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Presidential Documents

Title 3—

The President

Proclamation 9977 of January 17, 2020

Martin Luther King, Jr., Federal Holiday, 2020

By the President of the United States of America

A Proclamation

On August 28, 1963, nearly a quarter of a million people gathered in the August heat on the National Mall in Washington, DC, to hear the Reverend Dr. Martin Luther King, Jr., speak. People traveled to our Nation's Capital from places as far away as Atlanta and Los Angeles to witness one of the defining moments in American history. On the steps of the Lincoln Memorial, Dr. King articulated the founding dream of America, the vision of our Founders for all Americans to live as ''an heir of the legacy of dignity and worth.'' Today, we pause to honor the incredible life and accomplishments of Dr. King, who helped shape the Civil Rights Movement, gave hope to millions experiencing discrimination, and whose enduring memory inspires us to pursue a more just and equal society.

Dr. King dedicated his life's work to fighting for the right of every American to achieve the American Dream. Born the son of a Baptist minister on Auburn Street in Atlanta, Dr. King became an American icon and hero to millions of freedom-loving peoples everywhere, propelled by his powerful and inspiring message of peaceful protest and nonviolent resistance. From the steps of the Lincoln Memorial before thousands to the quiet solitude of a jail cell in Birmingham, Dr. King evinced an unshakable commitment to create a better future, never relenting in his quest for justice.

Since its inception, our Nation has served as a beacon of hope and opportunity around the world. America's promise of freedom and justice has guided our people through adversity to prosperity. Dr. King's life and legacy stands as a testament to that promise, one rooted in the inalienable rights of mankind and a commitment to freedom from persecution. Throughout his battle against segregation and discrimination, Dr. King praised his fellow demonstrators for returning ''back to the deep wells of democracy'' that trace their roots to our founding. We honor Dr. King's legacy and our Nation's heritage when we act to protect and expand freedom and opportunity.

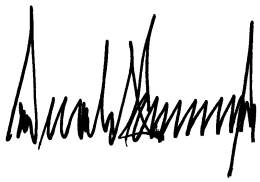
As President, I remain committed to safeguarding the promise of our Nation and the values we share, the values that Dr. King so ardently worked to achieve. My Administration works each day to ensure that all Americans have every opportunity to realize a better life for themselves and their families regardless of race, class, gender, or any other barriers that have arbitrarily stood in their way. We have seen historic economic growth, with more than 7 million new jobs since my election and record highs in African-American, Hispanic-American, and Asian-American employment. Through a focused effort of deregulation and growth-oriented policies, we have unleashed the potential of the American economy and bolstered the strength of the greatest workforce in the world, the American workforce. We recognize that economic opportunity is the greatest engine for empowering individuals and families to overcome adversity, and we will continue to fight for opportunity for all Americans.

On this day, we are reminded of what Dr. King described as ''our noble capacity for justice and love and brotherhood.'' As we pay tribute to Dr. King, I urge all Americans to heed his call to action so that we may

build the ''Beloved Community'' that he envisioned, living up to the sacred promise for a better future woven into the fabric of our American identity.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 20, 2020, as the Martin Luther King, Jr., Federal Holiday. On this day, I encourage all Americans to recommit themselves to Dr. King's dream by engaging in acts of service to others, to their community, and to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0542; Airspace Docket No. 19–ASW–6]

RIN 2120–AA66

Revocation of VHF Omnidirectional Range (VOR) Federal Airway V–369 Due to the Decommissioning of the Groesbeck, TX, VOR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes VHF Omnidirectional Range (VOR) Federal airway V–369 in its entirety between Navasota, TX, and Dallas-Fort Worth, TX. The FAA is taking this action due to the planned decommissioning of the Groesbeck, TX (GNL), VOR navigation aid (NAVAID) which provides navigation guidance for portions of the affected ATS route. The Groesbeck VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2019–0542 in the **Federal Register** (84 FR 34080; July 17, 2019), removing VOR Federal airway V–369. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the description of VOR Federal airway V–369. The planned decommissioning of the Groesbeck, TX, VOR has made this action necessary. The VOR Federal airway action is described below.

