center network infrastructure, are directly related to the network and offset such costs.

Further, the Exchange invests significant resources in network R&D, which are not included in direct expenses to improve the overall performance and stability of its network. For example, the Exchange has a number of network monitoring tools (some of which were developed in-house, and some of which are licensed from third-parties), that continually monitor, detect, and report network performance, many of which serve as significant value-adds to the Exchange's Members and enable the Exchange to provide a high level of customer service. These tools detect and report performance issues, and thus enable the Exchange to proactively notify a Member (and the SIPs) when the Exchange detects a problem with a Member's connectivity. In fact, the Exchange often receives calls from other industry participants regarding the status of networking issues outside of the Exchange's own network environment that are impacting the industry as a whole via the SIPs, including calls from regulators, because the Exchange has a superior, state-of-the-art network that, through its enhanced monitoring and reporting solutions, often detects and identifies industry-wide networking issues ahead of the SIPs. The costs associated with the maintenance and improvement of existing tools and the development of new tools resulted in significant increased cost to the Exchange since January 1, 2017 and are loss leaders for the Exchange to provide these added benefits for Members and non-Members.

Certain recently developed network aggregation and monitoring tools provide the Exchange with the ability to measure network traffic with a much more granular level of variability. This is important as Exchange Members demand a higher level of network determinism and the ability to measure variability in terms of single digit nanoseconds. Also, the Exchange routinely conducts R&D projects to improve the performance of the network's hardware infrastructure. As an example, in the last year, the Exchange's R&D efforts resulted in a performance improvement, requiring the purchase of new equipment to support that improvement, and thus resulting in increased costs in the hundreds of thousands of dollars range. In sum, the costs associated with maintaining and enhancing a state-of-the-art exchange network in the U.S. options industry is a significant expense for the Exchange that continues to increase, and thus the Exchange believes that it is reasonable to offset a portion of those increased costs by increasing its network connectivity fees, which are designed to recover those costs, as proposed herein. The Exchange invests in and offers a superior network infrastructure as part of its overall options exchange services offering, resulting in significant costs associated with maintaining this network

infrastructure, which are directly tied to the amount of the connectivity fees that must be charged to access it, in order to recover those costs. As detailed in the Exchange's 2018 Audited Unconsolidated Financial Statements, the Exchange only has four primary sources of revenue: transaction fees, access fees (of which network connectivity constitutes the majority), regulatory fees, and market data fees. Accordingly, the Exchange must cover all of its expenses from these four primary sources of revenue.

The Proposed Fee Increases are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense of MIAX and MIAX PEARL associated with providing network connectivity services versus the total projected annual revenue of both exchanges associated with providing network connectivity services. For 2018, the total annual expense associated with providing network connectivity services (that is, the shared network connectivity of MIAX and MIAX PEARL, but excluding MIAX Emerald) was approximately $19.3 million. The $19.3 million in total annual expense is comprised of the following, all of which is directly related to the provision of network connectivity services by MIAX and MIAX PEARL to their respective Members and non-Members: (1) Third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services; and (2) internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services. All such expenses are more fully-described below, and are mapped to the MIAX and MIAX PEARL 2018 Statements of Operations and Member's Deficit (the ''2018 Financial Statements''). The $19.3 million in total annual expense is directly related to the provision of network connectivity services and not any other product or service offered by the Exchange. It does not, as the Third IEX Letter baselessly claims, include general costs of operating matching systems and other trading technology. (And as stated previously, no expense amount was allocated twice.) As discussed, the Exchange conducted an extensive cost review in which the Exchange analyzed every expense item in the Exchange's general expense ledger (this includes over 150 separate and distinct expense items) to determine whether each such expense relates to the provision of network connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of network connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. The sum of all such portions of expenses represents the total actual baseline cost of the Exchange to provide network connectivity services.

As discussed above, the Exchange differentiates itself by offering a ''premium-product'' network experience, as an operator of a high performance, ultra-low latency network with unparalleled system throughput, which network can support access to three distinct options markets and multiple competing market-makers having affirmative obligations to continuously quote over 750,000 distinct trading products (per exchange), and the capacity to handle approximately 38 million quote messages per second. The ''premium-product'' network experience enables users of 10Gb and 10Gb ULL connections to receive the network monitoring and reporting services for those approximately 750,000 distinct trading products. Thus, the Exchange is acutely aware of and can isolate the actual costs associated with providing such a service to its customers, a significant portion of which relates to the premium, value-add customer network monitoring and support services that accompany the service, as fully-described above. IEX, on the other hand, does not offer such a network, and thus has no legal basis to offer a qualified opinion on the Exchange's costs associated with operating such a network. In fact, IEX differentiates itself as a provider of low cost connectivity solutions to an intentionally delayed trading platform—quite the opposite from the Exchange. Thus, there is no relevant comparison between IEX network connectivity costs and the Exchange's network connectivity costs, and IEX's attempt to do so in the Third IEX Letter is ill-informed and self-serving.[60]

For 2018, total third-party expense, relating to fees paid by MIAX and MIAX PEARL to third-parties for certain products and services for the Exchange to be able to provide network connectivity services, was $5,052,346. This includes, but is not limited to, a portion of the fees paid to: (1) Equinix, for data center services, for the primary, secondary, and disaster recovery locations of the MIAX and MIAX PEARL trading system infrastructure; (2) Zayo Group Holdings, Inc. (''Zayo'') for connectivity services (fiber and bandwidth connectivity) linking MIAX and MIAX PEARL office locations in Princeton, NJ and Miami, FL to all data center locations; (3) Secure Financial Transaction Infrastructure (''SFTI''),[61] which supports connectivity and feeds for the entire U.S. options industry; (4) various other services providers (including Thompson Reuters, NYSE, Nasdaq, and Internap), which provide content, connectivity services, and infrastructure services for critical components of options connectivity; and (5) various other hardware and software providers (including Dell and Cisco, which support the production environment in which Members and non-Members connect to the network to trade, receive market data, etc.).

All of the third-party expense described above is contained in the information technology and communication costs line item under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' of the 2018 Financial Statements. For clarity, only a portion of all fees paid to such third-parties is included in the third-party expense herein (only the portion that actually supports the provision of network connectivity services and no expense amount is allocated twice). Accordingly, MIAX and MIAX PEARL do not allocate their entire information technology and communication costs to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such third-party expense described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, the Exchange believes it is reasonable to allocate the identified portion of the Equinix expense because Equinix operates the data centers (primary, secondary, and disaster recovery) that host the Exchange's network infrastructure, which enables the provision of network connectivity services. This includes, among other things, the necessary storage space, which continues to expand and increase in cost, power to operate the network infrastructure, and cooling apparatuses to ensure the Exchange's network

[60] *See* Third IEX Letter, pg. 5.

[61] In fact, on October 22, 2019, the Exchange was notified by SFTI that it is again raising its fees charged to the Exchange by approximately 11%, without having to show that such fee change complies with the Act by being reasonable, equitably allocated, and not unfairly discriminatory. It is unfathomable to the Exchange that, given the critical nature of the infrastructure services provided by SFTI, that its fees are not required to be rule-filed with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively.

infrastructure maintains stability. Without these services from Equinix, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Equinix expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 68% of the total Equinix expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the Zayo expense because Zayo provides the internet, fiber and bandwidth connections with respect to the network, linking MIAX with its affiliates, MIAX PEARL and MIAX Emerald, as well as the data center and disaster recovery locations. As such, all of the trade data, including the billions of messages each day per exchange, flow through Zayo's infrastructure over the Exchange's network. Without these services from Zayo, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the Zayo expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 62% of the total Zayo expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the SFTI expense and various other service providers' (including Thompson Reuters, NYSE, Nasdaq, and Internap) expense because those entities provide connectivity and feeds for the entire U.S. options industry as well as the content, connectivity services, and infrastructure services for critical components of the network. Without these services from SFTI and various other service providers, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the SFTI and other service providers' expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 89% of the total SFTI and other service providers' expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

The Exchange believes it is reasonable to allocate the identified portion of the other hardware and software provider expense because this includes costs for dedicated hardware licenses for switches and servers, as well as dedicated software licenses for security monitoring and reporting across the network. Without this hardware and software, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the hardware and software provider expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 54% of the total hardware and software provider expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

For 2018, total internal expense, relating to the internal costs of MIAX and MIAX PEARL to provide the network connectivity services, was $14,271,870. This includes, but is not limited to, costs associated with: (1) Employee compensation and benefits for full-time employees that support network connectivity services, including staff in network operations, trading operations, development, system operations, business, etc., as well as staff in general corporate departments (such as legal, regulatory, and finance) that support those employees and functions; (2) depreciation and amortization of hardware and software used to provide network connectivity services, including equipment, servers, cabling, purchased software and internally developed software used in the production environment to support the provision of network connectivity for trading; and (3) occupancy costs for leased office space for staff that support the provision of network connectivity services. The breakdown of these costs is more fully-described below.

All of the internal expenses described above are contained in the following line items under the section titled ''Operating Expenses Incurred Directly or Allocated From Parent'' in the 2018 Financial Statements: (1) Employee compensation and benefits; (2) Depreciation and amortization; and (3) Occupancy costs. For clarity, only a portion of all such internal expenses are included in the internal expense herein (only the portion that supports the provision of network connectivity services), and no expense amount is allocated twice. Accordingly, MIAX and MIAX PEARL do not allocate their entire costs contained in those line items to the provision of network connectivity services.

The Exchange believes it is reasonable to allocate such internal expense described above towards the total cost to the Exchange to operate and support the network, including providing network connectivity services. In particular, MIAX's and MIAX PEARL's combined employee compensation and benefits expense relating to providing network connectivity services was $5,264,151, which is only a portion of the $11,997,098 (for MIAX) and $8,545,540 (for MIAX PEARL) total expense for employee compensation and benefits that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because this includes the time spent by employees of several departments, including Technology, Back Office, Systems Operations, Networking, Business Strategy Development (who create the business requirement documents that the Technology staff use to develop network features and enhancements), Trade Operations, Finance (who provide billing and accounting services relating to the network), and Legal (who provide legal services relating to the network, such as rule filings and various license agreements and other contracts). As part of the extensive cost review conducted by the Exchange, the Exchange reviewed the amount of time spent by each employee on matters relating to the operation and support of the network. Without these employees, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the employee compensation and benefits expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being

specifically mapped to operating and supporting the network, approximately 26% of the total employee compensation and benefits expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX's and MIAX PEARL's combined depreciation and amortization expense relating to providing network connectivity services was $8,269,048, which is only a portion of the $6,179,506 (for MIAX) and $4,783,245 (for MIAX PEARL) total expense for depreciation and amortization that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide network connectivity services to its Members and non-Members and their customers. The Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting the network, approximately 75% of the total depreciation and amortization expense, as connectivity services would not be possible without relying on such equipment. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

MIAX's and MIAX PEARL's combined occupancy expense relating to providing network connectivity services was $738,669, which is only a portion of the $945,431 (for MIAX) and $581,783 (for MIAX PEARL) total expense for occupancy that is stated in the 2018 Financial Statements. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense represents the portion of the Exchange's cost to rent and maintain a physical location for the Exchange's staff who operate and support the network, including providing network connectivity services. This amount consists primarily of rent for the Exchange's Princeton, NJ office, as well as various related costs, such as physical security, property management fees, property taxes, and utilities. The Exchange operates its Network Operations Center (NOC) and Security Operations Center (SOC) from its Princeton, New Jersey office location. A centralized office space is required to house the staff that operates and supports the network. The Exchange currently has 130 employees. Approximately two-thirds of the Exchange's staff are in the Technology department, and the majority of those staff have some role in the operation and performance of the network. Without this office space, the Exchange would not be able to operate and support the network and provide network connectivity services to its Members and non-Members and their customers. Accordingly, the Exchange believes it is reasonable to allocate the identified portion of its occupancy expense because such amount represents the Exchange's actual cost to house the equipment and personnel who operate and support the Exchange's network infrastructure and connectivity services. The Exchange did not allocate all of the occupancy expense toward the cost of providing network connectivity services, only that portion which the Exchange identified as being specifically mapped to operating and supporting network connectivity services, approximately 48% of the total occupancy expense. The Exchange believes this allocation is reasonable because it represents the Exchange's actual cost to operate and support the network, and not any other service, as supported by its cost review.

Accordingly, the total projected MIAX and MIAX PEARL combined revenue for providing network connectivity services, reflective of the proposed increase, on an annualized basis, of $14.5 million, is less than total annual actual MIAX and MIAX PEARL combined expense for providing network connectivity services during 2018 of approximately $19.3 million. MIAX and MIAX PEARL project comparable combined expenses for providing network connectivity services for 2019, as compared to 2018.

For the avoidance of doubt, none of the expenses included herein relating to the provision of network connectivity services relate to the provision of any other services offered by MIAX and MIAX PEARL. Stated differently, no expense amount of the Exchange is allocated twice.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective percentages of each expense category described above towards the total cost to the Exchange of operating and supporting the network, including providing network connectivity services, because the Exchange performed a line-by-line item analysis of all the expenses of the Exchange, and has determined the expenses that directly relate to operation and support of the network, including providing network connectivity to the Exchange. Further, the Exchange notes that, without the specific third-party and internal items listed above, the Exchange would not be able to operate and support the network, including providing network connectivity services to its Members and non-Members and their customers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to the operation and support of the network. Network connectivity fees are intended to recover the Exchange's costs of operating and supporting the network.

Accordingly, the Proposed Fee Increases are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual network operation and support costs to the Exchange versus the projected network connectivity annual revenue, including the increased amount. Additional information on overall revenue and expense of the Exchange can be found in the Exchange's 2018 Financial Statements.

The Exchange notes that other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity. For example, Nasdaq PHLX LLC (''Phlx''), NYSE Arca, Inc. (''Arca''), NYSE American LLC (''NYSE American'') and Nasdaq ISE, LLC (''ISE'') all offer a 1Gb, 10Gb and 10Gb low latency ethernet connectivity alternatives to each of their participants.[62] The Exchange further notes that Phlx, ISE, Arca and NYSE American each charge higher rates for such similar connectivity to primary

[62] *See* Phlx and ISE Rules, General Equity and Options Rules, General 8, Section 1(b). Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection, which the equivalent of the Exchange's 10Gb ULL connection. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit, which the equivalent of the Exchange's 10Gb ULL connection.

and secondary facilities.[63] While MIAX's proposed connectivity fees are substantially lower than the fees charged by Phlx, ISE, Arca and NYSE American, MIAX believes that it offers significant value to Members over other exchanges in terms of network monitoring and reporting, which MIAX believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges. Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[64]

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, the Exchange has received no official complaints from Members, non-Members (extranets and service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the Proposed Fee Increases are negatively impacting or would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

The Exchange believes that the Proposed Fee Increases do not place certain market participants at a relative disadvantage to other market participants because the connectivity pricing is associated with relative usage of the various market participants and does not impose a barrier to entry to smaller participants. As described above, the less expensive 1Gb direct connection is generally purchased by market participants that utilize less bandwidth. The market participants that purchase 10Gb ULL direct connections utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the Proposed Fee Increases do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the Proposed Fee Increases reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

Inter-Market Competition

The Exchange believes the Proposed Fee Increases do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges, as shown by the number of Members of MIAX as compared to the much greater number of members at other options exchanges (as described above). Not only does MIAX have less than half the number of members as certain other options exchanges, but there are also a number of the Exchange's Members that do not connect directly to MIAX. There are a number of large market makers and broker-dealers that are members of other options exchange but not Members of MIAX. Additionally, other exchanges have similar connectivity alternatives for their participants, including similar low-latency connectivity, but with much higher rates to connect.[65] The Exchange is also unaware of any assertion that its existing fee levels or the Proposed Fee Increases would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

While the Exchange recognizes the distinction between connecting to an exchange and trading at the exchange, the Exchange notes that it operates in a highly competitive options market in which market participants can readily connect and trade with venues they desire. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[66] and Rule 19b–4(f)(2)[67] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–51 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–2019–51. 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

[63] *Id.*

[64] *See* Nasdaq ISE, Options Rules, Options 7, Pricing Schedule, Section 11.D. (charging $3,000 for disaster recovery testing & relocation services); *see also* Cboe Exchange, Inc. (''Cboe'') Fees Schedule, p. 14, Cboe Command Connectivity Charges (charging a monthly fee of $2,000 for a 1Gb disaster recovery network access port and a monthly fee of $6,000 for a 10Gb disaster recovery network access port).

[65] *See supra* note 62.

[66] 15 U.S.C. 78s(b)(3)(A)(ii).

[67] 17 CFR 240.19b–4(f)(2).

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–2019–51 and should be submitted on or before January 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28535 Filed 1–6–20; 8:45 am]

BILLING CODE 8011–01–P

[68] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

[Docket Number DOT–OST–2019–0187]

Request for Information (RFI) for the Inclusive Design Challenge

AGENCY: Office of the Secretary of Transportation (OST), Department of Transportation.

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Transportation (DOT) Office of the Secretary of Transportation (OST) is seeking feedback on a proposed inclusive design challenge (Challenge) via this Request for Information (RFI). The Challenge is intended to incentivize creation of innovative, inclusive design solutions to enable access to automated vehicles (AV), also known as Highly automated Vehicles (HAV), for persons with disabilities. The Challenge seeks to emphasize the opportunities and challenges introduced by AVs which human occupants are not expected to drive, nor supervise the driving functions of the automated system, or perform any other element of the dynamic driving task as long as the vehicle remains within its operational design domain.

The Challenge will solicit solutions addressing obstacles faced by persons with physical, sensory, and/or cognitive disabilities. The goal of the Challenge is to inspire inclusive designs as AVs are developed, which may also increase access to conventional vehicles today. Solutions proposed should aim to decrease the need to modify Level 4 and 5 AVs post-production, or to reduce the cost of retrofitting AVs for use by persons with disabilities, including wheelchair users.

DATES: Responses to the RFI must be received by January 31, 2020, no later than 5:00 p.m. (ET).

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Electronic mail:* Email comments to *inclusivedesign@dot.gov.* Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and be no more than 5 pages in length, with 12-point font and 1-inch margins.
- *Internet:* To submit comments electronically, go to the Federal regulations website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Respondents may answer as many or as few questions as they wish.

DOT will not respond to individual submissions or publish publicly a compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the beginning of their response to this RFI:

- Company/institution name
- Company/institution contact
- Contact's address, phone number, and email address

FOR FURTHER INFORMATION CONTACT: The monitored inbox at *inclusivedesign@dot.gov.* You may also contact David Carter, Office of the Under Secretary, OST (202–366–4813). You may send email to Mr. Carter at *david.carter@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to solicit feedback from academia, research laboratories, industry, government agencies, and other stakeholders on the scope and ideal outcomes of the Challenge. DOT is interested specifically in information on how best to structure a multi-phase prize competition to attract novel systems that use design solutions to enhance accessibility in AVs.

Background

DOT is eager to realize the potential mobility benefits that AVs could bring to persons with disabilities. However, DOT also recognizes that this is not an easy problem to solve and there is no single solution. The wide diversity of disabilities and resulting needs for inclusive vehicle designs increase the complexity of the engineering challenge. While some mobility services (*e.g.,* transit vehicles and service, and other for-hire vehicles, such as taxis) currently incorporate some accessibility features, few such features have been universally included in passenger vehicles. Existing solutions, particularly to enable access to and use of vehicles by wheelchair users, typically are added through aftermarket modifications, which can be expensive and cumbersome for persons with disabilities, rather than integrated as original equipment.

Automated vehicles introduce new design opportunities, particularly to enable independent use by persons with physical, sensory, and/or cognitive disabilities. By using the challenge format, DOT seeks to draw attention to the topic of passenger vehicle accessibility; encourage new cross-disciplinary collaborations; incentivize the development of new approaches and technologies to help people move independently; and tap into the creativity and knowledge of the disability community, researchers, advocates, manufacturers, and entrepreneurs.

DOT aims to attract ideas from around the nation to identify new solutions for common access issues. The Challenge is expected to be open to individuals and teams (Designers) from the academic, research, and business communities, including but not limited to universities, research institutions, technology companies, and entrepreneurs. As with other government competitions, the Challenge aims to create a vibrant community of thinkers and doers who drive revolutionary innovation. As such, DOT encourages teams to organize themselves in a manner that best allows them to meet the Challenge. DOT expects teams to describe how they have engaged with stakeholders to understand the needs and constraints of both industry and travelers with disabilities when explaining the feasibility and impact of their design. DOT also encourages teams to identify representatives from both industry and the disability advocacy community to serve as advisors and to help inform the

direction of their ideas based on their knowledge and expertise.

Challenge Features

Through the Challenge, DOT seeks innovative ideas and design solutions to enable persons with disabilities to use AVs independently and ultimately to create a more accessible transportation future for all. Designers will compete for cash prizes by developing innovative design solutions to increase access to, and reduce the cost of building and/or modifying AVs for use by, persons with physical, sensory, and/or cognitive disabilities. Successful solutions will demonstrate consideration of production feasibility.

DOT expects to consider the following factors in the Challenge in evaluating design solutions that aim to both propose future vehicle designs and create components in support of inclusive design features.

• *Vehicle Platform:* All design solutions should be targeted toward integration into light duty passenger vehicles. Solutions may address any vehicle manufacturing stage (aftermarket modification and purpose-built).

• *Vehicle Use:* For the Challenge, design inclusiveness will be evaluated in part based on the extent to which proposed solutions enable each element of vehicle use, as outlined below. Designers will develop inclusive design solutions to address one or more of the following tasks that an AV user with a disability will need to complete independently:

○ Locating an AV—Including, but not limited to, being notified that a vehicle has arrived; identifying the correct vehicle and locating and navigating to the correct vehicle.

○ Entering an AV—Including, but not limited to, unlocking and opening vehicle door(s); deploying and stowing ramps or other equipment enabling access for wheelchair users or persons with other physical disabilities or mobility equipment; and closing vehicle door(s).

○ Securing Passengers and Mobility Equipment—Including, but not limited to, securing seatbelts and other passenger restraints; securing wheelchairs or other mobility equipment to the vehicle; and securing service animals.

○ Inputting Information—Including, but not limited to, confirming passenger identity; searching for, entering, and changing a desired destination; confirming the vehicle's destination; selecting a specific drop-off point (*e.g.,* a particular entrance to a large complex or a location with a curb cut or sufficient space to deploy a ramp or other physical device).

○ Interacting with the vehicle in routine and emergency situations—Including, but not limited to, operating passenger convenience and safety features (*e.g.,* entertainment, window controls, locks, climate control); monitoring the vehicle's location and route progress; changing the vehicle's destination enroute; requesting assistance (emergency or non-emergency); understanding and performing appropriate actions in the event of a breakdown or crash.

○ Exiting an AV—Including, but not limited to, being notified and confirming that a vehicle has reached its intended destination; releasing passenger and/or mobility equipment restraints; identifying and locating the safe and appropriate door(s) from which to exit the vehicle; recognizing when it is safe to exit a vehicle; opening door(s) and deploying and stowing ramps or other equipment enabling access for wheelchair users or persons with other physical disabilities or mobility equipment.

• *Disability Types:* For the Challenge, inclusiveness will be evaluated in part based on the extent to which proposed solutions address a range of disabilities and needs. Designers will also focus their efforts by designing solutions for use by one or more of the following audiences:

○ Persons with physical disabilities
○ Persons with sensory disabilities
○ Persons with cognitive disabilities

General Structure of the Prize

The Challenge is expected to consist of two stages. Individuals/teams will compete for an overall prize purse of up to $5,000,000. The prize purse is part of the $100 million provided in FY 2018 to the Federal Motor Carrier Safety Administration for a HAV research and development program. In Stage I, up to 15 semi-finalists will receive $100,000 each for developing promising concepts. In Stage II up to four Stage I Designers will move on to be named finalists and receive a portion of the remaining prize purse, including a potential grand prize of $2,000,000.

• *Stage I, Ideation:* In Stage I, all eligible Designers will submit proposals for ideas to develop inclusive design solutions for AVs. Up to 15 semifinalists will be selected to advance to Stage II to develop a functional prototype of their idea and compete for a cash prize. If a selectee declines to participate in the next stage, an alternate may be selected.

• *Stage II, Prototype/Demonstration:* In Stage II, the semi-finalists from Stage I will develop their concepts into functional prototypes (*i.e.,* detailed system designs and prototypes to be demonstrated) for an inclusive design solution. DOT anticipates that partway through Stage II one or more design charrettes will be held subject matter experts from industry and the disability community. At the end of Stage II, teams will be invited to Washington, DC to demonstrate their prototypes. After this the final prize selections will be announced. A travel stipend will be provided to teams for travel to Washington, DC, for the charrette(s) and demonstration. Up to four finalists will be selected and awarded a portion of the remaining prize purse, contingent upon review of the Stage II submissions and demonstrations against the evaluation criteria.

Disclaimer and Important Notes

This is solely an RFI and not a Notice of Funding Opportunity or the opening of a challenge competition. Therefore, DOT is not accepting applications at this time. DOT may issue a prize in the future based on or related to the content and responses to this RFI; however, DOT may also elect not to issue a prize. There is no guarantee that a prize will be issued as a result of this RFI. Responding to this RFI does not provide any advantage or disadvantage to potential applicants if DOT chooses to issue a prize regarding the subject matter. Final details, including the anticipated award size, quantity, and timing of DOT funded awards, will be at the discretion of the Secretary of Transportation.

Any information obtained as a result of this RFI is intended to be used by the government on a non-attribution basis for planning and strategy development; this RFI does not constitute a formal solicitation for proposals or abstracts. Responses to this notice will be treated as information only. DOT will review and consider all responses in its formulation of program strategies for the identified materials of interest that are the subject of this request. DOT will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that DOT is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind DOT to any further actions related to this topic. DOT may use or disclose responses for any lawful purpose.

Proprietary Information

Because information received in response to this RFI may be used to structure future programs and/or otherwise be made available to the public, respondents are strongly advised to NOT include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. However, respondents may choose to include such information in their submissions if they believe it will significantly assist DOT in the design of the Challenge.

Responses containing confidential, proprietary, or privileged information must be conspicuously marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act, 5 U.S.C. 552.

If a response contains trade secrets or confidential commercial or financial information, the respondent must include a cover sheet identifying the specific pages containing that information. The cover sheet must also provide evidence that the respondent actually or customarily treats the information as private.

In addition, the respondent must (1) mark the header and footer of every page that contains trade secrets or confidential commercial or financial information with ''Contains Confidential Information Exempt from Public Disclosure'' and (2) identify every line and paragraph containing such information with double brackets or highlighting.

Evaluation and Administration by Federal and Non-Federal Personnel

Federal employees are subject to criminal prosecution for the unauthorized disclosure of appropriately and properly marked confidential information under 18 U.S.C. 1905. The government may seek the advice of qualified non-federal personnel and use non-federal personnel to conduct routine, nondiscretionary administrative activities. Submissions may be reviewed by support contractors and private consultants. By submitting your response, the respondent consent to DOT providing it to non-federal parties. Non-federal parties will be obliged to maintain the confidentiality of any submissions prior to being given access to those submissions.

Request for Information

Category 1: Challenge Topic and Design

1. The Challenge could address elements of independently using a passenger vehicle, as described above. Are crucial elements missing? If so, please describe the missing element(s) and discuss how they create challenges for independent travel.

2. Is there benefit to including an option for the development of a full concept design for inclusive vehicles (*i.e.,* in reimagining the vehicle design)? If so, please explain why and describe what requirements should be considered as part of this concept proposal.

3. How can proposals account for uncertainty in the development path of automated vehicles while still demonstrating novel and realistic concepts for inclusive design?

4. Stakeholder engagement is an important aspect of the Inclusive Design Challenge. In what ways should DOT continue stakeholder engagement throughout the project to support teams in receiving valuable feedback on their designs (*e.g.,* expert panels, public webinars that solicit feedback etc.)?

5. Are Stage I awards sufficient for enabling the development of a prototype for Stage II?

6. Do the proposed Challenge background, purpose, and challenge features sections above provide sufficient information to inform proposals? If not, what additional information would be helpful?

Category 2: Evaluation

1. How can DOT evaluate proposals on the basis of:

a. Inclusiveness?
b. Production feasibility?
c. Expected user experience?

2. What evaluation criteria are most important when considering how proposals can best enable access to AVs for persons with disabilities:

a. Description of how the proposed solution contributes to independent travel
b. Demonstration of a realistic understanding of users and their unique needs
c. Demonstration of the engineering needs and explaining how the team arrived at that determination of need
d. Determination of the potential cost and manufacturability
e. Thorough description of the user experience when the technology is implemented
f. Consideration of the human-machine interface needs both inside and outside of the vehicle
g. Consideration of a range of needs and limitations, including users in a range of geographic contexts, income brackets, and with and without access to a smartphone or bank account
h. Other criteria

3. How would evaluation criteria be different if there were two types of proposals being considered (such as components and full design)?

Footnotes

1. Dynamic Driving Task and Operational Design Domain are both defined by SAE International in standard J3016: Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles (*https://www.sae.org/standards/content/j3016_201806/*)
2. See SAE International standard J3016: Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles for definitions of driving automation levels (*https://www.sae.org/standards/content/j3016_201806/*)

Finch Fulton,

Deputy Assistant Secretary for Transportation Policy.

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BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2020–0001]

Proposed Information Collections; Comment Request (No. 77)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before March 9, 2020.

ADDRESSES: As described below, you may send comments on the information collections described in this document using the ''Regulations.gov'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. We no longer accept public comments via email or fax.

• *Internet:* To submit comments online, use the comment form for this document posted within Docket No. TTB–2019–0001 on the ''Regulations.gov'' e-rulemaking website at *https://www.regulations.gov*;

• *U.S. Mail:* Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

• *Hand Delivery/Courier:* Delivery comments to the Paper Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB control number (if any) in your comment.

You may view copies of this document, the information collections described in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2019–0001 at *https://www.regulations.gov.* A link to that docket is posted on the TTB website at *https://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or *informationcollections@ttb.gov* (please do not submit comments to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

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 has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0041

Title: Distilled Spirits Plants—Records and Monthly Reports of Processing Operations.

TTB Form Number: TTB F 5110.28.

TTB Recordkeeping Number: TTB REC 5110/03.

Abstract: In general, the Internal Revenue Code of 1986, as amended (IRC), at 26 U.S.C. 5001, imposes a Federal excise tax on distilled spirits produced or imported into the United States, and imposes related recordkeeping and reporting requirements. The IRC at 26 U.S.C. 5207 requires that distilled spirits plant (DSP) proprietors keep records and submit reports regarding their production, storage, denaturation, and processing operations in such form and manner as the Secretary of the Treasury (Secretary) by regulation prescribes. Under that IRC authority, the TTB regulations in 27 CFR part 19 require DSP proprietors to keep records regarding their processing operations, as well as any wholesale liquor dealer or taxpaid storeroom operations they conduct. The part 19 regulations also require DSP proprietors to submit monthly reports of those processing operations (based on the required records) using form TTB F 5110.28. TTB uses the collected information to ensure proper tax collection. TTB also aggregates the collected information to produce generalized distilled spirits statistical reports for release to the public.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. However, due to a change in agency estimates resulting from continued growth in the number of DSPs in the United States, particularly small distilleries, TTB is increasing the number of annual respondents, responses, and burden hours reported for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; State, local, and tribal governments.

Estimated Annual Burden

• *Number of Respondents:* 3,700.

• *Average Responses per Respondent:* 12.

• *Number of Responses:* 44,400.

• *Average Per-Response Burden:* 2 hours (1 hour for recordkeeping and 1 hour for reporting).

• *Total Burden:* 88,800 hours.

OMB Control No. 1513–0058

Title: Usual and Customary Business Records Maintained by Brewers.

TTB Recordkeeping Number: TTB REC 5130/1.

Abstract: The IRC at 26 U.S.C. 5415 requires brewers to keep records in such form and containing such information as the Secretary of the Treasury may by regulation prescribe as necessary to protect the revenue. Under that IRC authority, the TTB regulations in 27 CFR part 25 require brewers to keep usual and customary business records that allow TTB to verify various brewer activities, including, for example, the quantities of raw materials received at a brewery, the quantity of beer and cereal beverages produced and removed taxpaid or without payment of tax from a brewery, and the quantity of beer previously removed subject to tax that is returned to the brewery.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. However, due to a change in agency estimates resulting from continued growth in the number of breweries in the United States, TTB is increasing the number of annual respondents and responses to this information collection. But, TTB is removing the one hour of burden previously reported for this information collection as a place holder since, under the OMB regulations at 5 CFR 1320.3(b)(2), regulatory requirements to

maintain usual and customary records kept during the normal course of business place no burden on respondents.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 12,000.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 12,000.
- *Average Per-Response and Total Burden:* None. (Under the OMB regulations 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents as defined in the Paperwork Reduction Act.)

OMB Control No. 1513–0059

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

TTB Recordkeeping Number: TTB REC 5110/05.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes a Federal excise tax on distilled spirits produced or imported into the United States. However, under the IRC at 26 U.S.C. 5214, distilled spirits may be withdrawn free of tax for nonbeverage purposes for use by Federal, State, and local governments, certain educational organizations and institutions, research laboratories, hospitals, blood banks, sanitariums, and nonprofit clinics, subject to regulations prescribed by the Secretary. Under that IRC authority, the TTB regulations in 27 CFR part 22 require tax-free alcohol users to maintain certain usual and customary shipment, loss, consignment, return, and inventory records, which are kept during the normal course of business, in order to maintain accountability over tax-free spirits. Such accountability is necessary to protect the revenue.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. However, due to a change in agency estimates resulting from continued growth in the number of tax-free alcohol users, TTB is increasing the number of annual respondents and responses to this information collection. But, TTB is removing the one hour of burden previously reported for this information collection as a place holder since, under the OMB regulations at 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits; Federal Government, State, local, and tribal governments.

Estimated Annual Burden

- *Number of Respondents:* 5,600.
- *Average Responses per Respondent:* One.
- *Number of Responses:* 5,600.
- *Average Per-Response and Total Burden:* None. (Under the OMB regulations 5 CFR 1320.3(b)(2), regulatory requirements to maintain usual and customary records kept during the normal course of business place no burden on respondents as defined in the Paperwork Reduction Act.)

OMB Control No. 1513–0071.

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

TTB Recordkeeping Number: TTB REC 5230/1.

Abstract: In general, the IRC at 26 U.S.C. 5701 imposes Federal excise taxes on tobacco products and cigarette papers and tubes, and, as described at 26 U.S.C. 5701(a)(2), the excise tax on large cigars is based on a percentage of the price at which such cigars are sold by the manufacturer or importer. In addition, the IRC at 26 U.S.C. 5741, requires every manufacturer and importer of tobacco products to keep records in such manner as the Secretary shall by regulation prescribe. Under those IRC authorities, the TTB regulations at 27 CFR 40.187 and 41.181 require that manufacturers and importers of large cigars maintain certain records regarding the price for which those cigars are sold. The required records are necessary to protect the revenue as they allow TTB to verify that the appropriate amount of Federal excise tax is paid on large cigars.

Current Actions: There are no program or estimated burden changes associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 300.
- *Average Responses per Respondent:* 1.
- *Number of Responses:* 300.
- *Average Per-Response Burden:* 2.33 hours.
- *Total Burden:* 699 hours.

OMB Control No. 1513–0119

Title: Certification of Proper Cellar Treatment for Imported Natural Wine.

TTB Form or Recordkeeping Number: None.

Abstract: Under the IRC at 26 U.S.C. 5382(a)(3), importers of natural wine produced after December 31, 2004, must provide the Secretary with a certification, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment. That IRC section also contains alternative certification requirements or exemptions for natural wine produced and imported under certain international agreements, as well as for such wine imported by an owner or affiliate of a domestic winery. In addition, the Federal Alcohol Administration Act at 27 U.S.C. 201 *et seq.* (FAA Act) vests the Secretary with authority to prescribe regulations regarding the identity and quality of alcohol beverages. Under those authorities, the TTB wine regulations in 27 CFR part 4 and its alcohol beverage import regulations in 27 CFR part 27 implement the IRC's proper cellar treatment certification requirement for imported natural wine.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. However, due to changes in agency estimates resulting from the implementation of several international wine production agreements, and the use of previously-submitted certificates by importers, TTB is reducing the number of annual respondents, responses, and burden hours associated with this information collection. TTB notes that since the adoption of the IRC section requiring certification of proper cellar treatment for imported natural wine, the United States has entered into wine production agreements with over 30 nations, including the world's largest wine producing countries. Therefore, as provided in the IRC at 26 U.S.C. 5382(a)(3), the majority of the natural grape wines imported into the United States are exempt from that section's certification requirement. In addition, TTB posts the submitted certificates to its website, and other importers may reference an existing certificate in lieu of providing their own. As a result of those actions, the number of certificates of proper cellar treatment for imported natural wine TTB receives annually has decreased significantly in recent years.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 50.
- *Average Responses per Respondent:* One (1).
- *Number of Responses:* 50.
- *Average Per-Response Burden:* 0.33 hours.
- *Total Burden:* 17 hours.

OMB Control No. 1513–0138

Title: Tax Class Statement Required on Hard Cider Labels.

TTB Form or Recordkeeping Number: None.

Abstract: The IRC at 26 U.S.C. 5041 imposes six Federal excise tax rates on wine, the lowest of which is the hard cider tax rate listed in section 5041(b)(6), while the IRC at 26 U.S.C. 5368(b) provides that wine can only be removed in containers bearing the marks and labels evidencing compliance with chapter 51 of the IRC as the Secretary may by regulation prescribe. Also, section 335(a) of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act, Pub. L. 144–113) recently modified the definition of hard cider in the IRC at 26 U.S.C. 5041(g) to broaden the range of products eligible for the hard cider tax rate. In addition, TTB's FAA Act-based wine labeling regulations in 27 CFR part 4 allow the term ''hard cider'' to appear on wine labels even if the product does not meet the definition of ''hard cider'' for tax purposes under the IRC. In light of this, in order to adequately identify products eligible for the hard cider tax rate, the TTB regulations in 27 CFR parts 24 and 27 require the tax class statement, ''Tax class 5041(b)(6),'' to appear on containers of domestic and imported wines, respectively, for which that tax rate is claimed. The placement of the hard cider tax class statement on such wine labels is necessary to protect the revenue as it evidences compliance with the IRC's statutory requirements and identifies products for which the taxpayer is claiming the hard cider tax rate.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. However, due to a change in agency estimates resulting from growth in the number of hard cider products in the marketplace, TTB is increasing the number of annual respondents, responses, and burden hours reported for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 800.
- *Average Responses per Respondent:* One (1).
- *Number of Responses:* 800.
- *Average Per-Response Burden:* 1 hour.
- *Total Burden:* 800 hours.

Dated: January 2, 2020.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2020–00018 Filed 1–6–20; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinion of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Office of the General Counsel (OGC) involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in claim matters involving the same legal issue. This summary is published to provide the public and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Suzanne Hill, Law Librarian, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7624.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential, and 38 CFR 14.507(b) specifies that precedent opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees in all adjudications and appeals involving the same legal issues in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel or a judicial decision.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the internet at *http://www.va.gov/ogc/precedent opinions.asp.*

VAOPGCPREC 3–2019

Questions Presented

1. Who is eligible to file a claim as a ''survivor'' under the effective date provision of the Blue Water Navy Vietnam Veterans Act of 2019 (''the BWN Act''), Public Law 116–23, to be codified at 38 U.S.C. 1116A(c)?

2. Does the BWN Act authorize the Department of Veterans Affairs (VA) to pay estates, as if they were eligible payees under the Final Stipulation and Order in *Nehmer* v. *United States Veterans Admin.,* No. CV–86–6160 (N.D. Cal. 1991) (''the *Nehmer* stipulation'')?

3. Are veterans or their survivors who were granted disability compensation or survivor benefits under *Procopio* v. *Wilkie,* 913 F.3d 1371 (Fed. Cir. 2019), potentially eligible for earlier effective dates under the *Nehmer* stipulation or under the BWN Act?

Held

1. As used in 38 U.S.C. 1116A(c), the term ''survivors'' refers to those relatives of veterans who are eligible for dependency and indemnity compensation (DIC) and/or accrued benefits under title 38, United States Code.

2. The BWN Act does not authorize VA to pay benefits to estates of claimants. The BWN Act did not adopt or extend the *Nehmer* court rulings authorizing payments to estates of certain benefits payable under the *Nehmer* stipulation. No other provisions of title 38, United States Code, authorize VA to pay benefits under 38 U.S.C. 1116A to estates of claimants.

3. The *Nehmer* stipulation operates to void a final decision on a veteran's or survivor's benefits claim only when the Secretary of Veterans Affairs establishes a new presumption of service connection pursuant to the Agent Orange Act of 1991, Public Law 102–4, codified at 38 U.S.C. 1116(b). The *Procopio* decision does not establish a new presumption pursuant to the process described in section 1116(b) and accordingly does not provide authority for VA to void final decisions on

benefits claims. A veteran or survivor who is granted benefits under the *Procopio* rule and whose claim for the same condition was previously denied on or after September 25, 1985, may be entitled to a retroactive award if he or she submits a claim for such award in accordance with the BWN Act.

Effective Date: December 13, 2019.

William A. Hudson, Jr.,
Acting General Counsel, Department of Veterans Affairs.

Signing Authority

The Secretary of Veterans Affairs 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 December 23, 2019, for publication.

Jeffrey M. Martin,
Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–00027 Filed 1–6–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost of Living Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2019, Public Law (Pub. L.) 116–58, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the compensation program.

DATES: These adjustments became effective on December 1, 2019, the date provided by Public Law 116–58.

FOR FURTHER INFORMATION CONTACT: Keith Hancock, Policy Staff (211A), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Section 2 of Public Law 116–58 provides for an increase in each of the rates in sections 1114, 1115(1), and 1162 of title 38, United States Code (U.S.C.). VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 1.6 percent cost-of-living increase in Social Security benefits for 2020. Therefore, applying the same percentage, the following rates (beginning on page 3) for VA's compensation program became effective on December 1, 2019:

Disability evaluation percent	Monthly rate
Disability Compensation [38 U.S.C. 1114]	
10	$142.29
20	281.27
30	435.69
40	627.61
50	893.43
60	1,131.68
70	1,426.17
80	1,657.80
90	1,862.96
100	3,106.04
(38 U.S.C. 1114(k) through (t)):	
38 U.S.C. 1114(k)	$110.31
38 U.S.C. 1114(l)	3,864.90
38 U.S.C. 1114(m)	4,265.31
38 U.S.C. 1114(n)	4,852.09
38 U.S.C. 1114(o)	5,423.45
38 U.S.C. 1114(p)	5,423.45
38 U.S.C. 1114(r)	2,326.23; 3,465.63
38 U.S.C. 1114(s)	3,476.65
38 U.S.C. 1114(t)	3,465.63
Additional Compensation for Dependents [38 U.S.C. 1115(1)]	
38 U.S.C. 1115(1):	
38 U.S.C. 1115(1)(A)	$173.18
38 U.S.C. 1115(1)(B)	300.00; 86.05
38 U.S.C. 1115(1)(C)	115.81; 86.05
38 U.S.C. 1115(1)(D)	138.98
38 U.S.C. 1115(1)(E)	332.00
38 U.S.C. 1115(1)(F)	277.96
Clothing Allowance [38 U.S.C. 1162]	
$830.56 per year	

Signing Authority

The Secretary of Veterans Affairs 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 30, 2019, for publication.

Jeffrey M. Martin,
Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2020–00001 Filed 1–6–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 565, 566, 567, et al.

Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 565, 566, 567, and 586

[Docket No. NHTSA–2019–0121]

RIN 2127–AL77

Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 24405 of the Fixing America's Surface Transportation Act (FAST Act) amended the National Traffic and Motor Vehicle Safety Act (Safety Act) to direct the Secretary of Transportation (NHTSA by delegation) to exempt annually a limited number of replica motor vehicles manufactured or imported by low-volume manufacturers from Federal motor vehicle safety standards (FMVSS) that apply to motor vehicles, but not standards that apply to motor vehicle equipment. To implement the exemption program and the procedural mandates of the FAST Act, NHTSA is proposing, in a new Part 586, requirements for registering as a replica manufacturer, submitting annual reports, providing consumer disclosures, and labeling. NHTSA is proposing procedures to exempt replica vehicles produced by registrants from all the FMVSS that apply to new motor vehicles. This Notice of Proposed Rulemaking (NPRM) also proposes changes to Part 565, to require manufacturers to encode specific information into each replica vehicle's VIN, and to Parts 566 and 567 for manufacturer identification and vehicle certification, respectively.

DATES: You should submit your comments early enough to ensure that the docket receives them not later than February 6, 2020. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection and revisions to existing information collections. For additional information, see the Paperwork Reduction Act section under the Regulatory Notices and Analyses section below. All comments relating to the information collection requirements should be submitted to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before February 6, 2020.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *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:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading under Rulemaking Notices and Analyses regarding documents submitted to the agency's dockets.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues and information concerning the information collections, you may contact Ms. Mary Versailles, Office of Rulemaking, by telephone at 202–366–2057. For legal issues, you may contact Ms. Callie Roach, Office of the Chief Counsel, by telephone at 202–366–2992. The mailing address of both officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The National Traffic and Motor Vehicle Safety Act (''Safety Act'') (49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*)) authorizes and directs the Secretary of Transportation (NHTSA by delegation) to prescribe Federal motor vehicle safety standards (FMVSS) to reduce traffic accidents and deaths and injuries resulting therefrom.[1] Under section 30112(a) of the Safety Act, a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, any new motor vehicle or motor vehicle equipment unless the vehicle or equipment complies with all applicable FMVSS in effect on the date of manufacture.

Pursuant to the Safety Act, NHTSA has issued FMVSS to protect the public against unreasonable risk of crashes occurring because of the design, construction, or performance of a vehicle and against unreasonable risk of death or injury in a crash. Some of the

[1] The Secretary of Transportation has delegated the responsibility to promulgate regulations under 49 U.S.C. Chapter 301, Motor Vehicle Safety (49 U.S.C. 30101 *et seq.*) to NHTSA. *See,* 49 CFR 1.95.

FMVSS are ''vehicle'' standards that apply only to new completed vehicles as a unit and not to aftermarket components, some are ''equipment'' standards that apply to original and aftermarket items of equipment, and a few are both vehicle and equipment standards. Section 30115 of the Safety Act requires that the manufacturer or distributor of a motor vehicle or motor vehicle equipment subject to the FMVSS certify at delivery that the vehicle or equipment complies with all applicable FMVSS.

The Safety Act provides limited authority to NHTSA to exempt motor vehicles from section 30112(a). Section 30113 authorizes NHTSA to exempt motor vehicles from a motor vehicle safety standard on a temporary basis and under tightly defined circumstances. Section 30114 sets forth ''special exemptions'' for motor vehicles and motor vehicle equipment from section 30112(a). Until the Fixing America's Surface Transportation Act (FAST Act), exemptions under section 30114 were limited to those necessary for research, investigations, demonstrations, training, competitive racing events, show, or display.

On December 4, 2015, Congress enacted the FAST Act (Pub. L. 114–94). Section 24405 of the FAST Act amended section 30114 of the Safety Act by, among other things, adding a subsection (b)(1)(A) that directs NHTSA by delegation to ''exempt from section 30112(a) of this title not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer.'' Section 30114(b)(1)(B) states that exemptions are available from FMVSS for motor vehicles (*i.e.,* vehicle standards), but not from FMVSS for motor vehicle equipment (*i.e.,* equipment standards).[2]

Under the delegation in 49 CFR 1.95 and pursuant to section 24405 of the FAST Act, NHTSA is proposing to adopt a regulation, 49 CFR part 586, and amend others to implement the low-volume manufacturer replica vehicle program. The FAST Act contains specific procedural requirements for the registration of low-volume manufacturers, labeling of replica vehicles, reporting, and other matters related to the exemption program. To implement the program and the procedural mandates of the FAST Act, NHTSA is proposing a new Part 586 to set forth requirements for registration, labeling, providing consumer disclosures, submitting annual reports, and other requirements needed for the administration of the program. This NPRM also proposes changes to Part 565 to require manufacturers to encode specific information into each replica vehicle's VIN, and to Parts 566 and 567 for manufacturer identification and vehicle certification, respectively.