V–369: V–369 extends between the Navasota, TX, VOR/DME and the Maverick, TX, VOR/DME. The airway is removed in its entirety.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this airspace action of removing VOR Federal airway V–369 has no potential to cause any significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment. Therefore, this airspace action has been categorically excluded

from further environmental impact review in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR parts 1500–1508, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–369 [Removed]

* * * * *

Issued in Washington, DC, on January 15, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00994 Filed 1–22–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0817; Airspace Docket No. 18–ASW–1]

RIN 2120–AA66

Amendment and Establishment of Multiple Air Traffic Service (ATS) Routes in the Vicinity of Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies 3 jet routes, 2 high altitude area navigation (RNAV) Q-routes, and 8 VHF Omnidirectional Range (VOR) Federal airways, and establishes 4 low altitude RNAV T-routes in the vicinity of Houston, TX. The FAA is taking this action due to the planned decommissioning of the Hobby, TX, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID), which provides navigation guidance for portions of the affected ATS routes.

DATES: Effective date 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2018–0817 (83 FR 48730; September 27, 2018) to amend 3 jet routes, 2 RNAV Q-routes, and 8 VOR Federal airways, and establish 4 RNAV T-routes due to the planned decommissioning of the Hobby, TX, VOR/DME. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One supportive comment was received.

The NPRM stated that the Hobby, TX, VOR/DME was being decommissioned in support of construction activities for a new international terminal and associated parking garage at the William P. Hobby Airport, Houston, TX. That was based on the Houston Airport System's September 2018 request that the FAA permanently turn off and remove the Hobby VOR/DME located on the Houston Hobby Airport parking garage as the VOR had been out of service for several months due to construction of the new international terminal and parking garage. However, prior to the Houston Airport System request, the FAA initiated a plan for reducing the number of VORs.

On December 15, 2011, the FAA published in the **Federal Register** a notice of proposed policy and request for comments (76 FR 77939) on the FAA's proposed strategy for gradually reducing the current VOR network to a Minimum Operational Network (MON) as the National Airspace System (NAS) transitions to performance-based navigation (PBN) as part of the Next Generation Air Transportation System (NextGen). The FAA reviewed all comments received and on August 21, 2012, published in the **Federal Register** the disposition of the comments on the notice of proposed policy (77 FR 50420). In considering and disposing of the comments, the FAA noted that it would develop an initial VOR MON Plan

which would be made publicly available.

On July 26, 2016, the FAA published in the **Federal Register** the VOR MON final policy statement (81 FR 48694) announcing the discontinuance selection criteria and candidate list of VOR navigational aids targeted for discontinuance as part of the VOR MON Implementation Program and NAS Efficient Streamline Services Initiative. This action is part of that national strategy.

Jet Routes are published in paragraph 2004, high altitude RNAV Q-routes are published in paragraph 2006, Domestic VOR Federal airways are published in paragraph 6010(a), and low altitude RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The jet routes, Q-routes, VOR Federal airways, and T-routes listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying 3 jet routes, 2 Q-routes, and 8 VOR Federal airways, and establishing 4 T-routes due to the planned decommissioning of the Hobby, TX, VOR/DME. The ATS route amendments are to the descriptions of J–37, J–138, J–177, Q–24, Q–56, V–15, V–20, V–68, V–76, V–194, V–198, V–548, and V–558, and the new T-routes would be designated T–200, T–220, T–224, and T–256. The ATS route changes are outlined below. Full ATS route descriptions are in the ''Adoption of the Amendment'' section of this document.

The jet route amendments are as follows:

J–37: J–37 extends between the Hobby, TX, VOR/DME and the Coyle, NJ, VOR/Tactical Air Navigation (VORTAC); and between the Kennedy, NY, VOR/DME and the Massena, NY, VORTAC. The airway segment between the Hobby, TX, VOR/DME and the Harvey, LA, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

J–138: J–138 extends between the Fort Stockton, TX, VORTAC and the Semmes, AL, VORTAC. The airway segment between the San Antonio, TX, VORTAC and the Lake Charles, LA, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

J–177: J–177 extends between the Humble, TX, VORTAC and the Tampico, Mexico, VOR/DME, excluding the portion south of lat. 26°00′00″ N. The airway segment between the Humble, TX, VORTAC and the Palacios, TX, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

The Q-route amendments are as follows:

Q–24: Q–24 extends between the Lake Charles, LA, VORTAC and the PAYTN, AL, fix. The route west of the Lake Charles, LA, VORTAC is extended to the San Antonio, TX, VORTAC. The San Antonio, TX, VORTAC and the MOLLR, TX, waypoint (WP) are added prior to the Lake Charles, LA VORTAC. The unaffected portions of the existing airway remain as charted.