NHTSA highlights the following aspects of the replica vehicle exemption program.

1. Low-volume manufacturers registering for this program would be conditionally exempt from section 30112(a)'s prohibitions on manufacturing, selling, and importing noncomplying motor vehicles for 325 replica motor vehicles per year (''covered replica vehicles'') per manufacturer. The exemption for replica vehicles would be conditioned on the manufacturer complying with all requirements of the program.[3] The covered replica vehicles would be exempt from complying with the ''vehicle'' standards in effect on the date of manufacture of the replica that apply to new vehicles of the replica's type (*e.g.,* passenger car, multipurpose passenger vehicle) and configuration, but would not be exempt from the ''equipment'' standards. That is, any equipment to which equipment standards apply that is installed on the covered replica vehicles would need to meet all applicable equipment standards in effect on the equipment's date of manufacture.

2. NHTSA emphasizes that a replica vehicle manufacturer's obtaining of an exemption from the FMVSS applicable to vehicles would have no effect on the manufacturer's obligation under the Safety Act to recall and remedy its vehicles if they are found by the manufacturer or NHTSA to contain a defect that creates an unreasonable risk to safety. Further, in such instance, manufacturers of covered replica vehicles must comply with the requirements of 49 U.S.C. 30116 through 30120A relating to defect reporting and notification.[4] In addition, the FAST Act specifies that a low-volume manufacturer's registration in the program may be revoked if the manufacturer fails to comply with requirements or if its vehicles are found to contain a safety-related defect or if the manufacturer engages in unlawful conduct that poses a significant safety risk.[5]

II. Background—Summary of Significant FAST Act Provisions

On December 4, 2015, Congress enacted the FAST Act. Section 24405, ''Treatment of Low-Volume Manufacturers,'' provides a framework to exempt replica vehicles manufactured by low-volume manufacturers from certain vehicle safety standards. Section 24405 amends 49 U.S.C. 30114 by adding a new subsection.[6]

Section 30114(b)(1)(A) directs NHTSA to exempt ''325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer'' from 49 U.S.C. 30112(a). Under 49 U.S.C. 30112(a), a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title. The exemption, as provided in section 30114(b)(1)(B), is limited to the ''Federal Motor Vehicle Safety Standards applicable to motor vehicles and not motor vehicle equipment.''

The FAST Act defines ''low-volume manufacturer'' at 49 U.S.C. 30114(b)(7)(A) as a manufacturer ''whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.'' The definition also specifically excludes persons who are registered as importers under 49 U.S.C. 30141.

[2] Using the above example, the FAST Act exempts the vehicle from meeting the FMVSS in effect on January 1, 2018 applying to passenger cars that are ''vehicle'' standards, such as the standards for braking systems, advanced frontal air bags, side impact head protection, ejection mitigation, roof crush resistance, fuel system crash integrity, and electronic stability control. The equipment used in the manufacture of a replica vehicle would still need to meet any applicable ''equipment'' standards in effect when the equipment was manufactured, such as those for lamps, glazing materials, and tires.

[3] If a manufacturer produces vehicles that do not qualify as replica vehicles, the vehicles would be non-exempt vehicles and would be required to comply with all applicable FMVSS. For example, NHTSA is proposing requirements to ensure that replica vehicles resemble the original vehicle. If a manufacturer submits design plans and NHTSA approves the registration, a deviation from those plans that results in vehicles that do not resemble the original would render those vehicles non-exempt.

[4] 49 U.S.C. 30114(b)(8).

[5] 49 U.S.C. 30114(b)(5).

[6] The FAST Act replica motor vehicle provision is not self-executing, *i.e.,* the Secretary must take steps to implement it. The provision states that the Secretary (NHTSA by delegation) ''shall exempt'' the vehicles. Further, the provision requires low-volume manufacturers to ''register with the Secretary at such time, in such manner, and under such terms that the Secretary determines appropriate'' in order ''[t]o qualify for an exemption.'' NHTSA is proposing to establish 49 CFR part 586 to set forth those determinations in order to implement the program.

The Act defines ''replica motor vehicle'' at section 30114(b)(7)(B) as a motor vehicle produced by a low-volume manufacturer that ''is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle'' and further specifies that the replica motor vehicle must be ''manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.''

To obtain an exemption, the FAST Act requires that a low-volume manufacturer, pursuant to section 30114(b)(2), ''register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate'' and requires that NHTSA establish terms to ''ensure that no person may register as a low-volume manufacturer if the person is registered as an importer under 49 U.S.C. 30141.''

Under section 30114(b)(5), NHTSA has 90 days to review and approve or deny a low-volume manufacturer's registration. If the agency determines that any such registration is incomplete, the agency has an additional 30 days for review. Any registration not approved or denied within 90 days after initial submission, or 120 days if the registration submission is incomplete, is deemed approved. Under section 30114(b)(5), NHTSA is authorized to revoke an existing registration based on a failure to comply with the requirements or a finding by the agency of a safety-related defect or unlawful conduct under this chapter that poses a significant safety risk. NHTSA must provide the registrant a reasonable opportunity to correct all deficiencies, if deemed correctable, at the sole discretion of NHTSA. An exemption granted by NHTSA may not be transferred to any other person, and expires at the end of the calendar year in which it was granted with respect to any volume authorized by the exemption that was not produced by the low-volume manufacturer. The Act directs NHTSA to maintain an up-to-date list of registrants and a list of the make and model of motor vehicles exempted on at least an annual basis and publish such list in the **Federal Register** or on a website operated by NHTSA.

The FAST Act requires, at section 30114(b)(3), that NHTSA require low-volume manufacturers to affix permanent labels to the exempted motor vehicles that identify the specified standards and regulations for which such vehicle is exempt from section 30112(a), state that the vehicle is a replica, and designate the model year such vehicle replicates. The provision also provides an option, under section 30114(b)(3)(B), for the agency to require low-volume manufacturers to deliver written notice of the exemption to the dealer and the first purchaser of the motor vehicle if the first purchaser is not an individual that purchases the motor vehicle for resale.

Further, under section 30114(b)(3)(C), low-volume manufacturers ''shall annually submit a report to [NHTSA] including the number and description of the motor vehicles exempted'' under the exemption for replica vehicles and the list of exemptions described on the required label.

Section 24405 of the FAST Act also exempts replica motor vehicles from 49 U.S.C. 32304, 32502, and 32902 and from section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). That is, replica motor vehicles will be exempt from passenger motor vehicle country of origin labeling requirements, bumper standards, average fuel economy standards, and vehicle labeling and safety rating disclosure requirements.

Section 30114(b)(8) provides that aside from the express exemptions provided, manufacturers of replica motor vehicles ''shall be considered a motor vehicle manufacturer for purposes of parts A and C of subtitle VI'' of title 49. The FAST Act also expressly states that ''[n]othing shall be construed to exempt a registrant from complying with the requirements under sections 30116 through 30120A.'' Sections 30116 through 30120A provide the requirements for defects and noncompliance reporting, notification and remedies.

Section 30114(b)(9) states that nothing in section 30114(b) ''shall be construed to preempt, affect, or supersede any State titling or registration law or regulation for a replica motor vehicle, or exempt a person from complying with such law or regulation.''

Further, section 24405(b) of the FAST Act amends the Clean Air Act to provide a framework for replica motor vehicles (referred to as exempted specially produced motor vehicles) to be exempt from vehicle certification testing and vehicle emission control inspection and maintenance requirement.[7] Among other requirements, the FAST Act directs manufacturers of replica motor vehicles to register with the Administrator of the Environmental Protection Agency and provides requirements for installing engines in exempted replica vehicles.

III. NHTSA's Proposed Replica Vehicle Program—Basics

a. Overview

NHTSA proposes the following provisions to implement the low-volume manufacturer replica vehicle program. Comments are requested on all aspects of the proposal.

The FAST Act contains specific definitions pertinent to the program and has numerous substantive and procedural requirements related to the exemption program. To implement the program and the procedural mandates of the FAST Act, we propose to establish Part 586 to specify definitions, procedural requirements for registration, labeling, consumer disclosures, submitting annual reports, and other matters needed for the administration of the program. This NPRM also proposes changes to Part 565 to require manufacturers to encode specific information into each replica vehicle's VIN, and to Parts 566 and 567 for manufacturer identification and vehicle certification, respectively.

b. Number of Exempted Vehicles Permitted

Under the FAST Act, the exemption program is limited to ''not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer'' that registers with NHTSA.[8]

NHTSA has interpreted the FAST Act to allow NHTSA to grant each registered low-volume manufacturer exemptions to produce up to 325 replica vehicles per calendar year.

c. Low-Volume Manufacturer Requirement

Congress specified that replica vehicles must be ''manufactured or imported by a low-volume manufacturer.'' NHTSA interprets this to mean that the vehicles must be produced by a ''low-volume manufacturer,'' and that replica vehicles may only be imported by their fabricating low-volume manufacturer.[9] This means that replica vehicles

[7] The exemption program is limited to light-duty vehicles and light-duty trucks. 42 U.S.C. 7525(a)(5)(H)(i).

[8] See section 30114(b)(1) and (2).

[9] Interpreting the statute to allow replicas to be produced by foreign manufacturers that do not qualify as low-volume manufacturers and then imported by low-volume manufacturers is contrary to Congress's intent to create an exemption program designed to address the unique financial challenges small manufacturers face.

fabricated by a foreign low-volume manufacturer may only be imported by that specific registered low-volume manufacturer (and each low-volume manufacturer would be limited to importing 325 replica vehicles per year, regardless of the calendar year of manufacture).[10]

NHTSA interprets the FAST Act provision in the same way NHTSA has interpreted the hardship exemption provision in 49 U.S.C. 30113, *i.e.,* as not authorizing the agency to grant hardship exemptions to entities that seek to import vehicles they did not produce.[11] NHTSA believes interpreting section 24405 of the FAST Act in the same manner is appropriate because both provisions recognize that small manufacturers are faced with unique financial challenges in meeting the FMVSS and provide exemptions to alleviate this burden.

Although the Safety Act includes importers in the definition of manufacturer,[12] importers are not always treated the same as fabricating manufacturers. For example, fabricating manufacturers bear the primary responsibility for meeting the FMVSS and certifying to those standards. For this reason, NHTSA does not believe limiting the exemption to fabricating manufacturers is contrary to the statute.

This proposed requirement would mean that an entity seeking to import replica motor vehicles could not register as a low-volume manufacturer of replica vehicles unless it is also the entity fabricating the replica vehicles. NHTSA's interpretation ensures that small importers are not permitted to import replica vehicles that are manufactured by large foreign manufacturers.

NHTSA requests comment on NHTSA's interpretation.

d. Vehicles Built in Two or More Stages

NHTSA requests comment on whether the replica vehicle program should exclude vehicles manufactured in two or more stages. As discussed below, some of the requirements that NHTSA is proposing may be impossible to meet unless the replica vehicle is manufactured in a single stage. This exclusion would provide clarity to manufacturers and ensure that incomplete, intermediate, and final-stage manufacturers do not attempt to become low-volume manufacturers of replica vehicles and later, after expending resources, realize they cannot comply with all the procedural requirements.

NHTSA seeks comment on excluding vehicles manufactured in two or more stages from the exemption program for the following reasons.

First, NHTSA wishes to ensure replica vehicles are properly identified as replicas in their VINs, which could be a problem with replica vehicles manufactured in two or more stages. NHTSA's proposed VIN requirements would stipulate that each replica vehicle must have the identification of its low-volume manufacturer and a designation that the vehicle is a replica encoded in its VIN. The VIN would also be required to indicate the make, model, and model year of the replicated vehicle. Those requirements could not be met by vehicles produced in two or more stages because under NHTSA's VIN regulation, each vehicle manufactured in two or more stages has a VIN assigned by the incomplete vehicle manufacturer.[13] The VIN of an incomplete vehicle may not be able to meet the proposed VIN requirements because the incomplete manufacturer may not know the make, model, and model year of the vehicle being replicated.

NHTSA is proposing a requirement that replica vehicle VINs designate the vehicle as a replica, what year it was manufactured, what vehicle it intends to replicate, the year of the original vehicle, and the identification of the manufacturer responsible for certifying the vehicle's compliance. Although that information may be provided on the certification label, including the information within the VIN provides an easier and more reliable way of verifying the characteristics of the vehicle. Including this information in the VIN and would also allow NHTSA to search its databases for crashes involving replica vehicles and better evaluate the safety of replica vehicles.

Second, NHTSA does not believe that the replica program is conducive to the multi-stage manufacture of replica vehicles as a practical matter. The FAST Act emphasizes that the replica vehicle exemption program is designed for ''low-volume manufacturers.'' The program is set forth in section 24405 of the FAST Act, which is entitled, ''Treatment of Low-Volume Manufacturers.'' The statute repeatedly describes the ''exemption'' as one for ''low-volume manufacturers'' and specifically exempts replica motor vehicles ''that are manufactured or imported by a low-volume manufacturer.'' NHTSA interprets this language to mean that if we were to permit the manufacture of replica vehicles produced in two or stages, each of the manufacturers, at all stages, would need to be a low-volume manufacturer. To our knowledge, incomplete vehicle manufacturers are typically not low-volume manufacturers. As a practical matter, therefore, it is likely that vehicles made in two or more stages would not qualify for the program because of the size of their manufacturer(s).[14]

As an alternative to excluding multi-stage manufacturing from the exemption program, NHTSA is considering allowing joint registration submissions from two or more manufacturers wishing to manufacture replica vehicles. This would allow an incomplete vehicle manufacturer, a final-stage manufacturer, and any intermediate-stage manufacturers to jointly manufacture up to 325 replica vehicles annually. As a condition, however, any manufacturer with a joint registration would not be permitted to participate in the manufacture of any replica vehicles not covered by that registration. Under a joint registration program, the incomplete vehicle manufacturers would be required to code the information about the finished replica vehicle into its VIN. At the onset of manufacturing, the incomplete vehicle would know, as specified in the registration submission, the make, model, and model year of the vehicle the replica resembles.

NHTSA requests comment on whether the replica vehicle exemption program should exclude vehicles made in two or more stages or allow those vehicles to be manufactured under joint registrations from the incomplete

[10] A low-volume manufacturer would not be permitted to import 326 replica vehicles into the U.S. in a single calendar year, regardless of whether those vehicles were fabricated over the course of two calendar years.

[11] See letter to Mr. Bill Cox (March 24, 1997) available at *https://isearch.nhtsa.gov/files/kill.ztv.html.*

[12] 49 U.S.C. 30102.

[13] 49 CFR 565.13(a). See also 49 CFR 567.3 for definitions of ''incomplete vehicle,'' ''incomplete vehicle manufacturer,'' ''final-stage manufacturer,'' and other terms relevant to this discussion.

[14] NHTSA believes problems with program administration could also result if incomplete vehicle manufacturers do not need to be low-volume manufacturers. NHTSA's VIN regulation requires vehicles manufactured in one stage to have the type of vehicle and bus body information encoded into the VIN. For vehicles manufactured in two or more stages, the VIN only identifies the incomplete vehicle manufacturer. If the incomplete vehicle manufacturer were not a low-volume manufacturer and the vehicle was completed as a replica motor vehicle by a final-stage manufacturer which was registered as a low-volume manufacturer of replica vehicles, the replica vehicle's VIN would not be encoded to identify the vehicle as a replica vehicle. This would be a problem because, as noted above, the replica vehicle information included in the VIN identifies what standards are applicable to the vehicle.

vehicle manufacturer, final-stage manufacturer and any intermediate manufacturers. Although NHTSA has concerns about administering the program to allow multi-stage manufacturing, NHTSA believes either proposals will ensure that Congress's goal of limiting the exemption to 325 vehicles per manufacturer per year is not circumvented.

IV. Relevant Definitions

a. Low-Volume Manufacturer

Section 30114(b)(7)(A) defines ''low-volume manufacturer'' as: ''a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of this title, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.'' NHTSA is proposing to use the term ''replica motor vehicle manufacturer'' in the proposed Part 586 rather than ''low-volume manufacturer'' to identify the manufacturers exempted by Part 586 because the latter term is used and defined differently in several other NHTSA regulations. For example, ''low-volume manufacturer'' is defined in the VIN regulation (Part 565) as a manufacturer of fewer than 1,000 vehicles of a given type.

For proposed Part 586, the term ''replica motor vehicle manufacturer'' would be defined as a low-volume manufacturer that is registered as a replica motor vehicle manufacturer pursuant to the requirements in Part 586. The regulation would specify that ''low-volume manufacturer'' is defined in 49 U.S.C. 30114(b)(7). (Hereinafter in this NPRM, NHTSA will use the terms ''replica motor vehicle manufacturer,'' ''replica manufacturer,'' and ''registrant'' to mean a low-volume manufacturer that is registered under Part 586.)

b. Replica Motor Vehicle

Section 30114(b)(7)(B) defines ''replica motor vehicle'' as follows: A motor vehicle produced by a low-volume manufacturer that (i) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and (ii) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

NHTSA is proposing requirements that would provide clarifications to the definition. First, ''replica motor vehicle'' would be defined, in part, as a motor vehicle that is produced by a manufacturer meeting the definition of replica motor vehicle manufacturer under Part 586 that has not yet manufactured 325 replica motor vehicles in that calendar year. This emphasizes the limit of 325 vehicles. Second, we propose requirements that will ensure that a replica vehicle meets the requirement that it be intended to resemble the original vehicle. Third, we address the provision about the manufacture of the vehicle pursuant to certain agreements for the intellectual property rights associated with the original vehicle that is being replicated. The second and third aspects are discussed below.

1. Requirement To Resemble the Replicated Vehicle

The FAST Act states that a replica vehicle is a vehicle that is ''intended to resemble the body'' of another motor vehicle that was manufactured at least 25 years before the replica. NHTSA is proposing requirements that replica manufacturers demonstrate objective manifestations of intent.

To balance objectivity, feasibility, and enforceability, NHTSA is proposing a requirement that manufacturers submit documentation to support the assertion that the replica vehicle is intended to resemble the original. The documentation must demonstrate that the replica vehicle has the same length, width, and height as the original and must include images of the original vehicle and design plans for the replica vehicle.

One way to ensure that a vehicle is intended to resemble another vehicle would be to require the measurements and shape of the replica motor vehicle body to be identical to those of the replicated vehicle. NHTSA has tentatively decided not to propose requiring replica vehicles to have the exact same specifications as the original vehicles. All of the specifications for the original may not be available and some adjustments may be necessary (*e.g.,* to accommodate modern safety features). That being said, our research shows that information regarding the dimensions of popular car models is available. Therefore, NHTSA believes that requiring the replica vehicles to have the same height, width, and length of original would be a reasonable and objective requirement that would help ensure that replica vehicles are intended to resemble the replicated vehicle.

In addition to the dimension and shape requirement, NHTSA is proposing a requirement that each replica vehicle have the same outward appearance or exterior as the original vehicle. This would mean that each replica must have the same body styling, shape, and exterior features as the original. Compliance with this requirement would be determined based primarily on the location, size, and shape of exterior features and the overall shape of the body of the vehicle.

We interpret the Act's reference to ''body'' to mean any part of the vehicle that is not part of the chassis or frame. Therefore, NHTSA interprets ''body'' to include, but not be limited to: The exterior sheet metal and trim, the passenger compartment, trunk, bumpers, fenders, grill, hood, interior trim, lights and glazing. In making this interpretation, NHTSA looked at, among other things, its concept of ''body type'' as defined at 49 CFR 565.12. ''Body type'' is defined as the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (*e.g.,* sedan fastback, hatchback). This definition helped NHTSA identify vehicle features and components that are part of the vehicle body. Because the definition includes reference to the shape of the vehicle as well as both exterior and interior features, NHTSA interprets the concept of ''body'' to include both exterior and interior characteristics. Although a replica vehicle must be the same body type as the original vehicle, merely replicating the number of doors and windows, cargo-carrying features, and the roofline is not sufficient.

In each manufacturer's annual report, the manufacturer would submit: Images of the original vehicle, images of the replica produced, and full and complete descriptive information, views, and arguments sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle.

Deviations in the appearance of the exterior would be considered carefully. While reasonable allowances would be made to accommodate safety equipment, NHTSA would consider any unjustified exterior changes (*e.g.,* not for safety) as potential indications that the vehicle is not a replica. If a replica manufacturer wants to make deviations to the exterior of the vehicle to accommodate safety features, it would be required to highlight those deviations for NHTSA's consideration.

To be clear, the statute provides for the creation of an exemption program

designed to allow old models to be replicated in a less costly way for low-volume manufacturers. It does not allow manufacturers to experiment with new motor vehicle designs or produce vehicles that do not resemble vehicles made not less than 25 years before the replica motor vehicle's manufacture.

As the statutory definition refers specifically to the ''body'' of the original vehicle, we propose that the interior of the replica vehicle does not need to ''resemble'' that of the original vehicle. NHTSA believes this approach would allow low-volume manufacturers to update the interiors to provide modern amenities and safety improvements.

NHTSA does not interpret the resemblance or licensing provisions in the FAST Act as requiring replica vehicle manufacturers to obtain rights to put all logos and emblems that were on the original vehicle on the replica vehicle. Although separate from body styling, the logos and emblems are part of the distinctive external appearance of a vehicle. Whether vehicle logos and emblems are required to appear as part of the requirements to produce a vehicle that resembles an original vehicle is a separate concern from whether replica manufacturers are required to obtain licenses from rights holders to use the logos and emblems. NHTSA addresses intellectual property rights requirements in the next section. In this section, NHTSA requests comment on whether replica production under these requirements should mandate the use of the actual logos, emblems and vehicle model names that appear originally or if something less or different in this area should apply. To be clear, NHTSA is not proposing to require the use of vehicle logos and emblems as a requirement of resemblance under the statute at this time.

NHTSA considered a provision requiring replica vehicles to resemble the body of the original vehicle not only cosmetically, but also with respect to the vehicle's conformance with the ''vehicle'' FMVSS that applied to the original vehicle. This provision would require at a minimum, the replica vehicle's body to include the safety features incorporated in the original vehicle to meet the vehicle FMVSS. The section titled ''Considered Requirements'' below discusses this further and the reasons NHTSA decided not to take this approach.

Because we interpret ''body'' not to include chassis or frame components, the replica would not need to have the same engine, transmission or drive axles, or drive train as the original vehicle. For example, a replica vehicle could be a battery electric vehicle, while the original vehicle was powered by an internal combustion engine.

Further, we propose that the replica vehicle must resemble the body of another motor vehicle that was manufactured ''for consumer sale'' not less than 25 years before the manufacture of the replica motor vehicle. The provision ''for consumer sale'' is intended to make clear that the proposed replica vehicle exemption program does not apply to prototype or concept vehicles that were never sold to consumers. NHTSA intends to prevent the replication of prototypes because the vehicles were never intended for sale to the public. Further, a prototype would not be eligible for replication under this provision because the Safety Act defines motor vehicle as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.[15] A prototype not intended for sale to the public does not meet the definition of a vehicle manufactured for use on public streets, roads, and highways. Therefore, as the FAST Act provision requires that the replica vehicle resemble another motor vehicle, a vehicle replicating a prototype would not qualify for the exemption provided by section 30114(b).

NHTSA requests comment on the requirement for replica vehicles to have the same dimensions and outward appearance as the original vehicle and whether the logos and emblems from the original vehicle should be reproduced on each replica vehicle. We also seek comment on the requirement that manufacturers submit images of the both the original vehicle and design plans or images of a representative replica vehicle in the registration submission and requirement to submit images of the replica vehicle(s) in the annual report.

2. Requirement To Manufacture Under License Agreement for Intellectual Property Rights

The FAST Act states that a replica motor vehicle ''is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.'' NHTSA views this provision as requiring replica vehicles manufactured under this program to be licensed products. This means that the manufacturer must obtain all legal rights necessary to produce the replica vehicle from the original manufacturer, its successes or assignees, or current owner of such intellectual property rights. As is clear from the comprehensive listing of the type of rights that might apply in such an effort, while creating an exemption for replica manufacturers, Congress also sought to protect the rights of the original manufacturers and their successors.

NHTSA is defining legal rights to be primarily based on the external appearance of the vehicle. Under the statute, replica manufacturers are defined as producing vehicles that are intended to resemble the body of another motor vehicle. NHTSA is not applying the definition to require that manufacturers also obtain rights associated with vehicle mechanics, electronic components or other interior aspects of a vehicle, unless implicated by the reproduction or otherwise necessary to ensure that the outward facing appearance of the replica vehicle resembles the original vehicle. While it is clear that such rights might exist, in our view, it is not necessary in most situations to obtain those rights for the purpose of producing a replica. However, we accept that some types of replica production may require intellectual property rights to components or other parts that are separate from the outward facing appearance of a vehicle.

In this document, NHTSA is not identifying any specific intellectual property rights that must be obtained by a replica manufacturer. However, as noted above, the FAST Act includes a definition of replica vehicle that identifies specifically ''product configuration, trade dress, trademark, or patent'' as intellectual property rights that might be licensed from a current rights holder prior to production. Based on this, replica manufacturers should consider what intellectual property rights are needed for production and obtain such rights prior to seeking registration with NHTSA.

For example, the FAST Act expressly includes trademarks as part of the rights that a manufacturer would obtain from an original manufacturer to produce a replica. Trademarks may cover vehicle make and model names or logos. Since NHTSA is requiring that replica manufacturers identify the original vehicle(s) it intends to replicate by make and model name and certify that the replica is intended to resemble and replicate the original, the manufacturer should consider whether it is necessary to obtain these rights. Certifying that a

[15] 49 U.S.C. 30102(a)(7).

vehicle is intended to resemble another vehicle could implicate intellectual property rights for trademarked, or otherwise protected, make or model names. However, NHTSA is not proposing any specific requirement at this time that replica manufactures affirmatively obtain these rights in connection with the manufacture of replica vehicles. NHTSA seeks comment on whether the replica vehicle manufacturer must obtain a license to use the original vehicle's make and model names and reserves the right to add a requirement based on the nature of the comments received.

NHTSA's role is to ensure that the manufacturers who register under this program meet the statutory requirements set forth in the FAST Act. Although NHTSA will review registration applications, NHTSA will not determine what intellectual property is required to produce a replica vehicle. Manufacturers remain responsible for performing the due diligence necessary to determine what rights are needed, and to obtain relevant rights. In areas of dispute, where the rights of a replica manufacturer are questioned, NHTSA plans to allow general legal procedures to take place without involvement.

That being said, NHTSA wants to ensure that manufacturers seeking registration under the statute have the legal basis to produce the replica vehicle. In order to protect rights holders and to mitigate the chance that lawsuits will emerge from this process, NHTSA is proposing that, when submitting its registration, manufacturers must provide a binding certification that attests that they can legally produce each replica vehicle model they propose to make. This requirement means that manufacturers must certify that they have determined the legal rights required and that they have obtained all licenses or permissions necessary to produce the replica vehicle. Applications that contain a missing or incomplete certification would be disapproved.

In addition to the required certification, the manufacturer also must provide supporting documentation that sets forth a description of the types of intellectual property that are necessary to produce the replica vehicle, addressing the status of each of those rights. If the manufacturer has a license for particular rights, it should provide documentation to that effect. If intellectual property rights for the original vehicle are no longer protected, the manufacturer should include a statement briefly stating the basis for concluding that no license is required. As an example,[16] a manufacturer seeking to replicate a Shelby Cobra must be able to state that it has the legal right to produce its distinctive body styling or explain why the body styling is no longer protected and provide support for this position. The information submitted also must address the fact that ''Shelby'' and ''Cobra'' are both trademarked and that permission may be required from both Carroll Shelby International and Ford Motor Company to manufacture the replica vehicle. As shown in the example above, the intellectual property of one vehicle may be owned by multiple individuals or entities. In those situations, licenses would need to be obtained from each one.

NHTSA is also proposing clarifying an aspect of the requirement that replica motor vehicles be manufactured under licensing agreements for the intellectual property rights of the original vehicles. The statute is ambiguous concerning the treatment of current owners of intellectual property rights that wish to manufacture replica vehicles. That is, the statute could arguably be read to require license agreements even when the current owner of the intellectual property also intends to manufacture the replica vehicles. NHTSA believes this creates an unnecessary step for current rights holders and does not meet Congress' intent with these requirements. Accordingly, NHTSA interprets the licensing requirement to apply only when a manufacturer intending to produce replica vehicles does not own the intellectual property rights to the original vehicle (which is being replicated).

V. Safety Requirements

a. Equipment FMVSS

The FMVSS apply to motor vehicles and/or motor vehicle equipment that are manufactured on or after the effective date of the standard.[17] The covered replica vehicles would be exempt from complying with the ''vehicle'' standards in effect on the date of manufacture of the replica that apply to new vehicles of the replica's type (*e.g.,* passenger car, multipurpose passenger vehicle) and configuration. However, equipment on a replica vehicle would not be exempt from the ''equipment'' standards in effect on the equipment's date of manufacture that apply to equipment items on or in the vehicle. Equipment to which an FMVSS applies must meet the applicable standard in effect on the equipment's date of manufacture, regardless of whether it is installed on a conforming vehicle or a vehicle granted a replica vehicle exemption.

Whether an FMVSS is a ''vehicle'' standard or an ''equipment'' standard is determined by the ''Application'' section of the standard. If vehicle types are listed in the section, such as ''passenger cars, multipurpose passenger vehicle, trucks, and buses,''[18] the standard is considered a ''vehicle'' standard. If equipment items are listed in the section, the standard is an ''equipment'' standard.[19] A standard that lists both motor vehicles and equipment items in its applicability section is considered both a vehicle and an equipment standard.[20] Replica vehicles would be exempt from any standard or portion of a standard that applies only to vehicles.

If an FMVSS that is both a vehicle and an equipment standard has requirements that apply to vehicles that are vehicle-specific, separate from requirements that apply to the equipment items, in NHTSA's view the replica motor vehicles are exempt from the vehicle-specific requirements but the requirements applying to the motor vehicle equipment would continue to apply. For example, for FMVSS No. 108, ''Lamps, reflective devices, and associated equipment,'' while the replica vehicle would not need to comply with vehicle-specific requirements specifying where lamps must be placed on the vehicle, the replica vehicle's lamps must meet the applicable portions of the standard that apply to lamps as equipment items on the date that the lamps were manufactured. Compliance with the vehicle portion of FMVSS No. 108 may be difficult or impossible when trying to produce a vehicle that resembles the appearance of an older vehicle, *e.g.,* the number and/or location of headlamps and/or tail lamps on the replica might not meet the specifications of FMVSS No. 108.

[16] Please note that this example is provided for illustrative purposes only. The types of intellectual property rights discussed for the Shelby Cobra are not meant to be authoritative or exhaustive. It is merely provided as an example of some of the types of intellectual property rights a prospective replica manufacturer should look to when obtaining licenses to manufacture a replica.

[17] 49 CFR 571.7(a).

[18] See *e.g.,* FMVSS No. 101, ''Controls and displays,'' S3, ''Application.''

[19] *E.g.,* FMVSS No. 209, ''Seat belt assemblies,'' S2, ''Application,'' states: ''This standard applies to seat belt assemblies for use in passenger cars, multipurpose passenger vehicles, trucks, and buses.''

[20] *E.g.,* FMVSS No. 205, ''Glazing materials,'' S3, ''Application,'' states, in relevant part: ''This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motor and low speed vehicles, and to glazing materials for use in those vehicles.''

Another notable standard that is both a vehicle and an equipment standard is FMVSS No. 208, ''Occupant crash protection.'' FMVSS No. 208 is mainly thought of as a vehicle standard requiring the installation of air bags and seat belts and specifying vehicle crash tests to evaluate the protective capabilities of those devices. However, section S9, ''Pressure vessels and explosive devices,'' applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in covered motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.[21] If a replica motor vehicle has a pressure vessel or explosive device, it must meet the requirements of S9 of FMVSS No. 208.

To assist the reader, the following is a list of current equipment FMVSS that would apply to motor vehicle equipment manufactured on today's date for installation in replica motor vehicles[22] if the program were in place today:

FMVSS No. 106, *Brake hoses;*

FMVSS No. 108, *Lamps, reflective devices, and associated equipment;*

FMVSS No. 109, *New pneumatic and certain specialty tires;*

FMVSS No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less;*

FMVSS No. 116, *Motor vehicle brake fluids;*

FMVSS No. 117, *Retreaded pneumatic tires;*

FMVSS No. 119, *New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles;*

FMVSS No. 120, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds);*

FMVSS No. 125, *Warning devices;*

FMVSS No. 129, *New non-pneumatic tires for passenger cars;*

FMVSS No. 139, *New pneumatic radial tires for light vehicles;*

FMVSS No. 205, *Glazing materials;*

FMVSS No. 208, *Occupant crash protection, for pressure vessels and explosive devices;*

FMVSS No. 209, *Seat belt assemblies;*

FMVSS No. 213, *Child restraint systems;*

FMVSS No. 218, *Motorcycle helmets;*

FMVSS No. 223, *Rear impact guards;*

FMVSS No. 304, *Compressed natural gas fuel container integrity;* and

FMVSS No. 403 *Platform lift systems for motor vehicles.*

b. Considered Requirements

In drafting this proposed rulemaking, NHTSA considered adding requirements to ensure that replicas provide a minimum level of vehicle safety beyond the performance of discrete equipment items. At this time, NHTSA is not proposing any additional safety requirements, but comments are requested to inform future agency action.

One considered approach would require replica vehicles to resemble the body of the original vehicle not only cosmetically, but also with respect to the safety designs and components incorporated into the body of the original vehicle to meet the vehicle FMVSS applying to that original vehicle. Features that meet a more current version of a standard would also be permitted under this approach.[23]

The language of the FAST Act directs NHTSA to exempt covered replica vehicles but to limit that exemption only to the current ''vehicle'' FMVSS that apply today to contemporary, newly completed vehicles. The Act defines ''replica motor vehicle'' in relevant part,[24] as ''a motor vehicle produced by a low-volume manufacturer and that . . . is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle.'' The agency is considering whether replica vehicles should be required to resemble the body of the original vehicle not just superficially but also structurally with respect to designs that met the vehicle FMVSS applying to the original, but is not proposing to do so at this time.

c. Safety-Related Defects

NHTSA emphasizes that a replica vehicle manufacturer's obtaining of an exemption from the FMVSS applicable to vehicles would have no effect on the manufacturer's obligation under the Safety Act to recall and remedy its vehicles if they are found by the manufacturer or NHTSA to contain a defect that creates an unreasonable risk to safety. Further, in such instance, manufacturers of covered replica vehicles must comply with the requirements of 49 U.S.C. 30116 through 30120A relating to defect reporting and notification. In addition, the FAST Act specifies that a low-volume manufacturer's registration in the program may be revoked if the manufacturer fails to comply with requirements or if its vehicles are found to contain a safety-related defect or if the manufacturer engages in unlawful conduct that poses a significant safety risk.

VI. Registration Requirements

This NPRM proposes requirements to implement the amendments made by section 24405 of the FAST Act to 49 U.S.C. 30114. Each manufacturer wishing to manufacture replica motor vehicles under this program must register, according the requirements in Part 586, as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured. Under 49 U.S.C. 30114(b)(2), low-volume manufacturers must be registered ''[t]o qualify for an exemption.''

NHTSA would determine whether a manufacturer is eligible and permitted to manufacture replica motor vehicles based on the information the manufacturer provides in its registration documents. We propose that manufacturers would register using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (*https://vpic.nhtsa.dot.gov/*). We request comment on whether submissions should be allowed to be submitted by mail as well.

We propose that manufacturers must submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

NHTSA proposes requiring that each manufacturer provide information, in its registration submission, about the replica vehicle it intends to manufacture, including a statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year. The manufacturer must submit images of the

[21] 49 CFR 571.208, S9.

[22] These are the FMVSS applying now to equipment only and to both vehicles and equipment. This list is provided here for illustration purposes only and not for purposes of establishing compliance. The list is also subject to change and/or correction. Manufacturers are responsible for ensuring the compliance of their vehicles and/or equipment with all applicable FMVSS and for keeping current with the FMVSS that apply to their vehicles and/or equipment.

[23] Note that, as explained above, regarding equipment items for which an FMVSS applies, the replica vehicle would be required to have the equipment that met the equipment FMVSS when it was manufactured.

[24] 49 U.S.C. 30114(b)(7)(B).

front, rear, and side views of the original vehicle's exterior.

The manufacturer would also need to provide documents showing that it has obtained the intellectual property rights to produce the replica vehicle, documents to support that it has done so, and a statement certifying to that effect. Proof of such rights could be shown by furnishing a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or the current owner of such product configuration, trade dress, trademark, or patent. As discussed above this documentation could also include a statement as to why obtaining licenses for certain intellectual property is not required.

The manufacturer would also need to certify that it will not manufacture more than the number of replica motor vehicles covered by the requested exemption, a number not more than 325 replica motor vehicles in a calendar year. NHTSA interprets this limitation to mean that a manufacturer is limited to 325 replica vehicles, regardless of whether it is manufacturing replicas of different makes and models of vehicles. NHTSA also interprets this limitation to apply to manufacturers under common ownership. For example, if a parent company or individual owns two low-volume manufacturers, the 325-limit would apply to all manufacturers under common ownership. Each low-volume manufacturer would not be permitted to manufacture 325 replicas. Instead, the two manufacturers under common ownership would need to submit one registration submission and collectively cannot manufacture more than 325 replica vehicles in any given calendar year. NHTSA interprets the statute this way to ensure that the 325-replica limit set by Congress is not circumvented.

Further, the manufacturer would need to submit information required by other administrative regulations, including all information required by 49 CFR part 566 to identify itself to NHTSA as a replica motor vehicle manufacturer (see below for proposed amendments to Part 566), VIN-deciphering information required by 49 CFR part 565, and a designation of a permanent resident of the United States as its agent for service of process if the manufacturer is not located in the United States (49 CFR part 551, subpart D). (NHTSA does not believe that any changes to the regulation at 49 CFR part 551, subpart D for manufacturers of replica motor vehicles are needed.)

49 U.S.C. 30114(b)(5) specifies that NHTSA has 90 days to review and approve or deny a registration. This new subsection also provides an additional 30 days if the registration is determined to be incomplete. We anticipate setting up the program so that registration under Part 586 on the vPIC portal provides an acknowledgment of receipt of the registration to the manufacturer when the registration is submitted. As some of the information will be provided by the manufacturer in attachments, NHTSA will review the submission, including attachments, within 90 days of acknowledging receipt to ensure that the registration is complete. If the registration is incomplete, NHTSA will inform the manufacturer that the registration is incomplete via email. NHTSA is proposing to give manufacturer 60 days from the date of NHTSA's email to submit the necessary information to complete the registration. If the necessary information is not submitted within 60 days, the registration will be denied. NHTSA requests comment on whether this 60-day period to respond is appropriate. The manufacturer may resubmit the denied registration (presumably, the resubmitted registration will include the information NHTSA identified as missing from the prior application) but the 90-day clock will reset.[25]

A manufacturer may submit additional information to supplement its registration per NHTSA's notification of an incomplete registration (within 60 days of receipt of such notice), or may submit additional information on its own initiative. In these instances, NHTSA will have 30 additional days to review the amended registration. That is, these 30 days will be added to any remaining days from the initial 90-day review period. If the submission is still incomplete, NHTSA will deny the registration.

On receipt of a complete registration, NHTSA will review and approve or deny the registration. 49 U.S.C. 30114(b)(5) states that any registration not approved or denied within 90 days after initial submission, or 120 days if the registration submitted is incomplete, shall be deemed approved.

We propose that a low-volume manufacturer is not considered registered with NHTSA unless the manufacturer receives confirmation from NHTSA that its registration is approved. A manufacturer whose registration is not approved or denied within the allotted time, who believes its registration is thus deemed approved, must obtain confirmation of the approval from NHTSA. When NHTSA confirms the approval, NHTSA would add the manufacturer to the up-to-date list of registrants.

The reason for requiring that manufacturers obtain confirmation of approvals in the circumstances describe above is to better safeguard the integrity of the exemption program against confusion and fraud. This approach would avoid situations in which a manufacturer might assume its registration was deemed to be approved when in fact it was never received by NHTSA. An up-to-date list of registrants will show the ''deemed to be approved'' registrants, and the confirmation process better establishes a means of communication between NHTSA and the manufacturer to achieve this end. The list will be important to enable members of the public to check whether the low-volume manufacturer they are dealing with in fact qualifies for an exemption under this replica vehicle program and which vehicles are covered by the exemption. The list will also provide NHTSA with a strong enforcement mechanism to monitor if manufacturers are lawfully presenting themselves as registrants and to check which vehicles they are offering for sale, a mechanism that would better ensure that only vehicles covered by approved and deemed to be approved registrations are being manufactured and sold.

NHTSA is proposing that, in the case that a registration is deemed approved, NHTSA may request additional information from a ''deemed approved'' replica manufacturer when the registration submission is incomplete or does not meet the requirements in the new Part 586. NHTSA is proposing that, when notified of the submission's shortcomings, the manufacturer would have 60 days to submit information to correct and/or complete the registration. If the manufacturer fails to submit the requisite information, NHTSA may revoke the registration.

NHTSA requests comment on requirement for ''deemed approved'' replica manufacturers to respond within 60 days. NHTSA also requests comment on what actions NHTSA should take in regards to revoking a ''deemed approved'' replica manufacturer. For purposes of this NPRM, NHTSA is proposing to revoke a registration if the manufacturer fails to respond within the allotted time. At NHTSA's discretion, additional time may be provided if the deficiencies of the registration are deemed correctable. And, consideration would be provided for the length of time that NHTSA took to identify the

[25] Repetitious incomplete or inadequate registrations will be denied. For example, if a manufacturer submits the same, previously-denied registration in identical form a second time, NHTSA may deny it without going through the step of asking for more information.

deficiency and the extent that the manufacturer should have been aware that the registration did not comply with the requirements.

49 U.S.C. 30114(b)(5) specifies that NHTSA has the authority to revoke a registration based on a failure to comply with requirements or a finding of a safety-related defect or unlawful conduct.

Section 30114(b)(5) also states that an exemption granted to a low-volume manufacturer may not be transferred to any other person, and expires at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the manufacturer to vehicles built during that calendar year. NHTSA understands 49 U.S.C. 30114(b)(5) to address the vehicles that could have been made under an exemption in a calendar year but which were not, and not as requiring that manufacturers must re-register (renew their registrations) annually. NHTSA has tentatively decided that registrants may carry forward their registration by informing NHTSA in an annual report (discussed below) of their intent to continue manufacturing the vehicles covered by the approved registration, and need not formally re-register annually at the end of the calendar year concerning those covered vehicles. If an approved replica manufacturer wishes to manufacture a different replica vehicle or make modifications to a replica covered by an existing registration, the registrant must submit an update to their existing registration with all necessary supporting documentation. 49 U.S.C. 30114(b)(5) specifies that NHTSA must maintain an up-to-date list of registrants and a list of the make and model of exempted motor vehicles on at least an annual basis and publish such list in the **Federal Register** or on a website operated by NHTSA. We anticipate posting such a list on NHTSA's website where it can be easily accessed and updated.

VII. Other Administrative Requirements

a. Manufacturer Identification Requirements (49 CFR Part 566)

NHTSA is proposing an amendment to Part 566 to list replica motor vehicles among the types of vehicles manufactured. Manufacturers who have already submitted information under Part 566 would be required to update their information as required by § 566.6 before manufacturing replica vehicles.

The addition of replica motor vehicles to the types of vehicles is merely for identifying the vehicle as a replica and does not supplant the vehicle's type for application of FMVSS. The manufacturer of a replica vehicle would determine which standards the replica vehicle is exempt from by looking at the standards for a vehicle of that body type and the VIN and certification labels would reflect that the vehicle is a replica of a specific body type (*e.g.,* replica passenger car).

In addition, NHTSA is proposing to update [26] § 566.5 to indicate that the required information for all manufacturers may either be submitted via mail or the vPIC portal.[27] Replica motor vehicle manufacturers, however, would be required under § 586.6 to submit the required Part 566 information via vPIC. Due to the potential for delay when filing outside the vPIC portal, either due to errors or delivery delays, most, if not all Part 566 manufacturer identification entries are currently being submitted on vPIC.

b. Manufacturer Identifier

Replica motor vehicle manufacturers would need to obtain a manufacturer identifier in this program, like other manufacturers are currently required to do. Currently, a manufacturer that intends to manufacture motor vehicles for sale or introduction into interstate commerce in the United States must obtain a manufacturer identifier from SAE International. The manufacturer identifier is incorporated into the vehicle's VIN (see section below). NHTSA has a contract with SAE International to assign manufacturer identifiers to manufacturers in the United States. Manufacturers would contact SAE International directly (and not NHTSA) to request the assignment of a manufacturer identifier. They would do so by telephoning 724–772–8511 or by writing to: SAE International, 400 Commonwealth Avenue, Warrendale, PA 15096, Attention: WMI Coordinator.

c. VIN

NHTSA's regulations at 49 CFR part 565 require, among other things, a motor vehicle manufacturer to assign each motor vehicle manufactured for sale in the United States a 17-character VIN that uniquely identifies the vehicle. Under regulations administered by NHTSA, a vehicle identification number is ''a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes.'' (49 CFR 565.12(r)).

VINs serve a variety of public safety purposes. One of the original purposes of the VIN requirements was to enhance public safety by deterring vehicle theft based on the assumption that drivers of stolen vehicles are more likely to operate those vehicles unsafety and thus be involved in vehicle crashes.[28] The current VIN system continues to serve this purpose and, as stated in Part 565, also serves ''to increase the accuracy and efficiency of vehicle recall campaigns.'' [29] The VIN has also become the key identifier in data systems that track such things as compliance with Federal importation regulations, vehicle registrations, insurance coverage, and motor vehicle crashes. Entities that today utilize VINs in data systems include NHTSA, state motor vehicle departments, law enforcement agencies, insurance companies, organizations involved in motor vehicle research, and manufacturers.[30]

NHTSA has considered whether changes are required to the regulations at 49 CFR part 565 for replica motor vehicles. The first section of the VIN (positions 1–3) uniquely identifies the manufacturer and type of the motor vehicle if the manufacturer is a high-volume manufacturer. If the manufacturer is a low-volume manufacturer, positions one through three along with positions twelve through fourteen in the VIN must uniquely identify the manufacturer and the type of the motor vehicle. The manufacturer identifier occupies the first three characters of the VIN for manufacturers that produce 1,000 or more vehicles of a specified type within a model year, and positions 1, 2, 3, 12, 13, and 14 of VINs assigned by manufacturers that produce less than 1,000 vehicles of a specified type of motor vehicle per model year. Because this proposal would create a new vehicle type for replica motor vehicles in Part 565 and each manufacturer is limited to manufacturing 325 replica vehicles per year, all manufacturers of replica vehicles would need to obtain new manufacturer identifiers that contain six characters. Therefore, even existing manufacturers who are manufacturing passenger cars would need to obtain new manufacturer identifier to manufacture replica passenger cars. However, the same identifier could be used for manufacturing different vehicle types. The vehicle type of the replica vehicles (*e.g.,* passenger car, MPV) would be

[26] The existing address in this section is an out-of-date address for NHTSA.

[27] *https://vpic.nhtsa.dot.gov/.*

[28] 73 FR 23367–01, September 30, 2008.

[29] 49 CFR 565.10.

[30] 73 FR 23367–01, September 30, 2008.

indicated in positions four through eight.

The second section of the VIN (positions 4–8) is known as the ''Vehicle Descriptor Section.'' This section contains information on vehicle attributes, which vary based on the vehicle's type classification (*i.e.,* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low speed vehicle).

The third section (position 9) is a check digit, used to determine whether the remainder of the VIN is properly configured.

The fourth section (positions 10–17) contains a variety of information. Position 10 represents the vehicle's model year. NHTSA interprets model year for the purposes of this replica vehicle program as the calendar year in which the vehicle was manufactured, and not, in the case of replica motor vehicles, the year the vehicle being replicated was originally manufactured. While these vehicles will be exempt from vehicle FMVSS, this information will be important for enforcement purposes. As discussed below, NHTSA is also required to include reporting requirements in this regulation, and NHTSA has proposed requirements that distinguish the year of manufacture from the year the replicated vehicle was manufactured.