Q–56: Q–56 extends between the CATLN, AL, fix and the KIWII, VA, WP. The route south of the CATLN, AL, fix is extended to the San Antonio, TX, VORTAC. The San Antonio, TX, VORTAC; the MOLLR, TX, WP; the PEKON, LA, fix; the Harvey, LA, VORTAC; and the Semmes, AL, VORTAC are added prior to the CATLN, AL, fix. Additionally, the KBLER, GA, WP is removed between the CATLN, AL, fix and the KELLN, SC, WP. The unaffected portions of the existing airway remain as charted.

The VOR Federal airway amendments are as follows:

V–15: V–15 extends between the Hobby, TX, VOR/DME and the Neosho, MO, VOR/DME; and between the Sioux City, IA, VORTAC and the Minot, ND, VORTAC (incorrectly identified as a VORTAC in the NPRM). The airway segment between the Hobby, TX, VOR/DME and the Navasota, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–20: V–20 extends between the McAllen, TX, VOR/DME and the Nottingham, MD, VORTAC. The airway segment between the Palacios, TX, VORTAC and the Beaumont, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–68: V–68 extends between the Montrose, CO, VOR/DME and the Hobby, TX, VOR/DME. The airway segment between the Industry, TX, VORTAC and the Hobby, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–76: V–76 extends between the Lubbock, TX, VORTAC and the Hobby, TX, VOR/DME. The airway segment between the Industry, TX, VORTAC and the Hobby, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–194: V–194 extends between the Cedar Creek, TX, VORTAC and the Meridian, MS, VORTAC; and between the Liberty, NC, VORTAC and the intersection of the Cofield, NC, VORTAC 077° and Norfolk, VA, VORTAC 209° radials (SUNNS fix). The airway segment between the College Station, TX, VORTAC and the Sabine Pass, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–198: V–198 extends between the San Simon, AZ, VORTAC and the Craig, FL, VORTAC. The airway segment between the Eagle Lake, TX, VOR/DME and the Sabine Pass, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

V–548: V–548 extends between the Hobby, TX, VOR/DME and the Waco, TX, VORTAC. The airway segment between the Hobby, TX, VOR/DME and the College Station, TX, VORTAC is removed. The unaffected portions of the existing airway remain as charted.

V–558: V–558 extends between the Llano, TX, VORTAC and the Hobby, TX, VOR/DME. The airway segment between the Eagle Lake, TX, VOR/DME and the Hobby, TX, VOR/DME is removed. The unaffected portions of the existing airway remain as charted.

The new T-routes are as follows:

T–200: T–200 is established between the College Station, TX, VORTAC and the Sabine Pass, TX, VOR/DME.

T–220: T–220 is established between the Industry, TX, VORTAC and the Sabine Pass, TX, VOR/DME.

T–224: T–224 is established between the Palacios, TX, VORTAC and the Lake Charles, LA, VORTAC.

T–256: T–256 is established between the San Antonio, TX, VORTAC and the Sabine Pass, TX, VOR/DME.

All radials in the route descriptions below are stated in True degrees.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying ATS routes J–37, J–138, J–177, Q–24, Q–56, V–15, V–20, V–68, V–76, V–194, V–198, V–548, and V–558, and establishing T–200, T–220, T–224, and T–256 near Hobby, TX, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–37 [Amended]

From Harvey, LA; Semmes, AL; Montgomery, AL; Spartanburg, SC; Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY; Albany, NY; to Massena, NY.

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J–138 [Amended]

From Fort Stockton, TX; Center Point, TX; to San Antonio, TX. From Lake Charles, LA; Fighting Tiger, LA; to Semmes, AL.

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J177 [Amended]

From Palacios, TX; to Tampico, Mexico, excluding the portion south of lat. 26°00′00″ N.