Position 11 is the plant code, assigned by the manufacturer and reported to NHTSA.

For manufacturers of replica motor vehicles, positions 12–14 will be the remainder of the manufacturer identifier, which, with the characters in positions 1–3 of the VIN, uniquely identify the manufacturer and vehicle type for manufacturers that produce less than 1,000 vehicles of that type per model year. Positions 15–17 are the numbers sequentially assigned by the manufacturer during the production process.

NHTSA is proposing to amend the second section (Vehicle Descriptor Section), positions 4–8, of the VIN to include specific vehicle attributes for replica vehicles. Within positions 4–8, the manufacturer must identify, in addition to the attributes specified in table I of Part 565 for the vehicle's type classification (*i.e.,* passenger car, multipurpose passenger vehicle, truck bus) that the vehicle is a replica.

This information would be important to NHTSA for tracking the safety of the replica motor vehicles and for other purposes. It also may be desirable to the States, which are permitted to regulate these vehicles under the provisions of the FAST Act.

NHTSA is also proposing amendments to Table I of § 565.15 which would require replica manufacturers to encode the make, model, and model year of the original replicated vehicle into the replica vehicle's VIN.

NHTSA is requesting comment on the proposed VIN requirements for replica motor vehicles.

d. Certification

Section 30114(b)(3)(a) directs NHTSA to require low-volume manufacturers to affix permanent labels to the exempted vehicles that identify the specified standards and regulations for which the vehicle is exempt, states that the vehicle is a replica, and designates the model year such vehicle replicates. NHTSA considered whether the label should be conspicuous or whether it should be in the same location as the certification labels required under 49 CFR part 567. While NHTSA believes that consumers should be provided a conspicuous warning label, NHTSA believes that aim is better accomplished by a requirement that manufacturers affix a temporary label, as discussed below.

To satisfy the requirement to have a permanent label, NHTSA is proposing requirements similar to those for certification labels that are required under 49 CFR part 567. NHTSA believes these labels will provide necessary information about the safety of the replica vehicle without detracting from the customer experience. NHTSA requests comments regarding the permanent label's placement and content requirements.

49 CFR part 567 includes permanent labeling requirements for motor vehicles to implement the certification requirements of 49 U.S.C. 30115. This NPRM proposes amendments to Part 567 to include a specific provision for certifying replica vehicles. Most of the requirements would be the same as those for non-replica vehicles.

For example, NHTSA is first proposing that § 567.4(a) be amended to include ''replica motor vehicles'' in the list of vehicles that are exempt from those requirements. Section 567.3 would be amended to include a definition of ''replica motor vehicles'' as discussed above. Next, new requirements for replica motor vehicles would be added in a similar format to the existing requirements. NHTSA is proposing to include the requirements in a new § 567.8. Many of the requirements would be the same or similar to those for other vehicles, such as the location on the vehicle where the label is to be affixed, as well as the contents of the label, including manufacturer name, month and year of manufacture, VIN, GVWR, vehicle type classification, and gross vehicle and gross axle weight ratings.

However, as amended by the FAST Act, 49 U.S.C. 30114(b)(3)(A) specifies that NHTSA shall require low-volume manufacturers to affix a permanent label to motor vehicles produced pursuant to a replica vehicle exemption. The label must identify the specified standards and regulations from which the replica vehicle is exempt under 49 U.S.C. 30112(a), state that the vehicle is a replica, and designate the model year such vehicle replicates. NHTSA is proposing that the requirements for permanent labeling be incorporated into the requirements for certification labels under 49 CFR part 567. NHTSA is proposing to incorporate the permanent label requirements for replica motor vehicles in the certification section to avoid duplicative requirements.

Details of the proposed permanent label requirements are discussed in a section below.

e. Importation of Replica Motor Vehicles

Imported replica vehicles will be subject to requirements in Part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.* Section 591.5, *Declarations required for importation,* requires importers to file declarations and documentations with U.S. Customs and Border Protection at the time vehicles or items of motor vehicle equipment are imported. Consistent with NHTSA's treatment of vehicles that are subject to exemptions under Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* replica vehicles will be permitted to be imported pursuant to 49 CFR 591.5(b). This means that importers will mark box ''2A'' on NHTSA's HS–7 declaration form, Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper when importing a replica motor vehicle. NHTSA requests comment on whether the agency should amend 49 CFR 591.5 to provide clarity and include specific language that states that replica vehicles may be imported pursuant to a declaration under 49 CFR 591.5(b).

VIII. Labels and Other Consumer Disclosures

a. Permanent Label

As amended by the FAST Act, 49 U.S.C. 30114(b)(3)(A) specifies that NHTSA shall require low-volume manufacturers to affix a permanent label to motor vehicles produced pursuant to

a replica vehicle exemption. NHTSA is proposing that the requirements for replica labeling be incorporated into the requirements for certification labels under 49 CFR part 567 because Part 567 includes permanent labeling requirements for motor vehicles pertaining to certification to the FMVSS.

Part 567 currently requires manufacturers to certify that the vehicle conforms to all applicable FMVSS. This NPRM proposes a different statement for replica vehicles. For replicas, the label would state that the vehicle is a replica, and designate the model year such vehicle replicates. The label would state that the vehicle is exempt from FMVSS that apply to a vehicle of its type and include a list of all vehicle FMVSS and regulations the vehicle does not meet.

b. Written Notice to Dealers and First Purchasers

The FAST Act permits NHTSA to require registrants to provide ''written notice of the exemption'' to dealers and first purchasers of replica vehicles.[31] Accordingly, NHTSA proposes to require a written disclosure to dealers and first purchasers of these vehicles which would consist of a list of the FMVSS and regulations from which the vehicle is exempt. To better inform consumers, NHTSA is proposing that the manufacturers provide a ''purpose'' statement for each standard and regulation from which the vehicle is exempt. The purpose statement would assist consumers in understanding the safety implications of the exemptions.

NHTSA has proposed purpose statements for each of the standards and regulations covered by the replica vehicle exemptions for inclusion in a table to Part 586. NHTSA is proposing using slight revisions of the existing ''purpose'' statements set forth at the beginning of each NHTSA regulation and standard in the CFR. NHTSA is asking for comments about whether the statements are easy to understand. The agency also requests comment on whether the table is needed or desirable. Registrants could research the CFR and provide the purpose statements on their own without NHTSA's intervention and without the need for NHTSA to conduct rulemaking to amend the table as necessary.

c. Temporary Label

To draw the potential purchaser's attention to the written disclosure and to better inform consumers about the safety implications of their purchasing decisions, NHTSA is proposing a requirement that each replica vehicle have a temporary label on the dashboard or steering wheel hub, similar to the temporary air bag warning required by 49 CFR 571.208 S4.5.1(e) when the vehicle is offered for sale. NHTSA is proposing that the label conform to the color and size requirements of 49 CFR 571.208 S4.5.1(e)(1)(i) and (ii), and include the following statement in at least 20-point font: ''This motor vehicle does not conform to all applicable Federal motor vehicle safety standards. Refer to the written disclosures provided for further information.'' Comments are requested on whether there are more effective means of warning consumers about the replica vehicles' nonconformance with the applicable FMVSS, such as whether the warning should also be provided on advertisements and other marketing materials for the vehicles. NHTSA also requests comment on the appropriate minimum lettering size for the temporary warning label. Specifically, NHTSA requests comment on whether the requirement that the warning statement be in 20-point font or larger is appropriate to ensure legibility and conspicuity.

IX. Reporting

Under 49 U.S.C. 30114(b)(3)(C), NHTSA must require replica manufacturers to submit an annual report providing the number and description of motor vehicles exempted as replica motor vehicles, including a list of the exemptions included on the mandatory label described above. Because of this requirement, NHTSA is proposing to specify that ''replica model year'' for replica motor vehicles must correspond to the calendar year in which the replica was manufactured. This would differ from ''Original model year of a replicated vehicle,'' which would be the year in which the vehicle being replicated was originally manufactured.

NHTSA is also proposing that annual reports must be submitted within 60 days of the end of the calendar year. Because these vehicles would be produced in limited quantities, NHTSA believes that the information for the report could be entered after each vehicle is manufactured and that meeting a 60-day deadline for submitting the report at the end of the calendar year is therefore reasonable.

NHTSA is proposing to require that annual reports include:

—Manufacturer's legal name;
—Manufacturer's address and phone number and email address;
—The calendar year for which the annual report is submitted (replica model year) and the total number of replica vehicles manufactured during that year.
—List of the different versions of replica motor vehicles produced by make, model, and original model year of replicated vehicle.
—List of the FMVSS and regulations from which each version of replica vehicle (by make, model, and original model year of replicated vehicle) is exempt.
—Images of the front, rear, and side views of the original vehicle(s) replicated, of both the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle.
—Full complete descriptive information, views, and arguments sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle;
—The complete Vehicle Identification Number (VIN) of each replica vehicle manufactured.
—Statement as to whether the replica vehicle contains any of the following vehicle safety features:
  ○ Air bags
  ○ Seat belts
  ○ Advanced safety systems/passive safety systems (listed w/locations)
  ○ Electronic Stability Control
  ○ Rear visibility camera system

Statement of whether to the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year and if so, how many vehicles it will be manufacturing.[32] If the manufacturer intends to continue manufacturing replica motor vehicle(s), the manufacturer must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

NHTSA is proposing that the annual report must be submitted using the NHTSA Product Information Catalog and Vehicle Listing (vPIC). The website

[31] 49 U.S.C. 30114(b)(3)(B).

[32] Section 30114(b)(5) states that an exemption shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the low-volume manufacturer to vehicles built during that calendar year. NHTSA has tentatively decided not to require manufacturers to re-register (renew their registrations) annually, but instead may carry forward their registration by informing NHTSA in the annual report of their intent to continue manufacturing the vehicles covered by the approved registration.

would be updated to accommodate the submission of the annual replica vehicle reports. NHTSA believes that the use of the online portal would be less burdensome than requiring manufacturers to submit their annual reports by mail. Online submission of the annual reports would also assist NHTSA in complying with the FAST Act requirement that NHTSA maintain a list of manufacturers of replica motor vehicles and the make and model of exempted vehicles being produced. NHTSA intends to maintain this list on its website as allowed by new subsection (b)(5) added to 49 U.S.C. 30114 by Sec. 24405(a) of the FAST Act. NHTSA requests comments on whether vPIC should be mandated for annual reports or whether manufacturers should have the option of sending them by mail.

NHTSA is proposing requiring a list of the complete VINs of all replica vehicles to be included in the annual report. This requirement will assist NHTSA in enforcing the annual limit of 325 replica vehicles per manufacturer. And, as manufacturers already maintain lists of all VINs manufactured in a given year, the burden should be very minimal.[33]

X. Revocation of Registrations

New subsection (b)(5) added to 49 U.S.C. 30114 by Sec. 24405 of the FAST Act specifies that NHTSA has the authority to revoke a registration ''based on a failure to comply with requirements set forth in this subsection [of the FAST Act] or a finding by the Secretary of a safety-related defect or unlawful conduct under this chapter that poses a significant safety risk.'' NHTSA is including this provision in the proposed Part 586 regulation.[34]

NHTSA would like to emphasize that revocation of registrations is not NHTSA's only means of enforcement. NHTSA's defect and recall authority under 49 U.S.C. 30116 through 30120A continues to apply.

XI. Overview of Benefits and Costs

NHTSA has developed a Preliminary Regulatory Evaluation (PRE) that discusses the potential costs, benefits and other impacts of this regulatory action. The PRE is available in the docket for this NPRM and may be obtained by downloading it or by contacting Docket Management at the address or telephone number provided at the beginning of this document.

The table below provides a summary of the various benefits and costs that may accrue from this rule, as well as the various factors that define the range of possible outcomes.

TABLE 1—RANGES OF OUTCOMES FOR BENEFIT AND COST CATEGORIES

Element	Low case	High case
Benefits:		
Incremental consumer surplus	*Not estimated:* Incremental consumer surplus would be low if substitutes such as luxury sports cars and kit cars are viable alternatives for consumers.	*Not estimated:* If replicas manufactured under the rule differ greatly in price and/or transaction cost from luxury sports cars and kit cars—thus behave more like a unique product—incremental consumer surplus could be high.
Incremental fatalities, injuries and property damage.	*Estimated:* Fatalities would be lower if: Voluntary compliance with safety standards is high; production of replicas is on the low end; and VMT by replicas is also low. *Not Estimated:* Fatalities will be lower if replicas primarily function as a substitute for kit cars.	*Estimated:* Fatalities would be higher if: Voluntary compliance is low; production is high; and if VMT is high. *Not Estimated:* Fatalities would be higher if replicas function as a new market that attracts new consumers—implying substitution from more compliant vehicles—or, if replica vehicle drivers choose to increase their VMT specifically to enjoy the replica vehicle, rather than as a substitute for mileage driven in substitute vehicles.
Innovation	*Not Estimated:* The proposed rule is primarily used to replicate old technology.	*Not Estimated:* Manufacturers producing under the proposed rule seek to incorporate some newer technologies into replica vehicles. Could lead to innovation to make technology fit into older designs. *(e.g.,* miniaturization).
Incremental employment impacts.	*Not Estimated:* Job losses from contractors and small businesses that assemble kit cars are around or equal to the job gains for small replica manufacturers.	*Not Estimated:* If kit car production remains relatively stable and replica car production increases significantly (consistent with case where replicas are a new and separate product category), employment effects would be greater.
Costs:		
Mitigated compliance costs	*Estimated:* Captures the cost of installing required safety technologies on an average modern car.	*Not Estimated:* Would consider the avoided costs of forcing required safety technologies into older vehicle designs.
Incremental fuel use	*Not Estimated:* Reflects low VMT	*Not Estimated:* Reflects high VMT.
Reporting costs	*Estimated:* Reflects low bound of production.	*Estimated:* Reflects high bound of production.

[33] Although manufacturers keep lists for business purposes, it is also required by 49 CFR part 573, Defect and Non-Compliance Responsibility and Reports.

[34] As stated in section 30114(b)(8), a low-volume manufacturer shall be considered a motor vehicle manufacturer for purposes of Title 49 subtitle VI parts A and C except as expressly provided. Therefore, replica manufacturers are subject to the same requirements as other manufacturers unless there is an express provision that exempts them, as replica manufacturers, from the requirement. Designation as a low-volume manufacturer under section 30114(b)(8) only applies in the context of exemptions for manufacturers of replica motor vehicles. Section 30114(b)(8) states that replica manufacturers will not be exempt from the requirements of 49 U.S.C. 30116 through 30120A which provide requirements for defects and noncompliance reporting, notification and remedies. NHTSA is not proposing any regulatory changes based on this provision. NHTSA requests comments about whether regulatory changes are necessary for clarification. If commenters believe regulatory changes are desirable, NHTSA requests that commenters provide details on what changes should be made.

NHTSA requests comment on the framework for the benefit cost analysis and preliminary estimates included in the analysis.

XII. Effective Date

NHTSA proposes to make the changes discussed in this NPRM effective immediately upon publication of the final rule in the **Federal Register**. The Administrative Procedure Act (APA) states that a rule cannot be made effective less than 30 days after publication, unless the rule falls under one of three enumerated exceptions. One of these exceptions is for a rule that ''grants or recognizes an exemption or relieves a restriction.'' [35] This rule would fall under this exception because it would create a process through which manufacturers could obtain exemptions to manufacture replica vehicles.

XIII. Regulatory Notices and Analyses

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

OMB has determined that this rule is nonsignificant. The amendments proposed by this NPRM implement an exemption program mandated by section 24405 of the FAST Act for low-volume manufacturers involving a relatively small number of motor vehicles. Potential benefits include costs avoided by low-volume manufacturers when producing replica vehicles that would not be required to meet all the Federal regulations and FMVSS applicable to new motor vehicles. Potential benefits could also include increased consumer surplus, reduced barriers to innovation, and increased incremental employment impacts among small manufacturers. Safety impacts could result from crashes if replica vehicles do not meet certain safety standards. However, we expect the program to have no significant effect on the national economy, due to the small number of vehicles affected by this program.

Regulatory Reform (E.O. 13771 and E.O. 13783)

NHTSA has reviewed this proposed rule for compliance with E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs''), which requires Federal agencies to offset the number and costs of new regulations through the repeal, revocation, and revision of existing regulations. As provided in OMB Memorandum M–17–21 (''Implementing E.O. 13771''), a ''regulatory action'' subject to E.O. is a significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero.

For the reasons identified in the previous sections, this proposed rule is not a significant regulatory action under E.O. 12866 and is a ''deregulatory action'' under E.O. 13771 because its total costs to manufacturers will be less than zero.

Details on the estimated cost savings of this proposed rule are presented in the Preliminary Regulatory Evaluation. The document evaluates the economic impact, in terms of benefits and costs, on Federal, State, and local governments, as well as private entities regulated under this action and the public, as required by E.O. 12866 and E.O. 13563.

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action.[36] The FAST Act requires NHTSA to establish an exemption program for replica vehicles, and this action implements that exemption program and the procedural mandates in the Act. The aspects of the program under the jurisdiction of NHTSA that could have environmental impacts include the exemption from the FMVSS (including those that may affect motor vehicle fuel economy) and the exemption from average fuel economy standards that are both specifically prescribed by statute. Although the PRE considers the impacts of this proposal, NHTSA does not have the authority to consider alternatives that would subject replica vehicles covered under this program to the FMVSS or the average fuel economy standards in 49 U.S.C. 32902. Therefore, NHTSA is precluded from considering the environmental and safety impacts of those aspects of the replica vehicle exemption program in its rulemaking and is not required to address them in its Environmental Assessment.

When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500 through 1508) require it to ''include brief discussions of the need for the proposal, of alternatives [. . .], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.'' [37] This section serves as the agency's Draft Environmental Assessment (Draft EA) for those aspects of the program for which NHTSA may exercise discretion. NHTSA invites public comments on the contents and tentative conclusions of this Draft EA.

This document sets forth the purpose of and need for this action. The purpose of this rulemaking is to implement the exemption program and the procedural mandates described in Section 24405 of the FAST Act, which directs NHTSA to exempt annually a limited number of replica motor vehicles manufactured or imported by low-volume manufacturers from the FMVSS that apply to motor vehicles, but not standards that apply to motor vehicle equipment. In addition, replica vehicles will be exempt from the requirements of 49 U.S.C. 32304, 32502, and 32902, as well as from section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). This action is needed to implement a program to grant exemptions, as directed by Congress, for the manufacture of replica vehicles. NHTSA is also proposing labeling, consumer disclosure, and registration requirements to ensure adequate public awareness and agency oversight over these vehicles.

NHTSA seeks comment on all aspects of its proposal, including limitations on importers, application to vehicles manufactured in two or more stages, the use of vehicle logos and emblems as a requirement of resemblance, the requirement to have the same dimensions and outward appearance as the original vehicle, labeling requirements, and more. The above requests for public comment specifically describe alternative approaches to regulation that are being considered by the agency. NHTSA will consider all substantive public comments received and recommendations on alternatives in its final rule.

The aspects of the program over which NHTSA has the most discretion, including labeling requirements and registration, are not anticipated to have anything other than *de minimis* environmental impacts. These aspects of the program are largely ministerial in nature for replica vehicle manufacturers and importers and are not likely to result in a significant change in sales volumes. Further, NHTSA assumes that 40 low-volume manufacturers will produce between 4,000 and 8,000 replica vehicles annually, and the vehicles are expected to be driven, on average, no more than 2,280 miles per year. With regard to all aspects of the replica vehicle exemption program

[35] 5 U.S.C. 553(d)(1).

[36] 42 U.S.C. 4332(2)(C).

[37] 40 CFR 1508.9(b).

(including the exemption from the FMVSS and average fuel economy standards), these vehicles represent an extremely small fraction of overall motor vehicle sales and on-road VMT that will be disbursed throughout the country. As a result, they are unlikely to cause environmental impacts that could rise to any level of significance. NHTSA seeks comments on this analysis and whether there are any environmental impacts it has not considered that are relevant to a reasoned choice by the decisionmaker.

NHTSA and DOT have consulted with EPA in developing this proposal.

NHTSA has reviewed the information presented in this Draft EA and concludes that the proposed action and alternatives it may consider would have nothing more than *de minimis* impacts on the quality of the human environment. Based on the information in this Draft EA and assuming no additional information or changed circumstances, NHTSA expects to issue a Finding of No Significant Impact (FONSI). Such a finding will be made only after careful review of all public comments received. A Final EA and a FONSI, if appropriate, will be issued as part of the final rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish an NPRM or final rule, generally it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). A regulatory flexibility analysis is not required if the head of the agency certifies that the action would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a proposal would not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed rule on small entities and has prepared an Initial Regulatory Flexibility Analysis (IRFA).

This proposed rule would directly impact low-volume manufacturers that choose to produce replica vehicles and that would fall under North American Industry Classification System (NAICS) Nos. 336111, 336112, and 336120 for Automobile Manufacturing, Light Truck and Utility Vehicle Manufacturing, and Heavy Duty Truck Manufacturing. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, entities in these industries are small business concerns if they have 1,500 or fewer employees. NHTSA expects that most, if not all, replica manufacturers will have 1,500 employees or fewer. NHTSA estimates that up to 40 manufacturers will register as low-volume manufacturers of replica vehicles. However, as the Small Business Administration's regulations define a small business, in part, as a business entity ''which operates primarily within the United States,'' foreign manufacturers that participate in the replica vehicle program are not considered small businesses for the purposes of the Regulatory Flexibility Act.[38] Of the expected 40 such manufacturers, 10 of them are assumed to be foreign replica manufacturers.[39] Therefore, this proposed rule is expected to impact 30 small entities.

Until the FAST Act was enacted, all low-volume manufacturers of replica vehicles were subject to virtually the same Vehicle Safety Act requirements as the largest manufacturers when producing new motor vehicles. Occasionally, small manufacturers are given more time to comply with new FMVSS requirements, such as by having longer phase-in timelines to comply with new requirements, and can also petition for exemptions from certain FMVSS for limited periods of time on certain specific grounds.[40] However, notwithstanding the flexibility regarding compliance dates and limited-period exemptions, until the FAST Act, low-volume manufacturers of replica vehicles had the same responsibilities as larger manufacturers to certify their vehicles as complying with all FMVSS applying to the vehicle that were in effect on the day of manufacture of the vehicle. These FMVSS comprise standards applying to ''equipment'' and standards applying to the ''vehicle'' as a unit.

The FAST Act allows low-volume manufacturers of replica vehicles registered in the proposed exemption program to manufacture vehicles that are exempt from meeting the ''vehicle'' FMVSS. NHTSA estimates that involvement in the proposed Part 586 exemption program would save low-volume manufacturers of replica passenger cars and light trucks, MPVs, and buses (LTVs) between $3.4 million and $17.2 million at a three-percent discount rate (between $3.3 million and $16.8 million at a seven-percent discount rate) annually resulting from the elimination of the requirement to comply with the vehicle FMVSS, fuel economy standards, bumper standards, and labeling requirements.[41] This means that each replica vehicle manufacture would, on average, experience cost savings of between $85,000 and $430,000 annually at a three-percent discount rate and between $82,000 and $420,000 annually at a seven-percent discount rate.[42] NHTSA expects this cost savings would have a significant positive economic impact on the 30 regulated small entities.

According to guidance provided by the SBA's Office of Advocacy, to determine whether the number of small entities significantly impacted is substantial, an agency may need to look not only at the number of significantly impacted entities, but also at the percentage of affected small entities so impacted.[43] In view of the fact that the proposal is expected to significantly economically impact 100 percent of the 30 regulated small entities, this would be a substantial number. Therefore, the replica vehicle program is expected to significantly economically impact a substantial number of small entities.

[38] 13 CFR 121.105(a).

[39] This assumption is based on the percent of all passenger cars sold in the US but are manufactured outside the U.S. Between January and August 2018, 76.1% of vehicles sold in the U.S. were produced domestically and 23.9% were imported. ''U.S. light-vehicle sales by nameplate, August & 8 months.'' Automotive News. September 10, 2018, pp. 56–7.

[40] Pursuant to 49 CFR part 555, a manufacturer may petition for a temporary exemption on the bases of substantial economic hardship, making easier the development or field evaluation of new motor vehicle safety or impact protection, or low-emission vehicle features, or that compliance with a standard would prevent it from selling a vehicle with an overall level of safety or impact protection at least equal to that of nonexempted vehicles.

[41] Additional detail on these estimates is provided in the Preliminary Regulatory Evaluation.

[42] NHTSA divided the total cost savings by 40 because these estimates are based on NHTSA's assumption that there will be a total of 40 replica manufacturers producing, on average, 200 vehicles per year. In addition to the 30 replica manufacturers that NHTSA expects to be considered small businesses by SBA, the total cost savings also include savings to an estimated 10 replica manufacturers that would not be considered small businesses by SBA.

[43] U.S. Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, 21–22 (August 2017), available at *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* (last accessed Oct. 15, 2018).

Accordingly, NHTSA has prepared this Initial Regulatory Flexibility Act Analysis.

Overview of the Objectives of and Legal Basis for the Proposed Rule

NHTSA is proposing requirements in this NPRM to implement a program mandated under the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), as amended by the Fixing America's Surface Transportation Act (the FAST Act). The FAST Act directs the NHTSA by delegation to exempt not more than 325 replica motor vehicles per year that are manufactured or imported by a low-volume manufacturer. The exemption must be limited to the FMVSS applicable to motor vehicles, not motor vehicle equipment.

NHTSA is issuing this NPRM proposing to establish 49 CFR part 586 to implement the replica motor vehicle exemption program.[44] NHTSA is proposing a new 49 CFR part 586 to establish the requirements and procedures for the registration of low-volume manufacturers as replica motor vehicle manufacturers and establishes the duties of the manufacturers.

Description and Estimate of the Number of Small Entities to Which the Rule, if Made Final, Will Apply; Compliance Impacts

This proposed rule would affect manufacturers who have a total annual worldwide production of 5,000 vehicles or less. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, vehicle manufacturers would fall under North American Industry Classification (NAICS) No. 336111, Automobile Manufacturing, which has a size standard of 1,000 employees. Using the size of 1,000 employees or fewer, NHTSA estimates that most, if not all, of the manufacturers that would produce replica vehicles would be small businesses. NHTSA estimates that there will be approximately 40 manufacturers that will take advantage of this program and manufacture replica vehicles under the replica vehicle exemption program.

Although this proposed rule would affect small manufacturers, we do not anticipate that the proposed rule would have a significant negative economic impact. Instead, this proposed rule should reduce compliance costs for the small businesses that produce replica vehicles under the exemption program. NHTSA estimates that manufacturers will save between $3.4 million and $17.2 million at a three-percent discount rate (between $3.3 million and $16.8 million at a seven-percent discount rate) annually. The cost savings result from low-volume manufacturers no longer having to conform their vehicles to the ''vehicle'' FMVSS.

A Description of the Projected Reporting, Record Keeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule contains reporting, record keeping and other compliance requirements to implement the replica vehicle program. All the proposed reporting and record keeping requirements discussed below are mandated or contemplated by the FAST Act or are essential to carrying out the statute.

First, in accordance with the FAST Act, low-volume manufacturers wishing to qualify for an exemption must register with NHTSA in accordance with this proposed regulation. The FAST Act mandates this registration requirement in section 30114(b)(1)(B)(2), specifying that ''a low-volume manufacturer shall register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate.'' NHTSA estimates that it would take each manufacturer 10 hours to draft and compile the submission. At an estimated cost of $48.47 per hour,[45] this burden would cost each manufacturer $484.70 one time for each original vehicle the manufacturer seeks to replicate.

Second, in accordance with the FAST Act, manufacturers of replica vehicles would be required to submit annual reports. The annual reports are required by section 30114(b)(1)(C), which specifies that the annual report include the number and description of the motor vehicles exempted and a list of the exemptions described on a permanent label required by section 30114(b)(3)(A) (described below). The agency proposes that the annual report would be submitted online. In lieu of a requirement that registrants renew their registrations, the NPRM proposes only to require registrants to report to NHTSA if they will be producing the same replica motor vehicles the following calendar year. NHTSA estimates that compiling and submitting the annual report would take two hours and would involve primarily administrative skills. NHTSA estimates that labor to compile the report would cost $48.47 per hour, for a total cost to compile the report of $96.94.[46]

Third, in accordance with the FAST Act, the proposed rule would also require the registrants to disclose information to consumers. Because the replica vehicles would be exempt from complying with current FMVSS, it is important that the consumer understand the reduced level of safety provided by the vehicle. In accordance with a mandate in section 30114(b)(3)(A), the NPRM would require registrants to affix a permanent label to the vehicle identifying the specified standards and regulations from which the vehicle is exempt, stating that the vehicle is a replica, and designating the model year such vehicle replicates. In accordance with discretion provided to NHTSA in section 30114(b)(3)(B), the proposed rule would require registrants to provide written notice of the exemption to the dealer and the first purchaser of the vehicle for purposes other than resale. NHTSA estimates that the consumer disclosures would cost $1 per vehicle and the temporary labels would cost $1 per vehicle. If each manufacturer manufacturers 200 vehicles, the total cost per manufacturer would be $400 for both the consumer disclosures and the temporary labels.

An Identification, to the Extent Practicable, of All the Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Final Rule

NHTSA does not know of any Federal rules which duplicate, overlap, or conflict with this proposal.

[44] The FAST Act replica motor vehicle provision is not self-executing. That is, the Secretary must take steps to implement it.

[45] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

[46] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

A Description of any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and Minimize any Significant Economic Impact of the Final Rule on Small Entities

The FAST Act provision directing the establishment of the replica exemption program prescribes specific requirements that limit NHTSA's discretion to adopt different regulatory approaches. For the purpose of evaluating regulatory alternatives under the requirements of the Regulatory Flexibility Act, NHTSA considers here not only alternatives that are within NHTSA's discretion, but also alternatives that are not permitted by statute. The alternative approaches impact: Which entities may participate in the replica vehicle program; the safety performance of replica motor vehicles; requirements for replica vehicles to resemble the original vehicle; and reporting and informational requirements.

First, NHTSA is considering limiting the exemption program to replica vehicles that are built in one stage or, alternatively, allowing replica vehicles to be manufactured in two or more stages, if they are produced under a registration that was jointly submitted to NHTSA by all of the low-volume manufacturers involved with the production of the vehicle. These two alternative approaches would impact which entities would qualify for the replica vehicle exemption program. NHTSA is requesting comment on these approaches out of concern about administering the program and the belief that some of the requirements for the program could not be met if the vehicle is built in more than one stage. NHTSA does not have sufficient data to quantify the impact of this alternative approach and requests comment.

Second, there are alternatives that would impact the safety performance of replica vehicles. Although not permitted by statute, one alternative would be to take no action. This alternative, to maintain the status quo, is demonstrably more burdensome to manufacturers. NHTSA estimates that each replica manufacturer that participates in the exemption program would, on average, realize cost savings of between $85,000 and $430,000 annually (at a three-percent discount rate) and between $82,000 and $420,000 annually at a seven-percent discount rate; maintaining the status quo would forego these cost savings. Another alternative would be to require that replica motor vehicles resemble not only the original vehicle's exterior, but also its interior and its conformance with FMVSS in effect when the original vehicle was manufactured. NHTSA has not quantified the impact of this approach, but NHTSA has concluded that it would significantly increase the burden on small entities compared to the current proposal. This conclusion is based on data from NHTSA's Preliminary Regulatory Evaluation that estimates the savings that manufacturers may realize in manufacturing vehicles that are exempt from the FMVSS applicable to vehicles. Although NHTSA is not proposing the requirement to replicate the safety performance of the original vehicle, NHTSA is requesting comment to inform future decision-making.

Third, NHTSA considered some alternative approaches to ensuring that vehicles exempted under Part 586 meet the definition for ''replica motor vehicle'' in the FAST Act. The definition states that a replica motor vehicle ''is intended to resemble the body of another motor vehicle.'' To balance objectivity, feasibility, and enforceability, NHTSA is proposing to require manufacturers to submit images with each registration and documentation confirming that the replica vehicle will have the same dimensions (height, width, and length) as the original vehicle. Alternatively, NHTSA could have proposed either (1) no requirements for resemblance; or (2) requirements that replica vehicles have the exact specifications of the original vehicle and fully replicate not only the exterior of the original, but also its interior. NHTSA believes the proposal strikes the right balance between ensuring that the program is limited, as Congress intended, to vehicles that resemble previously-made vehicles while not unduly burdening low-volume manufacturers. NHTSA decided not to propose requiring the more stringent requirements because NHTSA recognizes that obtaining exact specifications for original vehicles may be difficult and allowing manufacturers to incorporate modern amenities and safety features in the interior would enable a greater range of alternatives to customers in terms of (improved) vehicle attributes and safety. NHTSA, however, thought some minimum requirements would help bring some objectivity to NHTSA's evaluation of whether a vehicle met the statutory definition of ''replica motor vehicle.'' NHTSA also believes that most replica manufacturers will act in good faith to ensure resemblance with the original and, even in the absence of requirements, will be motivated to closely replicate the original vehicle in appearance for marketing purposes. Therefore, although NHTSA does not have data to quantify the impact of the proposed approach, NHTSA does not expect the proposed requirements related to resemblance to generate any significant incremental burden for replica vehicle manufacturers.

Fourth, there are some alternatives that would impact the amount of information replica manufacturers would be required to submit to NHTSA or disclose to members of the public. The new requirements that are specific to replica vehicles include: Registration requirements, annual reporting, temporary labels, and consumer disclosures. Some alternatives are within NHTSA discretion, such as not requiring the submission of images with registration and annual reports. Others, like requiring less frequent reporting are not. Because the FAST Act provision requires annual reporting, NHTSA does not have discretion to require reporting only ever two or five years. NHTSA also does not have the discretion to collect less information in the annual report than is required by the FAST Act. In proposing these requirements, NHTSA considered that most, if not all, of replica vehicle manufacturers would be small entities; NHTSA estimated the costs associated with these requirements with this in mind, as well. NHTSA estimates the total cost associated with these requirements to be less than $1,500 for each replica manufacturer annually (approximately $4–$5 per vehicle if producing the maximum number of replica vehicles allowed per year). Thus, NHTSA does not believe these requirements will be burdensome to manufacturers, and does not believe less stringent requirements would constitute significant alternatives because the cost savings per vehicle would be minimal.

Accordingly, NHTSA does not believe there are any significant alternative approaches which would not only accomplish all the objectives of the rulemaking and NHTSA's statutory mandate under the FAST Act, but also minimize burden on small entities. NHTSA invites public comment on this tentative conclusion and whether there are workable significant alternative approaches for small entities that the agency should consider.

E.O. 13132 (Federalism)

NHTSA has examined this proposed rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has

concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would 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.

The FAST Act provision directing NHTSA to allow low-volume manufacturers registering with NHTSA to produce replica vehicles contains two unique provisions that have preemption implications.[47] The first provision, section 30114(b)(6), provides protection to the original manufacturer, its successor or assignee, or current owner, who grants a license or otherwise transfers rights to a low-volume manufacturer to produce replicas of vehicles. The Act states that those persons shall incur no liability to any person or entity under Federal or State statute, regulation, local ordinance, or under any Federal or State common law for such license or assignment to a low-volume manufacturer. This legislative command is set forth in the FAST Act and this proposed rule has no effect on that directive.

The second provision, section 30114(b)(9), states that nothing in the ''exemption for low-volume manufacturers'' subsection of the Act shall be construed to preempt, affect, or supersede any State titling or registration law or regulation for a replica motor vehicle, or exempt a person from complying with such law or regulation. NHTSA interprets this section to mean that States may have their own replica motor vehicle standards for the vehicles to be titled or registered in that State. NHTSA also interprets this provision to mean that NHTSA's requirements for replica motor vehicles are intended to be minimum requirements only. Therefore, States may have higher safety requirements for replica vehicles than prescribed by NHTSA to be titled or registered in that State.

In terms of preemption generally and the FMVSS, NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision under 49 U.S.C. 30103(b)(1): When a motor vehicle safety standard is in effect, a State or political subdivision of State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle only if the standard is identical to the standard prescribed under 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under 49 U.S.C. 30103(e), which states that compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law. Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this proposal and finds that this proposed rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this proposal preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that to be established by this proposal. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Proposed 49 CFR part 586 would be issued as a regulation, not as an FMVSS, so the express preemption provision under 49 U.S.C. 30103(b)(1) does not apply to matters relating to Part 586. Therefore, NHTSA has concluded that this rulemaking will not preempt State law and does not require additional consultation with States and local governments.

E.O. 12988 (Civil Justice Reform)

When promulgating a regulation, E.O. 12988, ''Civil Justice Reform'' (61 FR 4729; February 7, 1996), specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this proposal is discussed above in connection with E.O. 13132. NHTSA has also considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E.O. 13609: Promoting International Regulatory Cooperation

Under E.O. 13609 (77 FR 26413, May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and regulatory approaches are unnecessary or may impair the ability of American business to export and

[47] NHTSA does not believe regulation is necessary to implement those provisions.

compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Sections 3 and 4 of E.O. 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule.

NHTSA has analyzed this action under the policies and agency responsibilities of E.O. 13609, and has determined that this action would have no effect on international regulatory cooperation. NHTSA requests public comment on whether regulatory approaches taken by foreign governments concerning the subject matter of this rulemaking and the above policy statement have any implications for this rulemaking.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards to carry out policy objectives or activities determined by the agencies and departments, except when use of such a voluntary consensus standard would be inconsistent with the law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA has searched for but did not find any voluntary consensus standards that would apply to this proposal.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with the applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why the agency did not adopt the alternative.

This proposed rule is not anticipated to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of 100 million, $154 million when adjusted for inflation, annually.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The Information Collection Requests (ICR) for a proposed new information collection and proposed revisions to the existing information collections described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

This proposed rule would have new collection of information requirements that would require registrants to provide information to NHTSA and to dealers and consumers pertaining to registration, annual reporting, labeling, and written notification to dealers and owners. This proposed rule would also make changes to existing information collections for manufacturer identification, Vehicle Identification Number (VIN) requirements, and certification labeling. Accordingly, NHTSA is submitting requests to OMB for approval of a new collection of information for Replica Motor Vehicles and revisions to existing collections of information.

a. New Collection of Information for Replica Motor Vehicles

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR part 586, Replica motor vehicles.

Type of Request: New collection.

OMB Control Number: 2127–New.

Form Number: The collection of this information would not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information: Manufacturers of replica motor vehicles would be required to: Register with NHTSA, provide dealers and first retail purchasers information on the standards with which the vehicle does not comply, and annually report the type and number of replica motor vehicles produced. Manufacturers would also be required to provide NHTSA with images of the front, rear, and side views of the exterior of the original vehicle, and if the manufacturer has previously replicated that original vehicle, images of the front, rear, and side views of the exterior of a representative replica motor vehicle in both the registration and in their annual reports. NHTSA considered but has tentatively decided against a requirement that manufacturers must re-register (renew their registrations) annually. Instead, we propose that registrants simply inform NHTSA in their annual reports of their plans to continue manufacturing the previously-approved replica vehicles under their current registration.

Manufacturers of replica vehicles would also be required to affix temporary labels on the dashboard or steering wheel hub of each exempted vehicle alerting passengers that the vehicle does not comply with all FMVSS and directing them to consult their customer disclosure for more information on the standards from which the vehicle is exempt. However, this requirement is not subject to the Paperwork Reduction Act because NHTSA provides the exact language to provide on the temporary labels.[48]

Description of the Need for the Information and Use of the Information: NHTSA is required by the Fixing America's Surface Transportation (FAST) Act to exempt a limited number

[48] The public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included within [the definition of a collection of information]. 5 CFR 1320.3(c)(2).

of replica motor vehicles manufactured by low-volume manufacturers from certain Federal standards each year provided the manufacturer registers with NHTSA. NHTSA is issuing a regulation that implements the exemption program. All the proposed reporting and record keeping requirements discussed below are mandated or contemplated by the FAST Act or are essential to carrying out the statute.

First, in accordance with the FAST Act, low-volume manufacturers wishing to qualify for an exemption must register with NHTSA in accordance with this proposed regulation. The FAST Act mandates this registration requirement in 49 U.S.C. 30114(b)(2), specifying that ''a low-volume manufacturer shall register with [NHTSA] at such time, in such manner, and under such terms that [NHTSA] determines appropriate.'' NHTSA needs this information to keep track of the exempted vehicles, ensure that the vehicles qualify as replica vehicles, and for enforcement purposes.

Second, in accordance with the FAST Act, manufacturers of replica vehicles would be required to submit annual reports. The annual reports are required by 49 U.S.C. 30114(b)(3)(C). The Act specifies that the annual report include the number and description of the motor vehicles exempted and a list of the exemptions described on a permanent label required by 49 U.S.C. 30114(b)(3)(A) (described below). In the annual report, manufacturers that are registered in the program (registrants) would be required to show NHTSA images of the vehicles they produced so that NHTSA can assess if the vehicles resemble the original vehicle. The registrants must also notify NHTSA if they will be manufacturing the same replica motor vehicles in the next calendar year and if so, how many vehicles they will be manufacturing. 49 U.S.C. 30114(b)(5) states that an exemption ''shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the low-volume manufacturer to vehicles built during that calendar year.'' The annual reporting requirement would be essential to NHTSA's enforcement of the program, enabling the agency to better assess whether registrants are complying with the 325-vehicle limit and manufacturing vehicles qualifying as ''replica motor vehicles.'' The reporting requirements would also enable NHTSA to keep track of registrants and the vehicles they produce, which would help the agency meet a FAST Act requirement to keep an up-to-date list of registrants and publish such list on an annual basis (section 30114(b)(5)). NHTSA considered requiring all registrants to formally renew their registration annually but believes that this reporting process would simplify and reduce paperwork by eliminating the need to re-register with NHTSA if the same replica vehicles would be produced in the next calendar year.

Third, in accordance with the FAST Act, the proposed rule would require the registrants to disclose information to consumers. Because the replica vehicles will be exempt from current FMVSS, it is important that the consumer understand the reduced level of safety provided by the vehicle. In accordance with a mandate in 49 U.S.C. 30114(b)(3)(A), the NPRM, if adopted, would require registrants to affix a permanent label to the vehicle identifying the specified standards and regulations from which the vehicle is exempt, stating that the vehicle is a replica, and designating the model year such vehicle replicates. In accordance with discretion provided to NHTSA in section 30114 (b)(3)(B), the proposed rule would require registrants to provide written notice of the exemption to the dealer and the first purchaser of the vehicle for purposes other than resale.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): NHTSA estimates that at most there would be approximately 40 manufacturers in the replica vehicle program at any given time. NHTSA estimates that it will take some time before the total number of replica manufacturer reaches 40. By the end of the first three years of the program, NHTSA estimates that there will be 30 replica vehicle manufacturers. Therefore, in the first three years of the replica program, NHTSA expects to receive approximately 10 submissions from low-volume manufacturers to register as replica manufacturers each year. Based on an assumption that on average 30 manufacturers would each produce 200 vehicles each year, there would be 6,000 replica vehicles produced each year by the end of the third year, or an average of 4,000 replica vehicles a year over the first three years. For purposes of calculating the burden associated with the collections, we use the average of 4,000 replica vehicles a year and 20 replica manufacturers. Combined, manufacturers are expected to label 4,000 replica vehicles with temporary and permanent labels and provide 4,000 written disclosures to consumers. Each manufacturer must submit one report annually, for an average of 20 reports for the next three years.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information: NHTSA estimates the total burden of this collection to be an average of 400 hours and $24,239 each year. The cost of labor associated with the 400 burden hours is estimated to be $16,239 and the cost of printing the consumer disclosures and temporary labels is estimated to be $8,000.

NHTSA estimates that it will take 10 hours to complete an initial registration submission. NHTSA estimates the labor cost for compiling and submitting the required information to be $48.47 [49] per hour, using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification #27–3042).[50] Therefore, NHTSA estimates that the labor cost for each registration will be $484.70 (10 hours × $48.47 per hour). NHTSA estimates that, over the first three years, a total of 30 manufacturers will submit registrations to become manufacturers of exempted replica vehicles. NHTSA estimates that, on average, ten manufacturers will submit registrations each year. Therefore, NHTSA estimates the total annual burden on low-volume manufacturers for initial submissions to be 100 hours (10 manufacturers × 10 hours). NHTSA estimates that the total cost associated with labor for the registrations to be $4,847 (10 submissions × $484.70 per submission) per year.

For the annual reporting requirement, NHTSA estimates it would take a maximum of two hours to collect the necessary information and submit it on the vPIC portal. NHTSA estimates that, on average, 20 manufacturers will submit annual reports each year. Therefore, the burden hours associated with this information collection would, on average, be 40 hours per year (20 manufacturers × 2 hours). NHTSA estimates the hourly cost associated

[49] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

[50] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

with annual reports to be $48.47 [51] per hour, using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification # 27–3042).[52] Therefore, NHTSA estimates the total labor cost associated with annual reports will be $96.94 per manufacturer and a total of $1,939 for all manufacturers ($96.94 × 20 manufacturers) in each of the first three years. NHTSA does not estimate that there will be any additional costs because these reports would be submitted electronically.

To estimate the burden to produce consumer disclosures, NHTSA looked at estimates for owner's manuals which provide required disclosures to consumers. Owner's manuals are much longer and contain far more information than the replica vehicle consumer disclosures. However, because owner's manuals are produced in higher quantities, NHTSA estimates that it only costs manufacturers, on average, about $.50 for each Owner's Manual.[53] To account for the fact that replica manufacturers are smaller and less able to take advantage of economies of scale, NHTSA estimates that printing consumer disclosures will cost $1 per replica vehicle. NHTSA estimates that, in the next three years, 20 manufacturers will each produce 200 replica vehicles. NHTSA estimates the cost for producing the 4,000 consumer disclosures will be $4,000 ($1 per disclosure × 4,000 replica vehicles).

NHTSA estimates that it will take no more than 1 hour per manufacturer to compile and format the consumer disclosures. Therefore, the total burden hours for twenty manufacturers would be 20 hours (20 manufactures × 1 hour). NHTSA estimates the hourly cost associated with compiling consumer disclosures to be $48.47 [54] per hour, using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification #27–3042).[55] Therefore, NHTSA estimates the total labor costs associated with compiling and formatting consumer disclosures to be $48.47 per manufacturer and $969 per year for all replica manufacturers (20 manufacturers × $48.47 per hour).

Replica manufacturers will also be required to affix temporary labels. NHTSA estimates that it will take each manufacturer 2 hours to design and format the temporary labels for a total of 40 hours for all replica vehicle manufacturers. NHTSA estimates the hourly cost associated with designing and formatting temporary labels to be $48.47 [56] per hour, using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification #27–3042).[57] Therefore, NHTSA estimates the total annual labor cost associated with designing and formatting temporary labels to be $96.94 for each manufacturer and $1,939 for all manufacturers ($96.94 × 20 manufacturers). NHTSA estimates the cost to print or purchase printed labels for each replica vehicle to be $1 per vehicle, for a total cost of $4,000. This cost is higher than what NHTSA estimates for the total cost to provide certification labels.[58] NHTSA has estimated a higher cost for temporary replica vehicle warning labels because they will be larger than certification labels and replica manufacturers will produce the labels in smaller batches. NHTSA estimates that it will take approximately 3 minutes to label each vehicle. This is longer than the estimated 18 seconds to label an average vehicle with a Part 567 certification label.[59] However, because replica vehicle manufacturers are expected to be much smaller than the average vehicle manufacturer, NHTSA assumes that replica vehicle manufacturers will not be able to label each vehicle as quickly. Based on the assumption that 4,000 vehicles are manufactured, on average, in each of the next three years, the labor costs associated with affixing the temporary labels to the steering hub, at a cost of $32.72 per hour, using the Bureau of Labor Statistic's mean hourly wage estimate for motor vehicle assemblers and fabricators (Standard Occupational Classification #51–2000), will be approximately $6,545 annually (200 hours × $32.72 per hour).

The total burden associated with this information collection request is estimated to be 400 hours. The cost associated with the burden hours is estimated to be $16,239 and the cost associated with printing consumer disclosures and temporary labels is estimated to be $8,000. The total cost associated with this information collection is estimated to be $24,239.