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–24 SAN ANTONIO, TX (SAT) TO PAYTN, AL [AMENDED]

San Antonio, TX (SAT)	VORTAC	(Lat. 29°38′38.51″ N, long. 98°27′40.73″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
Lake Charles, LA (LCH)	VORTAC	(Lat. 30°08′29.45″ N, long. 93°06′20.05″ W)
Fighting Tiger, LA (LSU)	VORTAC	(Lat. 30°29′06.48″ N, long. 91°17′38.64″ W)
IRUBE, MS	WP	(Lat. 31°00′15.95″ N, long. 88°56′18.62″ W)
PAYTN, AL	FIX	(Lat. 31°28′04.35″ N, long. 87°53′07.91″ W)

* * * * * * *

Q–56 SAN ANTONIO, TX (SAT) TO KIWII, VA [AMENDED]

San Antonio, TX (SAT)	VORTAC	(Lat. 29°38′38.51″ N, long. 98°27′40.73″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
PEKON, LA	FIX	(Lat. 29°37′22.88″ N, long. 92°55′26.37″ W)
Harvey, LA (HRV)	VORTAC	(Lat. 29°51′00.70″ N, long. 90°00′10.74″ W)
Semmes, AL (SJI)	VORTAC	(Lat. 30°43′33.53″ N, long. 88°21′33.46″ W)
CATLN, AL	FIX	(Lat. 31°18′26.03″ N, long. 87°34′47.75″ W)
KELLN, SC	WP	(Lat. 34°31′33.22″ N, long. 82°10′16.92″ W)
KTOWN, NC	WP	(Lat. 35°11′49.14″ N, long. 81°03′18.27″ W)
BYSCO, NC	WP	(Lat. 35°46′09.25″ N, long. 80°04′33.85″ W)
JOOLI, NC	WP	(Lat. 35°54′55.21″ N, long. 79°49′16.24″ W)
NUUMN, NC	WP	(Lat. 36°09′53.78″ N, long. 79°23′38.70″ W)
ORACL, NC	WP	(Lat. 36°28′01.58″ N, long. 78°52′14.80″ W)
KIWII, VA	WP	(Lat. 36°34′56.91″ N, long. 78°40′03.92″ W)

Paragraph 6010(a) Domestic VOR Federal Airways.

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V–15 [Amended]

From Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; McAlester, OK; Okmulgee, OK; to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

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V–20 [Amended]

From McAllen, TX, INT McAllen 038° and Corpus Christi, TX, 178° radials; 10 miles 8 miles wide, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline), Corpus Christi; INT Corpus Christi 054° and Palacios, TX, 226° radials; to Palacios. From Beaumont, TX; Lake Charles, LA; Lafayette, LA; Reserve, LA; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; Semmes, AL; INT Semmes 048° and Monroeville, AL, 231° radials; Monroeville; Montgomery, AL; Tuskegee, AL; Columbus, GA; INT Columbus 068° and Athens, GA, 195° radials; Athens; Electric City, SC; Sugarloaf Mountain, NC; Barretts Mountain, NC; South Boston, VA; Richmond, VA; INT Richmond 039° and Brooke, VA, 132° radials; INT Patuxent, MD, 228° and Nottingham, MD, 174° radials; to Nottingham. The

airspace on the main airway above 14,000 feet MSL from McAllen to 49 miles northeast and the airspace within Mexico is excluded. The airspace within R–4007A and R–4007B is excluded.

* * * * *

V–68 [Amended]

From Montrose, CO; Cones, CO; Dove Creek, CO; Cortez, CO; Rattlesnake, NM; INT Rattlesnake 128° and Albuquerque, NM, 345° radials; Albuquerque; INT Albuquerque 120° and Corona, NM, 311° radials; Corona; 41 miles 85 MSL, Chisum, NM; Hobbs, NM; Midland, TX; San Angelo, TX; Junction, TX; Center Point, TX; San Antonio, TX; INT San Antonio 064° and Industry, TX, 267° radials; to Industry.

* * * * *

V–76 [Amended]

From Lubbock, TX; INT Lubbock 188° and Big Spring, TX, 286° radials; Big Spring; San Angelo, TX; Llano, TX; Centex, TX; to Industry, TX.

* * * * *

V–194 [Amended]

From Cedar Creek, TX; to College Station, TX. From Sabine Pass, TX; Lafayette, LA; Fighting Tiger, LA; McComb, MS; INT McComb 055° and Meridian, MS, 221° radials; to Meridian. From Liberty, NC; Raleigh-Durham, NC; Tar River, NC; Cofield, NC; to INT Cofield 077° and Norfolk, VA, 209° radials.