LABOR COSTS

Information collection	Time per response	Number of responses	Hourly wage	Total hourly cost	Total labor cost per response	Total labor cost overall
Initial Registration	10 hours	10	$33.98	$48.47	$484.70	$4,847
Annual Report	2 hours	20	33.98	48.47	96.94	1,939
Consumer Disclosures	1 hour	20	33.98	48.47	48.47	969

[51] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

[52] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

[53] The estimate is provided in the supporting statements NHTSA submitted to OMB in 2015 in support of the renewal of NHTSA's Information Collection titled ''Consolidated Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.'' NHTSA estimated costs as $8,198,948 for 16,500,000 vehicles, or approximately $.50 per vehicle. The supporting statements can be accessed at *https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201504-2127-001.*

[54] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

[55] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

[56] The hourly wage is estimated to be $33.98 per hour. National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019. The Bureau of Labor Statistics estimates that wages represent 70.1 percent of total compensation to private workers, on average. Bureau of Labor Statistics (2019). Employer Costs for Employee Compensation—March 2019. *https://www.bls.gov/news.release/ecec.t04.htm,* last accessed July 10, 2019. Therefore, NHTSA estimates the total hourly compensation cost to be $48.47.

[57] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

[58] NHTSA estimates that the cost of 49 CFR part 567 certification labels is approximately $.10 per label.

[59] 83 FR 8732, February 28, 2018.

LABOR COSTS—Continued

Information collection	Time per response	Number of responses	Hourly wage	Total hourly cost	Total labor cost per response	Total labor cost overall
Designing and Formatting Temporary Labels.	2 hours	20	33.98	48.47	96.94	1,939
Labeling Each Vehicle	3 minutes	4,000	22.94	32.72	1.64	6,545
Total Cost						16,239

OTHER COSTS TO RESPONDENTS

	Cost per vehicle	Number of vehicles	Printing cost
Printing Temporary Labels	$1	4,000	$4,000
Printing Consumer Disclosures	1	4,000	4,000
Total Cost			8,00

Comments are invited on:

i. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including 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.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document to NHTSA and OMB.

b. Revision of Currently Approved Clearance for Manufacturer Identification

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR part 566, Manufacturer Identification.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2127–0043.

Affected Public: New manufacturers of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety standards.

Requested Expiration Date of Approval: Three years from the date of approval.

Form Number: None.

Summary of the Collection of Information: If a motor vehicle or item of replacement motor vehicle equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal motor vehicle safety standard (FMVSS), the manufacturer is required under 49 U.S.C. 30118 to furnish notification of the defect or noncompliance to NHTSA, as well as to owners, purchasers, and dealers of the motor vehicle or replacement equipment, and to remedy the defect or noncompliance without charge to the owner. To ensure that manufacturers are meeting these and other responsibilities under the statutes and regulations administered by NHTSA, the agency issued 49 CFR part 566, Manufacturer Identification. The regulations in Part 566 require manufacturers of motor vehicles or motor vehicle equipment to which an FMVSS applies, to submit to NHTSA, on a one-time basis, identifying information on themselves and a description of the products that they manufacture to those standards. With changes implemented in 2015, manufacturers have been able to make these submissions using an online portal on the agency's website at *https://vpic.nhtsa.dot.gov/.*

The information that must be submitted includes: (a) The full individual, partnership, or corporate name of the manufacturer; (b) the business name of the manufacturer commonly known to the public; (c) the residence address of the manufacturer and State of incorporation if applicable; (d) full contact information for the manufacturer and the submitting official; and (e) a description of each type of motor vehicle or of covered equipment manufactured by the manufacturer, including, for motor vehicles, the approximate ranges of gross vehicle weight ratings (GVWR) for each vehicle type. The regulations specify that the description may be of a general type, such as ''passenger cars'' or ''brake fluid,'' but that in the case of multipurpose passenger vehicles, trucks, and trailers, the description shall be specific enough to indicate the types of use for which the vehicles are intended, such as ''tank trailer,'' ''motor home,'' or ''cargo van.'' [60]

The regulations further specify that in the case of motor vehicles produced in two or more stages, if the manufacturer is an incomplete vehicle manufacturer, the description shall so state and include a description indicating the stage of completion of the vehicle and, where known, the types of use for which the vehicles are intended, such as ''Incomplete vehicle manufacturer—Chassis-cab intended for completion as a van-type truck.'' [61] The regulations also specify that if the manufacturer is an intermediate manufacturer, or a final stage manufacturer of a vehicle manufactured in two or more stages, the description shall so state and include a brief description of the work performed, such as ''Multipurpose passenger vehicles: Motor homes with GVWR from 8,000 to 12,000 pounds. Final-stage manufacturer—add body to bare chassis.'' [62]

The information must be submitted no later than 30 days after the manufacturer begins to manufacture motor vehicles or motor vehicle equipment subject to the FMVSS. No

[60] 49 CFR 566.5(c)(1) and (2).

[61] 49 CFR 566.5(c)(3).

[62] *Id.*

specific form need be used for the submission of this information. NHTSA provides an online portal with a fillable web-based format for use in submitting the required information. This is described in a handbook entitled Requirements for Manufacturers of Motor Vehicles and Motor Vehicle Equipment that can be accessed on the agency's website at *https://vpic.nhtsa.dot.gov/.*

Manufacturers who have previously submitted identifying information must ensure that the information on file is accurate and complete by submitting revised information no later than 30 days after a change in the business that affects the validity of that information has occurred.

In 2016, NHTSA received submissions of manufacturer identifying information under 49 CFR part 566 from 821 manufacturers. In 2016, the agency received 882 such submissions. Based on this volume and the estimating that the agency will receive 10 replica motor vehicle manufacturer submissions in each of the next three years, the agency projects that it will receive approximately 892 Part 566 submissions from manufacturers in each of the next three years. Assuming that it will take a manufacturer on average 15 minutes to prepare an online submittal, the agency estimates that 223 hours will be expended on an annual basis by all manufacturers required to submit Part 566 identifying information.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): The agency estimates that it will receive 892 submissions of manufacturer identifying information under Part 566 from manufacturers of motor vehicles and regulated items of motor vehicle equipment per year. The manufacturers need only submit the required information on a one-time basis, with the proviso that they refile their information through the online portal in the event of any changes in the information on file within 30 days from the date that any change in that information occurs.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information: 223 hours.

Estimate of the Total Annual Costs of the Collection of Information: Assuming that the Part 566 information that needs to be submitted through the online portal is entered by company officers or employees compensated at an average rate of $33.98 [63] per hour using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification # 27–3042),[64] the agency estimates that the total hourly wage cost associated with the burden hours is $7,577.54. The Bureau of Labor Statistics estimates that for private industry workers, wages represent 70.1% of total compensation.[65] Therefore, NHTSA estimates that a total of $10,809.61 will be expended on an annual basis for wage by all manufacturers required to submit that information.

Comments are invited on:

i. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including 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.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document to NHTSA and OMB.

c. Revision of Currently Approved Clearance for Vehicle Identification Number (VIN) Requirements and Certification Labeling

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Consolidated Labeling Requirements for 49 CFR parts 565 Vehicle Identification Number (VIN) Requirements, and 567 Certification.

Type of Request: Revision of a previously approved collection.

OMB Control Number: 2127–0510.

Affected Public: Motor vehicle manufacturers.

Form Number: None.

Summary of the Collection of Information:

Part 565

The regulations in Part 565 specify the format, contents, and physical requirements for a vehicle identification number (VIN) system and its installation to simplify vehicle identification information retrieval and to increase the accuracy and efficiency of vehicle recall campaigns. The regulations require each vehicle manufactured in one stage to have a VIN that is assigned by the vehicle's manufacturer. Each vehicle manufactured in more than one stage is to have a VIN assigned by the incomplete vehicle manufacturer. Each VIN must consist of 17 characters, including a check digit, in the ninth position, whose purpose is to verify the accuracy of any VIN transcription. The first section of the VIN consists of three characters that occupy positions one through three in the VIN. This section shall uniquely identify the manufacturer and type of the motor vehicle if the manufacturer is a high-volume manufacturer. If the manufacturer is a low-volume manufacturer, positions one through three along with positions twelve through fourteen in the VIN shall uniquely identify the manufacturer and the type of the motor vehicle. The manufacturer identifier occupies the first three characters of the VIN for manufacturers that produce 1,000 or more vehicles of a specified type within a model year, and positions 1, 2, 3, 12, 13, and 14 of VINs assigned by manufacturers that produce less than 1,000 vehicles of a specified type of motor vehicle per model year. The remaining characters of the VIN describe various vehicle attributes, such as make, model, and type, which vary depending on the vehicle's type classification (*i.e.* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle), and identify the vehicle's model year, plant code, and sequential production number. NHTSA has contracted with SAE International of Warrendale, Pennsylvania, to coordinate the assignment of manufacturer identifiers to manufacturers in the United States. Each manufacturer of vehicles subject to the requirements of Part 565 must submit, either directly or through an agent, the unique identifier for each make and type of vehicle it manufactures at least 60 days before affixing the first VIN using the identifier. Manufacturers are also

[63] National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019.

[64] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

[65] Employer Costs for Employee Compensation-March 2019, *https://www.bls.gov/news.release/pdf/ecec.pdf,* last accessed June 28, 2019.

required to submit to NHTSA information necessary to decipher the characters contained in their VINs, including amendments to that information, at least 60 days prior to offering for sale the first vehicle identified by a VIN containing that information or if information concerning vehicle characteristics sufficient to specify the VIN code is unavailable to the manufacturer by that date, then within one week after that information first becomes available. With changes implemented in 2015, manufacturers have been able to make these submissions using an online portal on the agency's website at *https://vpic.nhtsa.dot.gov/.* In 2016, NHTSA received 1,054 submissions of VIN-deciphering information under Part 565 from manufacturers. In 2017, NHTSA received 1,239 submissions. NHTSA estimates it will receive, on average, 15 submissions of VIN-deciphering information from replica manufacturers in the next three years. Based on these figures, NHTSA expects to receive approximately 1,254 Part 565 submissions from manufacturers in each of the next three years. Assuming that it would take one hour to produce a VIN deciphering submission, at an average cost of $33.98 per hour for the administrative and professional staff preparing and reviewing the submission,[66] NHTSA estimates that it will cost vehicle manufacturers $42,610.92 to comply with the Part 565 requirements (1,254 submissions × $33.98 = $42,610.92).

Part 567

The regulations in Part 567 specify the content and location of, and other requirements for, the certification label to be affixed to a motor vehicle, as required by the National Traffic and Motor Vehicle Safety Act,[67] as amended (the Vehicle Safety Act) and the Motor Vehicle Information and Cost Savings Act,[68] as amended (the Cost Savings Act), to address certification-related duties and liabilities, and to provide the consumer with information to assist him or her in determining which of the Federal motor vehicle safety standards (as found in 49 CFR part 571), bumper standards (as found in 49 CFR part 581, and Federal theft prevention standards (as found in 49 CFR part 541) are applicable to the vehicle. The regulations pertain to manufacturers of motor vehicles to which one or more standards are applicable, including persons who alter such vehicles prior to their first retail sale, and to Registered Importers of vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards that are determined eligible for importation by NHTSA, based on the vehicles' capability of being modified to conform to those standards. The regulations require each manufacturer to affix to each vehicle, in a prescribed location, a label that, among other things, identifies the vehicle's manufacturer (defined as the person who assembles the vehicle), the vehicle's date of manufacture, and the statement that the vehicle complies with all applicable Federal motor vehicle safety standards and, where applicable, bumper and theft prevention standards in effect on the date of manufacture. The label must also include the vehicle's gross vehicle and gross axle weight ratings (GVWR and GAWRs), vehicle identification number, and vehicle type classification (*i.e.,* passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle, low-speed vehicle). The regulations specify other labelling requirements for incomplete vehicle, intermediate, and final-stage manufacturers of vehicles built in two or more stages, such as commercial trucks that are built by adding work performing components, such as a cargo box or cement mixer, to a previously manufactured chassis or chassis-cab, and to persons who alter previously certified vehicles, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, before the first purchase of the vehicle for purposes other than resale.

As NHTSA estimates that fewer than 8,00 replica vehicles will be manufactured in each year, the implementation of the replica provision is not expected to change the estimate that 17,600,000 vehicles will be labeled according to Part 567 in each of the next three years.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): The agency estimates that it will receive 1,254 submissions of VIN-deciphering information under Part 565 from approximately 629 manufacturers of motor vehicles per year. The manufacturers need only submit the required information on a one-time basis, with the proviso that they notify the agency of any changes in the information on file within 30 days from the date that any change in that information occurs. In addition, the agency estimates that approximately 7,600 manufacturers of motor vehicles of all types, including manufacturers of passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, motorcycles, low-speed vehicles, and replica motor vehicles as well as incomplete vehicle manufacturers, intermediate and final-stage manufacturers of vehicles built in two or more stages, and vehicle alterers, will need to comply with the certification labeling requirements of Part 567 in each of the next three years.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information: 1,254 hours for supplying required VIN-deciphering information to NHTSA under Part 565; 88,000 hours for meeting the labeling requirements of Part 567.

Estimate of the Total Annual Costs of the Collection of Information: Assuming that the Part 565 information is submitted to the agency's website by company officers or employees compensated at an average rate of $33.98[69] per hour using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification #27–3042),[70] the agency estimates that $42,610.92 will be expended on an annual basis by all manufacturers required to submit that information (1,254 hours × $33.98 = $42,610.92). Additionally, NHTSA assumes that it will take an average of .005 hours to affix a certification label to each of the approximately 17,600,000 vehicles produced each year for sale in the United States, at an average cost of $22.94,[71] using the Bureau of Labor Statistic's mean hourly wage estimate for motor vehicle assemblers and fabricators (Standard Occupational Classification #51–2000).[72] Therefore, the agency estimates that roughly $2,018.720 will be expended by all manufacturers to comply with the labeling requirements of Part 567

[66] This estimate uses the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry (Standard Occupational Classification # 27–3042). National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019.

[67] 49 U.S.C. 30115.

[68] 49 U.S.C. 30254 and 33109.

[69] National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100—Motor Vehicle Manufacturing, May 2018, *https://www.bls.gov/oes/current/naics4_336100.htm#47-0000,* last accessed July 1, 2019.

[70] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

[71] Occupational Employment and Wages, May 2018, *https://www.bls.gov/oes/current/oes434031.htm,* last accessed July 1, 2019.

[72] U.S. Office of Management and Budget. *Standard Occupation Classification Manual,* 2018.

(17,600,000 vehicles × .005 hours = 88,000 hours; 88,000 hours × $20.00 = $2,018.720).

The total hourly wage cost associated with this information collection is $2,061,330.92. The Bureau of Labor Statistics estimates that for private industry workers, wages represent 70.1% of total compensation.[73] Therefore, the total cost associated with the hourly burden of this information collection is estimated to be $2,940,557.66.

Comments are invited on:

i. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii. How to enhance the quality, utility, and clarity of the information to be collected;

iv. How to minimize the burden of the collection of information on those who are to respond, including 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.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document to NHTSA and OMB.

Plain Language

E.O. 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

[73] Employer Costs for Employee Compensation-March 2019, *https://www.bls.gov/news.release/pdf/ecec.pdf,* last accessed June 28, 2019.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

XIV. Public Participation

How long do I have to submit comments?

We are providing a 30-day comment period. The comment period is shorter than the customary 45-day comment period used by the agency for nonsignificant rulemakings. A shorter comment period is in the public interest because it will allow us to issue a final rule more quickly and allow qualifying low-volume manufacturers to begin manufacturing replica motor vehicles sooner. We do not believe a longer comment period is necessary for the public to consider this proposal because most of the proposed requirements are mandated or contemplated by the FAST Act.

How do I prepare and submit comments?

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects

49 CFR Part 565

Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 566

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 567

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 586

Labeling, Motor vehicle safety, Replica motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR chapter V as follows:

PART 565—VEHICLE IDENTIFICATION NUMBER (VIN) REQUIREMENTS

■ 1. The authority citation for part 565 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.95.

■ 2. Revise § 565.12 to read as follows:

§ 565.12 Definitions.

(a) *Federal Motor Vehicle Safety Standards Definitions.* Unless otherwise indicated, all terms used in this part that are defined in 49 CFR 571.3 are used as defined in 49 CFR 571.3.

(b) *Other definitions.* As used in this part—

Body type means the general configuration or shape of a vehicle distinguished by such characteristics as the number of doors or windows, cargo-carrying features and the roofline (*e.g.,* sedan, fastback, hatchback).

Check digit means a single number or the letter X used to verify the accuracy of the transcription of the vehicle identification number.

Engine type means a power source with defined characteristics such as fuel utilized, number of cylinders, displacement, and net brake horsepower. The specific manufacturer and make shall be represented if the engine powers a passenger car or a multipurpose passenger vehicle, or truck with a gross vehicle weight rating of 4,536 kg (10,000 lb) or less.

High-volume manufacturer, for purposes of this part, means a manufacturer of 1,000 or more vehicles of a given type each year.

Incomplete vehicle means an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.

Line means a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.

Low-volume manufacturer, for purposes of this part, means a manufacturer of fewer than 1,000 vehicles of a given type each year.

Make means a name that a manufacturer applies to a group of vehicles or engines.

Manufacturer means a person—

(1) Manufacturing or assembling motor vehicles or motor vehicle equipment; or

(2) Importing motor vehicles or motor vehicle equipment for resale.

Manufacturer identifier means the first three digits of a VIN of a vehicle manufactured by a high-volume manufacturer, and the first three digits of a VIN and the twelfth through fourteenth digits of a VIN of a vehicle manufactured by a low-volume manufacturer.

Model means a name that a manufacturer applies to a family of vehicles of the same type, make, line, series and body type.

Model year means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Plant of manufacture means the plant where the manufacturer affixes the VIN.

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

Series means a name that a manufacturer applies to a subdivision of a ''line'' denoting price, size or weight identification and that is used by the manufacturer for marketing purposes.

Trailer kit means a trailer that is fabricated and delivered in complete but unassembled form and that is designed to be assembled without special machinery or tools.

Type means a class of vehicle distinguished by common traits, including design and purpose. Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, incomplete vehicles, low speed vehicles, and motorcycles are separate types.

VIN means a series of Arabic numbers and Roman letters that is assigned to a motor vehicle for identification purposes.

■ 3. In § 565.15(b), amend Table I—Type of Vehicle and Information Decipherable by adding an entry for ''Replica motor vehicle'' after the entry for ''Low speed vehicle'' to read as follows:

565.15 [Amended]

(b) * * *

TABLE I—TYPE OF VEHICLE AND INFORMATION DECIPHERABLE

*	*	*	*	*

Replica motor vehicle: The make, model, and model year of the original replicated vehicle; and the information listed in this table for the vehicle' type classification (e.g., if the replica meets the definition for passenger car in 49 CFR 571.3, the following information is required: body type; engine type; and all restraint devices and their locations).

TABLE I—TYPE OF VEHICLE AND INFORMATION DECIPHERABLE—Continued

*	*	*	*	*

* * * * *

PART 566—MANUFACTURER IDENTIFICATION

■ 4. The authority citation for part 566 is revised to read as follows:

Authority: National Traffic and Motor Vehicle Safety Act (49 U.S.C. 30166) and Sec. 24405(a) of the Fixing America's Surface Transportation Act (49 U.S.C. 30114(b)); delegation of authority at 49 CFR 1.95.

■ 5. Amend § 566.5 by revising the introductory text and adding paragraph (c)(4) to read as follows:

§ 566.5 Requirements.

Each manufacturer of motor vehicles, and each manufacturer of covered equipment, shall furnish the information specified in paragraphs (a) through (c) of this section to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590 or at *https://vpic.nhtsa.dot.gov/*.

* * * * *

(c) * * *

(4) In the case of replica motor vehicles, the manufacturer shall include, in the description of each type of motor vehicle it manufactures, a designation that the vehicle is a replica motor vehicle.

PART 567—CERTIFICATION

■ 6. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30114, 30115, 30117, 30166, 32504, 33101–33104, 33108 and 33109; delegation of authority at 49 CFR 1.95.

■ 7. Revise § 567.1 to read as follows:

§ 567.1 Purpose.

The purpose of this part is to specify the content and location of, and other requirements for, the certification label to be affixed to motor vehicles as required by the National Traffic and Motor Vehicle Safety Act, as amended (the Vehicle Safety Act) (49 U.S.C. 30114 and 30115) and the Motor Vehicle Information and Cost Savings Act, as amended (the Cost Savings Act), (49 U.S.C. 30254 and 33109), to address certification-related duties and liabilities, and to provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards (part 571 of this chapter), Bumper Standards (part 581 of this chapter), and Federal Theft Prevention Standards (part 541 of this chapter), are applicable to the vehicle.

■ 8. Amend § 567.3 by adding in alphabetical order a definition for ''Replica motor vehicle'' to read as follows:

§ 567.3 Definitions.

* * * * *

Replica motor vehicle means a motor vehicle meeting the definition of replica motor vehicle in 49 CFR part 586.

■ 9. Revise § 567.4(a) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

(a) Each manufacturer of motor vehicles (except replica motor vehicles or vehicles manufactured in two or more stages) shall affix to each vehicle a label, of the type and in the manner described in this section, containing the statements specified in paragraph (g) of this section.

* * * * *

■ 10. Add § 567.8 to read as follows:

§ 567.8 Requirements for manufacturers of replica motor vehicles.

(a) Each manufacturer of replica motor vehicles shall affix to each vehicle a label, of the type and in the manner described in this section, containing the statements specified in paragraph (e) of this section.

(b) The label shall be riveted or permanently affixed in such a manner that it cannot be removed without destroying or defacing it.

(c) The label shall be affixed to either the hinge pillar, door-latch post, or the door edge that meets the door-latch post, next to the driver's seating position, or if none of these locations is practicable, to the left side of the instrument panel. If that location is also not practicable, the label shall be affixed to the inward-facing surface of the door next to the driver's seating position. If none of the preceding locations is practicable, notification of that fact, together with drawings or photographs showing a suggested alternate location in the same general area, shall be submitted for approval to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590. The location of the label shall be such that it is easily readable without moving any part of the vehicle except an outer door.

(d) The lettering on the label shall be of a color that contrasts with the background of the label.

(e) The label shall contain the following information and statements, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high, in the order shown:

(1) *Name of manufacturer:* The full corporate or individual name of the actual assembler of the vehicle shall be spelled out, except that such abbreviations as ''Co.'' or ''Inc.'' and their foreign equivalents, and the first and middle initials of individuals, may be used. The name of the manufacturer shall be preceded by the words ''Manufactured By'' or ''Mfd By.''

(2) *Month and year of manufacture:* This shall be the time during which work was completed at the place of main assembly of the vehicle. It may be spelled out, as ''June 2000,'' or expressed in numerals, as ''6/00.''

(3) ''Gross Vehicle Weight Rating'' or ''GVWR'' followed by the appropriate value in pounds, which shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions.

(4) ''Gross Axle Weight Rating'' or ''GAWR,'' followed by the appropriate value in pounds, for each axle, identified in order from front to rear (*e.g.,* front, first intermediate, second intermediate, rear). The ratings for any consecutive axles having identical gross axle weight ratings when equipped with tires having the same tire size designation may, at the option of the manufacturer, be stated as a single value, with the label indicating to which axles the ratings apply.

Examples of combined ratings: GAWR:

(a) All axles—2,400 kg (5,290 lb.) with LT245/75R16(E) tires.

(b) Front—5,215 kg (11,500 lb.) with 295/75R22.5(G) tires.

First intermediate to rear—9,070 kg (20,000 lb.) with 295/75R22.5(G) tires.

(5) *The following statement:* ''This vehicle is a replica motor vehicle that replicates a [insert make and model of the replicated motor vehicle] originally manufactured in model year [insert year].''

(6) *The following statement:* ''This replica motor vehicle is exempt from the following Federal motor vehicle safety, theft prevention, and bumper standards in effect on [insert the date of manufacture of the replica motor vehicle] for [insert replica's type of motor vehicle (*e.g.,* passenger cars)].'' The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal.'' List all standards that the vehicle has been granted an exemption from under part 586.

(7) Vehicle identification number.