* * * * *

V–198 [Amended]

From San Simon, AZ, via Columbus, NM; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX, 287° radials; 6 miles wide; Hudspeth; 29 miles, 38 miles, 82 MSL, INT Hudspeth 109° and Fort Stockton, TX, 284° radials; 18 miles, 82 MSL; Fort Stockton; 20 miles, 116 miles, 55 MSL; Junction, TX; San Antonio, TX; to Eagle Lake, TX. From Sabine Pass, TX; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles, 25 MSL; Brookley, AL; INT Brookley 056° and Crestview, FL, 266° radials; Crestview; Marianna, FL; Seminole, FL; Greenville, FL; Taylor, FL; INT Taylor 093° and Craig, FL, 287° radials; to Craig.

* * * * *

V–548 [Amended]

From College Station, TX; INT College Station 307° and Waco, TX, 173° radials; to Waco.

* * * * *

V–558 [Amended]

From Llano, TX; INT Llano 088° and Centex, TX, 306° radials; Centex; Industry, TX; to Eagle Lake, TX.

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–200 COLLEGE STATION, TX (CLL) TO SABINE PASS, TX (SBI) [NEW]

College Station, TX (CLL)	VORTAC	(Lat. 30°36′18.00″ N, long. 96°25′14.45″ W)
SEALY, TX	FIX	(Lat. 29°51′15.54″ N, long. 95°56′36.33″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 94°02′16.72″ W)

* * * * * * *

T–220 INDUSTRY, TX (IDU) TO SABINE PASS, TX (SBI) [NEW]

Industry, TX (IDU)	VORTAC	(Lat. 29°57′21.81″ N, long. 96°33′43.90″ W)
SEALY, TX	FIX	(Lat. 29°51′15.54″ N, long. 95°56′36.33″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 94°02′16.72″ W)

* * * * * * *

T–224 PALACIOS, TX (PSX) TO LAKE CHARLES, LA (LCH) [NEW]

Palacios, TX (PSX)	VORTAC	(Lat. 28°45′51.93″ N, long. 96°18′22.25″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
Beaumont, TX (BPT)	VOR/DME	(Lat. 29°56′45.80″ N, long. 94°00′58.36″ W)
Lake Charles, LA (LCH)	VORTAC	(Lat. 30°08′29.45″ N, long. 93°06′20.05″ W)

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T–256 SAN ANTONIO, TX (SAT) TO SABINE PASS, TX (SBI) [NEW]

San Antonio, TX (SAT)	VORTAC	(Lat. 29°38′38.51″ N, long. 98°27′40.73″ W)
Eagle Lake, TX (ELA)	VOR/DME	(Lat. 29°39′44.93″ N, long. 96°19′01.65″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 95°16′35.83″ W)
Sabine Pass, TX (SBI)	VOR/DME	(Lat. 29°41′12.19″ N, long. 94°02′16.72″ W)

Issued in Washington, DC, on January 15, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00993 Filed 1–22–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0998; Airspace Docket No. 18–AGL–16]

RIN 2120–AA66

Amendment of Area Navigation (RNAV) Route T–217 in the Vicinity of Springfield, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends low altitude area navigation (RNAV) route T–217 in the vicinity of Springfield, OH, to update the facility type listed for the Springfield, OH (SGH), route point in the T-route description. The FAA is taking this action due to the planned decommissioning of the VHF Omnidirectional Range (VOR) portion of the Springfield VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID). No existing route structure or air traffic services are affected by this action.

DATES: Effective date 0901 UTC, March 26, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA is planning to decommission the VOR portion of the Springfield, OH, VOR/DME NAVAID in March, 2020. The Springfield, OH, VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR Minimum Operating Network (VOR MON) program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Springfield, OH, VOR/DME is being decommissioned, the Springfield, OH, DME is being retained in the same location and charted as a DME facility with the same ''SGH'' identifier.

In reviewing ATS route dependencies associated with the Springfield, OH, VOR/DME, the FAA identified T–217 as the only air traffic service (ATS) route dependency. Since the Springfield, OH, DME facility is being retained in the same location with the same SGH identifier, the FAA determined T–217 could be retained as published, with minor editorial corrections to the description, to continue supporting enroute airspace users, as well as ongoing NextGen efforts to transition the national airspace system to performance-based navigation.

This rule makes an editorial amendment to the T–217 legal description to reflect the Springfield, OH (SGH), route point as a DME facility due to the Springfield, OH, VOR being decommissioned. Additionally, other minor editorial corrections are being made to comply with route description policy guidance. The editorial amendment and corrections to T–217 do not change the route's structure, operational use, or charted depiction.

Low altitude RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV T-route listed in this rule will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying RNAV route T–217. The planned decommissioning of the VOR portion of the Springfield, OH, VOR/DME NAVAID has made this action necessary. The route modification is editorial in nature and simply changes the type of facility listed for the Springfield, OH (SGH) route point. A number of minor editorial formatting corrections are also made. No air traffic services are affected by this action and no substantive change to the RNAV route is being made. Therefore, notice and public procedures under 5 U.S.C. 553(b) is unnecessary.

The RNAV route modifications accomplished by this action are outlined below.

T–217: T–217 extends between the Lexington, KY, VOR/Tactical Air Navigation (VORTAC) and the BONEE, OH, fix. This rule changes the Springfield, OH (SGH) route point from being listed as ''VOR/DME'' to ''DME''. Additionally, the Lexington VORTAC ''HYK'' identifier is added to the first line of the route description and the geographic coordinates of each route point are updated to be expressed in degrees, minutes, seconds, and hundredths of a second. The existing RNAV route remains as charted.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of modifying RNAV route T–217 near Springfield, OH, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, Paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA

has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–217 LEXINGTON, KY (HYK) TO BONEE, OH [AMENDED]

Lexington, KY (HYK)	VORTAC	(Lat. 37°57′58.86″ N, long. 84°28′21.06″ W)
BOSTR, OH	FIX	(Lat. 38°53′08.13″ N, long. 84°04′58.02″ W)
HEDEN, OH	FIX	(Lat. 39°16′44.88″ N, long. 84°02′02.37″ W)
PRUDE, OH	FIX	(Lat. 39°25′44.92″ N, long. 83°56′58.60″ W)
Springfield, OH (SGH)	DME	(Lat. 39°50′11.55″ N, long. 83°50′41.84″ W)
BONEE, OH	FIX	(Lat. 40°03′08.85″ N, long. 83°56′56.15″ W)

* * * * *

Issued in Washington, DC, on January 15, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–00995 Filed 1–22–20; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Parts 121, 123, 124, 126, and 129

[Public Notice: 10603]

RIN 1400–AE30

International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) amends the International Traffic in Arms Regulations (ITAR) to revise Categories I—firearms, close assault weapons and combat shotguns, II—guns and armament, and III—ammunition/ordnance of the U.S. Munitions List (USML) to describe more precisely the articles that provide a critical military or intelligence advantage or, in the case of weapons, perform an inherently military function and thus warrant export and temporary import control on the USML. These revisions complete the initial review of the USML that the Department began in 2011. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the Export Administration Regulations.

DATES: This final rule is effective March 9, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2809; email *DDTC PublicComments@state.gov.* ATTN: Regulatory Change, USML Categories I, II, and III.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). On May 24, 2018, DDTC published a proposed rule, 83 FR 24198, for public comment regarding proposed revisions to Categories I, II, and III of the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). After review of received comments and with the revisions to the proposed rule further described below, DDTC now publishes this final rule to amend the ITAR.

The articles and related technical data subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the USML. With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (EAR, 15 CFR parts 730 through 774, which includes the Commerce Control List (CCL) in Supplement No. 1 to part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR. The Department of Commerce is publishing a companion rule in this edition of the **Federal Register**.

Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import are part of the USML under the AECA. All references to the USML in this rule, however, are to the list of AECA defense articles that are controlled for purposes of export or temporary import pursuant to the ITAR, and not to the list of AECA defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. References to the USMIL are to the list of AECA defense articles controlled by ATF for purposes of permanent import.