■ 11. Add part 586 to read as follows:

PART 586—REPLICA MOTOR VEHICLES

Sec.
586.1 Scope.
586.2 Purpose.
586.3 Applicability.
586.4 Definitions.
586.5 General requirements.
586.6 Registration.
586.7 Timing for processing registrations.
586.8 Deemed approved registrations.
586.9 Updating existing registrations.
586.10 Written notice.
586.11 Temporary label.
586.12 Annual report.
586.14 Revocation of registrations.

Authority: 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

§ 586.1 Scope

This part specifies requirements and procedures under 49 U.S.C. 30114(b) for the registration of low-volume manufacturers as replica motor vehicle manufacturers and establishes the duties of the manufacturers. Once approved, replica motor vehicle manufacturers are granted a conditional exemption from 49 U.S.C. 30112(a), 32304, 32502, and 32902 and from section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232) to produce up to 325 replica motor vehicles. That is replica motor vehicles granted an exemption under this part are exempt from all applicable Federal motor vehicle safety standards in part 571 of this chapter (except for standards applicable to motor vehicle equipment), passenger motor vehicle country of origin labeling requirements, bumper standards, average fuel economy standards, and vehicle labeling and safety rating disclosure requirements.

§ 586.2 Purpose.

The purpose of this part is to implement a program under 49 U.S.C. 30114(b) to annually exempt not more than 325 replica motor vehicles per year that are manufactured or imported by low-volume manufacturers from existing requirements for motor vehicles. This part specifies eligibility requirements for low-volume manufacturers that wish to register with NHTSA as a replica motor vehicle manufacturer, procedures for the registration of such manufacturers, content and format requirements for registration submissions, and requirements for updating registrations. This part also provides for the revocation of registrations and sets forth the duties required of replica vehicle manufacturers. Manufacturers are not exempted under 49 U.S.C. 30114(b) unless they register with NHTSA pursuant to this part 586.

§ 586.3 Applicability.

This part applies to low-volume manufacturers that wish to register with NHTSA as a replica motor vehicle manufacturer, and to manufacturers registered as replica motor vehicle manufacturers.

§ 586.4 Definitions.

All terms in this part that are defined in 49 U.S.C. 30102 and in 49 CFR 571.3 are used as defined therein.

Low-volume manufacturer is defined in 49 U.S.C. 30114(b)(7).

Original model year of a replicated vehicle means the stated model year of a vehicle that has been replicated pursuant to 49 CFR part 586.

Replica motor vehicle manufacturer means a low-volume manufacturer that is registered as a replica motor vehicle manufacturer pursuant to the requirements in this part.

Replica model year means the calendar year in which a replica motor vehicle was manufactured.

Replica motor vehicle means a motor vehicle that—

(1) Is produced by a manufacturer meeting the definition of replica motor vehicle manufacturer under 49 CFR part 586 that has not manufactured 325 replica motor vehicles in the current calendar year; and

(2) Is intended to resemble the body of another motor vehicle that was manufactured for consumer sale not less than 25 years before the manufacture of the replica motor vehicle; and

(3) Is either:

(i) Manufactured under a license for all of the intellectual property rights of the motor vehicle that is intended to be replicated, including, but not limited to, product configuration, trade dress, trademark, and patent, from the original manufacturer, or its successors or assignees; or,

(ii) Manufactured by a current owner of such intellectual property, including, but not limited to, product configuration trade dress, trademark, and patent rights.

§ 586.5 General requirements.

(a) Each manufacturer wishing to register as a replica motor vehicle manufacturer must have a calendar year, worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, of not more than 5,000 motor vehicles, and must not be a registered importer under 49 CFR part 592. Only one registration is permitted for manufacturers sharing common ownership. If a manufacturer wishes to manufacture replica vehicles and it shares common ownership with a registered replica motor vehicle, it may only do so after the registered replica manufacturer submits a revised registration submission indicating that the exemption for 325 replica vehicles will be divided between the manufacturers. Replica manufacturers sharing common ownership will be limited to a total of 325 replica vehicles. An update to a registration to add a manufacturer under common ownership shall allocate the exemption for 325 replica vehicles between the manufacturers. An update to the registration to adjust the allocation must be made pursuant to § 586.9.

(b) Each manufacturer wishing to manufacture replica motor vehicles under this program must be registered, according to the requirements in 49 CFR 586.6, as a replica motor vehicle manufacturer for the calendar year in which the replica motor vehicle is manufactured.

(c) Each replica motor vehicle manufacturer shall meet all statutory and regulatory requirements applicable to motor vehicle manufacturers, except:

(1) 49 U.S.C. 30112(a) regarding the Federal motor vehicle safety standards applicable to vehicles in effect on the date of manufacture of the replica motor vehicle; and

(2) 49 U.S.C. 32304, 32502, 32902 and 15 U.S.C. 1232.

(d) Each replica motor vehicle manufacturer shall:

(1) Meet all the requirements set forth in this part; and,

(2) Not manufacture more than 325 replica motor vehicles in a calendar year.

(e) Each replica motor vehicle, as manufactured, shall closely resemble the original replicated vehicle.

(f) An exemption granted by NHTSA may not be transferred to any other person, and shall expire at the end of the calendar year for which it was granted with respect to any volume authorized by the exemption that was not applied by the replica motor vehicle manufacturer to vehicles built during that calendar year.

§ 586.6 Registration.

(a) A manufacturer may register under this part as a manufacturer of replica motor vehicles if:

(1) The manufacturer is not registered as an importer under 49 CFR part 592;

(2) The manufacturer's annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles;

(3) The manufacturer has submitted manufacturer identification information pursuant to part 566 of this chapter.

(b) To register as a replica motor vehicle manufacturer, a manufacturer

must submit, using the NHTSA Product Information Catalog and Vehicle Listing (vPIC) platform (*https://vpic.nhtsa.dot.gov/*) its name, address, and email address, and the following:

(1) Information sufficient to establish:

(i) That the manufacturer's annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration; and,

(ii) That the manufacturer is not registered as an importer under 49 CFR part 592;

(2) A statement identifying the original vehicle(s) the manufacturer intends to replicate by make, model, and model year;

(3) Information sufficient to establish that the replica vehicle(s) the manufacturer intends to replicate is intended to resemble the body of the original vehicle, including:

(i) The images of the front, rear, and side views of the exterior of the original vehicle;

(ii) If the manufacturer has previously replicated the original vehicle(s), images of the front, rear, and side views of the exterior of a representative replica motor vehicle;

(iii) If the manufacturer has not previously replicated the original vehicle(s), design plans for the replica vehicles;

(iv) Information to show that the replica vehicle will be the same height, width, and length as the original vehicle; and

(v) If any deviations were made to accommodate safety features, highlight those deviations for NHTSA's consideration.

(4) A certification that the manufacturer has determined the intellectual property rights required and obtained all licenses and permissions necessary to legally produce the replica and documentation to support that it has obtained the required licenses from the original manufacturer, its successors or assignees, or the current owner of any product configuration, trade dress, trademark, or patent necessary to produce the replicated vehicle. The intellectual property rights for the original vehicle may include, but are not limited to, the following:

(i) Trade dress of the vehicle;

(ii) Trademarks for the body style of the vehicle;

(iii) Patents for the vehicle's exterior shape or features; and/or

(iv) Trademarks for make and/or model names used in connection with the manufacturer and sale of the original vehicle.

(5) A statement certifying that the manufacturer will not manufacture more than the number of replica motor vehicles covered by the requested exemption, a number not more than 325 replica motor vehicles in a calendar year; and,

(6) All information required by part 566 of this chapter to identify itself to NHTSA as a motor vehicle manufacturer.

(7) A statement certifying that the manufacturer understands that information provided under this part is information upon which the Federal Government will rely, and that submission of false, fictitious or fraudulent information may result in civil or criminal penalties under 18 U.S.C. 1001.

(c) A manufacturer is not considered registered under this part 586 until it receives written confirmation from NHTSA that:

(1) The registration is approved; or,

(2) The registration is deemed approved by NHTSA's failure to approve or deny the registration pursuant to § 586.7.

(d) A replica manufacture shall submit an updated registration submission prior to beginning manufacture of any replica vehicle model(s) not covered by their existing registration and will not begin manufacturing those additional replica vehicle model(s) until the registration is either approved or deemed approved as specified under § 586.9.

(e) A registrant need not reapply annually if the registrant seeks to manufacture the same replica vehicles (make, model and model year) for which it received approval. The registrant must provide notification, by way of its annual report pursuant to § 586.12, of its intent to continue manufacturing covered replica vehicles.

§ 586.7 Timing for processing registrations.

Upon receipt of a registration submitted on vPIC, NHTSA will notify the registrant within 90 days, in writing which includes by email, whether the registration is approved or denied. If notification is not sent to the registrant within 90 days from NHTSA's receipt of the submission, the registration will be deemed approved pursuant to § 586.6(c) unless:

(a) NHTSA determines that the submission is incomplete. If NHTSA notifies the registrant, in writing which includes by email, within 90 days that the submission is incomplete, the manufacturer shall have 60 days to submit the missing information. If the manufacturer fails to submit additional information, the registration will be denied.

(1) Upon receipt of additional information, NHTSA shall have 30 days plus the remaining time of the initial 90 days to review and grant or deny the registration. For example, if NHTSA notifies the manufacturer that registration is incomplete on the 30th day, NHTSA shall have the remaining 60 days plus 30 days to review the registration upon receipt of additional information.

(2) A registration shall be denied if NHTSA requests additional information from the registrant necessary to complete the registration and the manufacturer does not submit information sufficient to complete the registration within 60 days.

(b) The submission is repetitious. A repetitious registration submission is one that relies on the same facts and circumstances as a previously denied registration.

§ 586.8 Deemed approved registrations.

(a) If a manufacturer believes that its registration is deemed approved by NHTSA's failure to approve or deny the registration pursuant to § 586.7, the manufacturer must obtain written confirmation from NHTSA that its registration is deemed approved. If NHTSA confirms that the registration is deemed approved, NHTSA shall include each deemed approved registrant's name on NHTSA's published list of registrants. If NHTSA cannot find any record of the registration submitted on vPIC, NHTSA will inform the manufacturer in writing that the registration has not been deemed approved.

(b) If NHTSA determines that a registration, deemed approved by a failure to approve or deny the registration within the allotted time, is incomplete or does not provide a basis for qualifying as a registrant, NHTSA may request additional information from the registrant, in writing which includes by email. A manufacturer shall have 60 days to respond to a request for additional information. If the manufacturer fails to respond within the 60 days or submits information that does not support qualification as a low-volume manufacturer of replica vehicles, NHTSA may revoke the registration.

§ 586.9 Updating existing registrations.

A registered replica manufacturer shall submit updated registration

information prior to commencing manufacturer of a new model of replica vehicle or reallocating the number of replica vehicles to be made by two or more replica manufacturers under common ownership. The manufacturer shall submit updated registration information pursuant to § 586.6. The manufacturer may not begin producing the new model of replica vehicle or reallocate replica vehicles until its registration is either approved or deemed approved by NHTSA.

§ 586.10 Written notice.

Each replica motor vehicle manufacturer must provide the dealer and first retail purchaser the following information, either in the owner's manual or a separate document:

(a) A list of all current standards and regulations the vehicle would be required to comply with but with which it does not comply due to this exemption;

(b) The purpose statements of each such standard or regulation, as provided in Table 1 of this part.

§ 586.11 Temporary label.

The vehicle shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. The label shall meet the following requirements:

(a) The label shall include a heading area in yellow with an alert symbol consisting of a solid black equilateral triangle with a yellow exclamation point and the word ''WARNING'' in black block capitals in a type size that is larger than that used in the remainder of the label and the alert symbol in black.

(b) The label shall include a message area in white with black text in at least 20-point font stating: ''This vehicle is a replica motor vehicle and is exempt from complying with all current Federal motor vehicle safety standards that apply to motor vehicles, and with theft prevention and bumper standards in effect on the date of manufacture. [The expression ''U.S.'' or ''U.S.A.'' may be inserted before the word ''Federal''.] See the certification label or consumer disclosure for more specific information.''

(c) The message area shall be no less than 30 cm^2 (4.7 in^2).

§ 586.12 Annual report.

Each manufacturer of a replica motor vehicle shall furnish the following information to *https://vpic.nhtsa.dot.gov/* no later than March 1 following the end of a calendar year in which the manufacturer produced at least 1 (one) replica motor vehicle:

(a) Full individual, partnership or corporate name of the manufacturer.

(b) Residence address of the manufacturer, phone number and email address.

(c) The calendar year for which the annual report is submitted (replica model year) and the total number of replica vehicles manufactured during that year.

(d) The complete Vehicle Identification Number (VIN) of each replica vehicle manufactured.

(e) List of the different versions of replica motor vehicles produced by make, model, and original model year of replicated vehicle.

(f) List of the FMVSS and regulations from which each version of replica vehicle (by make, model, and original model year of replicated vehicle) is exempt.

(g) Images of the front, rear, and side views of the original vehicle(s) replicated, of both the vehicle's exterior, and images of the same views of a representative replica manufactured to resemble each original vehicle.

(h) Information sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle.

(i) State whether the replica vehicles contain any of the following vehicle safety features: (1) Front or side air bags;

(2) Lap or lap and shoulder belts;

(3) Advanced safety systems/passive safety systems (listed with locations);

(4) Electronic stability control;

(5) Rear visibility camera system; or

(6) Ejection mitigation.

(j) Notification to NHTSA if the registrant will be manufacturing the same replica motor vehicle(s) in the next calendar year and if so, how many vehicles it will be manufacturing. If the manufacturer intends to continue manufacturing replica motor vehicle(s), the manufacturer must also submit information sufficient to establish that their annual world-wide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles, and a statement certifying to that effect, including the total number of motor vehicles produced by or on behalf of the registrant in the 12-month prior to filing the registration.

§ 586.13 Revocation of registrations.

NHTSA may require registrants to provide information at any time demonstrating compliance with the requirements of this part. NHTSA may revoke an existing registration or deny a registration based on a failure to comply with requirements of this part or a finding of a safety-related defect or unlawful conduct under 49 U.S.C. Chapter 301 *et seq.* that poses a significant safety risk. Prior to the revocation of the registration, NHTSA will provide the registrant a reasonable opportunity to correct deficiencies, if such are correctable, based on the sole discretion of NHTSA.

Tables to Part 586

TABLE 1—PURPOSE STATEMENTS FOR INCLUSION IN CONSUMER DISCLOSURE

49 CFR 571.101; Controls and displays	The purpose of this standard is to ensure that motor vehicle controls, telltales, and indicators are accessible, visible, and recognizable. This is to help users select the proper controls under daytime and nighttime conditions to reduce safety hazards caused by the diversion of the driver's attention from the driving tasks, and mistakes in selecting controls.
49 CFR 571.102; Transmission shift position sequence, starter interlock, and transmission braking effect.	The purpose of this standard is to specify the requirements for the transmission shift position sequence, a starter interlock, and for braking effect of automatic transmissions, to reduce the likelihood of shifting errors, to prevent starter engagement by the driver when the transmission is any driver position, and to provide supplemental braking at speeds below 40 kilometers per hour (25 miles per hour).
49 CFR 571.103; Windshield defrosting and defogging systems.	The purpose of this standard is to specify requirements for windshield defrosting and defogging systems.
49 CFR 571.104; Windshield wiping and washing systems.	The purpose of this standard is to specify requirements for windshield wiping and washing systems.
49 CFR 571.105; Hydraulic and electric brake systems.	The purpose of this standard is to insure safe braking performance under normal and emergency conditions by specifying requirements for hydraulic and electric service brake systems, and associated parking brake systems.

TABLE 1—PURPOSE STATEMENTS FOR INCLUSION IN CONSUMER DISCLOSURE—Continued

49 CFR 571.106; Brake hoses	The purpose of this standard is to reduce deaths and injuries occurring as a result of brake system failure from pressure or vacuum loss due to hose or hose assembly rupture.
49 CFR 571.108; Lamps, reflective devices, and associated equipment.	The purpose of this standard is to reduce traffic accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility.
49 CFR 571.110; Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.	The purpose of this standard is to specify requirements for tire selection to prevent tire overloading and motor home/recreation vehicle trailer load carrying capacity information.
49 CFR 571.111; Rear visibility	The purpose of this standard is to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.
49 CFR 571.113; Hood latch system	The purpose of this standard is to establish the requirement that each passenger car, multipurpose passenger car, truck and bus provides a hood latch system or hood latch systems.
49 CFR 571.114; Theft protection and rollaway prevention.	The purpose of this standard is to decrease the likelihood that a vehicle is stolen or accidently set in motion.
49 CFR 571.116; Motor vehicle brake fluids	The purpose of this standard is to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid.
49 CFR 571.118; Power-operated window, partition, and roof panel systems.	The purpose of this standard is to minimize the likelihood of death or injury from accidental operation of power operated windows, partitions, and roof panel systems.
49 CFR 571.120; Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).	The purpose of this standard is to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation and by ensuring that consumers are informed of motor home/recreation vehicle trailer load carrying capacity.
49 CFR 571.121; Air brake systems	The purpose of this standard is to ensure safe braking performance under normal and emergency conditions.
49 CFR 571.122; Motorcycle brake systems	The purpose of this standard is to ensure safe motorcycle braking performance under normal and emergency riding conditions.
49 CFR 571.122a; Motorcycle brake systems	The purpose of this standard is to ensure safe motorcycle braking performance under normal and emergency riding conditions.
49 CFR 571.123; Motorcycle controls and displays.	The purpose of this standard is to minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.
49 CFR 571.124; Accelerator control systems	The purpose of this standard is to reduce deaths and injuries resulting from engine overspeed caused by malfunctions in the accelerator control system.
49 CFR 571.126; Electronic stability control systems.	The purpose of this standard is to reduce the number of deaths and injuries that result from crashes in which the driver loses directional control of the vehicle, including those resulting in vehicle rollover.
49 CFR 571.131; School bus pedestrian safety devices.	The purpose of this standard is to reduce deaths and injuries by minimizing the likelihood of vehicles passing a stopped school bus and striking pedestrians in the vicinity of the bus.
49 CFR 571.135; Light vehicle brake systems	The purpose of this standard is to ensure safe braking performance under normal and emergency driving conditions.
49 CFR 571.136; Electronic stability control systems for heavy vehicles.	The purpose of this standard is to reduce crashes caused by rollover or by directional loss-of-control.
49 CFR 571.138; Tire pressure monitoring systems.	The purpose of this standard is to specify performance requirements for tire pressure monitoring systems (TPMSs) to warn drivers of significant under-inflation of tires and the resulting safety problems.
49 CFR 571.141; Minimum Sound Requirements for Hybrid and Electric Vehicles.	The purpose of this standard is to reduce the number of injuries that result from electric and hybrid vehicle crashes with pedestrians by providing a sound level and sound characteristics necessary for these vehicles to be detected and recognized by pedestrians.
49 CFR 571.201; Occupant protection in interior impact.	The purpose of this standard is to require that vehicles provide impact protection to occupants.
49 CFR 571.202a; Head restraints; Mandatory applicability begins on September 1, 2009.	The purpose of this standard is to reduce the frequency and severity of neck injuries in rear-end and other collisions by specifying requirements for head restraints.
49 CFR 571.203; Impact protection for the driver from the steering control system.	The purpose of this standard is to minimize chest, neck, and facial injuries to the driver as a result of impact with the steering control systems.
49 CFR 571.204; Steering control rearward placement.	The purpose of this standard is to reduce the likelihood of chest, neck, or head injury by limiting the rearward displacement of the steering control into the passenger compartment.
49 CFR 571.205; Glazing materials	The purpose of this standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.
49 CFR 571.206; Door locks and door retention components.	The purpose of this standard is to minimize the likelihood of occupants being rejected from the vehicle as a result of impact.
49 CFR 571.207; Seating systems	The purpose of this standards is to minimize the possibility of seat failure by forces acting on them as a result of vehicle impact.
49 CFR 571.208; Occupant crash protection	The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the severity of injuries, by specifying vehicle crashworthiness requirements in terms of forces and accelerations measured on anthropomorphic dummies in test crashes, and specifying equipment requirements for active and passive restraint systems.

TABLE 1—PURPOSE STATEMENTS FOR INCLUSION IN CONSUMER DISCLOSURE—Continued

49 CFR 571.210; Seat belt assembly anchorages.	The purpose of this standard is to reduce the likelihood that seat belts will become disconnected from the vehicle frame during impact by specifying the location and strength performance of seat belt assembly anchorages.
49 CFR 571.212; Windshield mounting	The purpose of this standard is to reduce crash injuries and fatalities by providing for retention of the vehicle windshield during a crash, thereby utilizing fully the penetration residence and injury-avoidance properties of the windshield glazing material and preventing the ejection of occupants from the vehicle.
49 CFR 571.213; Child restraint systems	The purpose of this standard is to reduce the number of children killed or injured in motor vehicle crashes and in aircraft.
49 CFR 571.214; Side impact protection	The purpose of this standard is to reduce the risk of serious and fatal injury to occupants, of passenger cars, multipurpose passenger vehicles, trucks, and buses in side impacts by specifying strength requirements for side doors, limiting the forces, deflections and accelerations measured on anthropomorphic dummies in test crashes, and by other means.
49 CFR 571.216; Roof crush resistance; Applicable unless a vehicle is certified to § 571.216a.	The purpose of this standard is to reduce deaths and injuries due to the crushing of the roof into the occupant compartment in rollover crashes.
49 CFR 571.216a; Roof crush resistance; Upgraded standard.	The purpose of this standard is to reduce deaths and injuries due to the crushing of the roof into the occupant compartment in rollover crashes.
49 CFR 571.217; Bus emergency exits and window retention and release.	The purpose of this standard is to minimize the likelihood of occupants being thrown from the bus and to provide accessible emergency exits.
49 CFR 571.219; Windshield zone intrusion	The purpose of this standard is to reduce crash injuries and fatalities that result from occupants contacting vehicle components displaced near or through the windshield.
49 CFR 571.220; School bus rollover protection	The purpose of this standard is to reduce the number of deaths and the severity of injuries that result from failure of the school bus body structure to withstand forces encountered in rollover crashes.
49 CFR 571.221; School bus body joint strength	The purpose of this standard is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes.
49 CFR 571.222; School bus passenger seating and crash protection.	The purpose of this standard is to reduce the number of deaths and the severity of injuries that result from the impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers.
49 CFR 571.224; Rear impact protection	The purpose of this standard is to reduce the number of deaths and serious injuries occurring when light duty vehicles impact the rear of trailers and semitrailers with a GVWR of 4,536 kg or more.
49 CFR 571.225; Child restraint anchorage systems.	The purpose of this standard is to ensure the proper location and strength for the effective securing of child restraints, to reduce the likelihood of the anchorage systems' failure, and to increase the likelihood that child restraints are properly secured and thus more fully achieve their potential effectiveness in motor vehicles.
49 CFR 571.226; Ejection Mitigation	The purpose of this standard is to reduce the likelihood of complete or partial ejection of vehicle occupants through side windows during rollovers or side impact events.
49 CFR 571.301; Fuel system integrity	The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, and resulting from ingestion of fuels during siphoning.
49 CFR 571.302; Flammability of interior materials.	The purpose of this standard is to reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes.
49 CFR 571.303; Fuel system integrity of compressed natural gas vehicles.	The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.
49 CFR 571.304; Compressed natural gas fuel container integrity.	The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.
49 CFR 571.305; Electric-powered vehicles: Electrolyte spillage and electrical shock protection.	The purpose of this standard is to reduce deaths and injuries during and after a crash that occurs because of electrolyte spillage from electric energy storage devices, intrusion of electric energy storage/conversion devices into the occupant compartment, and electrical shock.
49 CFR 571.401; Interior trunk release	The purpose of this standard is to require providing a trunk release mechanism that allows a person trapped inside the trunk compartment of a passenger to escape from the compartment.
49 CFR 571.404; Platform lift installations in motor vehicles.	The purpose of this standard is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts installed in motor vehicles.
49 CFR 571.500; Low-speed vehicles	The purpose of this standard is to ensure that low-speed vehicles operated on the public streets, roads, and highways are equipped with the minimum motor vehicle equipment appropriate for motor vehicle safety.

Issued in Washington, DC, on December 12, 2019.

Under authority delegated in 49 CFR part 1.95 and 49 CFR 501.4.

James Clayton Owens,

Acting Administrator.

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