Section 38(b)(1)(A)(ii) of the AECA, requires, with limited exceptions, registration of persons who engage in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President as such under section 38(a)(1) and licensing for such activities. Through Executive Order 13637, the President delegated the responsibility for registration and licensing of brokering activities to the Department of State with respect to defense articles or defense services controlled either for purposes of export by the Department of State or for purposes of permanent import by ATF. Section 129.1 of the ITAR states this requirement. As such, all defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of jurisdiction from the ITAR's USML to the EAR's

CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under the AECA for purposes of permanent import or brokering controls for any brokering activity, including facilitation in their manufacture, export, permanent import, transfer, reexport, or retransfer. This rule adds two new paragraphs, (b)(2)(vii) and (viii), to § 129.2 to update the enumerated list of actions that are not brokering. This change is a conforming change and is needed to address the transfer from the USML to the CCL of USMIL defense articles that remain subject to the brokering controls, and to ensure that the U.S. government does not impose a double licensing requirement on the export, reexport, or retransfer of such items subject to the EAR or continue to require registration with the Department solely based on activities related to the manufacture of these items.

The Department of State is engaged in an effort, described more fully below, to revise the USML so that its scope is limited to those defense articles that provide the United States with a critical military or intelligence advantage or, in the case of weapons, have an inherently military function. The Department has undertaken these revisions pursuant to the President's delegated discretionary statutory authority in section 38(a)(1) of the AECA to control the import and export of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States and to designate those items which constitute the USML. The Department determined that the articles in USML Categories I, II, and III that are removed from the USML under this final rule do not meet this standard, including many articles that are widely available in retail outlets in the United States and abroad (such as many firearms previously described in Category I, paragraph (a), including, for example, a .22 caliber rifle).

The descriptions below describe the status of the subject categories of the USML and CCL as of the effective date of this rule and the companion rule published by the Department of Commerce in this **Federal Register** issue. Any reference in the preamble to this final rule to transfer from the USML to the CCL reflects the combined effects of removal of the defense article from the controls of the ITAR by virtue of the removal of an item (*i.e.,* enumerated control text) from the USML by this rule and the corresponding adoption of the former defense article as an item subject to the EAR by action of the companion rule. Comments regarding the overall rule are addressed immediately below, while comments specific to a Category or amended section of the ITAR are addressed in the relevant discussion of revisions to Categories I, II, or III, or in the discussion under the title of ''Conforming ITAR Changes.''

Comments of General Applicability

The Department believes that a restatement of the overall principles behind the multi-year review of the USML and the efforts to better harmonize the ITAR and the EAR and the larger U.S. government's export control system is applicable to many of the comments received and to the reasoning behind this rule. Therefore, before addressing individual comments, the Department reiterates that it, along with its interagency partners, is engaged in a years-long effort to revise the USML to limit its scope to those items that provide the United States with a critical military or intelligence advantage or, in the case of weapons, perform an inherently military function. Review of the USML is statutorily required by section 38(f) of the AECA, and the Department conducts this review in accordance with, and in full recognition of, the President's authority, conferred in section 38(a) of the Act, to control the import and export of defense articles and defense services in furtherance of world peace and the security and foreign policy of the United States, and to designate those items that constitute the USML. In connection with this effort, the Department has published 26 final, or interim final, rules revising eighteen of the twenty-one USML categories, removing less sensitive items from the USML. While a wide range of interagency stakeholders review and clear the **Federal Register** notices that revise the USML, the Department works particularly closely with the Departments of Defense and Commerce to solicit their views on the appropriate composition of the USML. As required by Executive Order 13637, the Department obtains the concurrence of the Secretary of Defense for designations, including changes in designations, of items or categories of items that are defense articles and defense services enumerated on the USML. The engagement with the Department of Commerce is further intended to ensure that the jurisdictional posture of a given item is clear, and that the application of ITAR or EAR controls to that item can be discerned and understood by the public.

The Department underscores that this rule constitutes an important part of a nine-year program of revisions that has streamlined the USML. From the beginning, the Department has repeatedly stated its goals for that program (*see e.g.,* 76 FR 68694 (Nov. 7, 2011), 76 FR 76097 (Dec. 6, 2011), 80 FR 11313 (Mar. 2, 2015), 82 FR 4226 (Jan. 13, 2017)). First, that it is seeking to better focus its resources on protecting those articles and technologies that provide the United States with a critical military or intelligence advantage. As applied to this rule, for example, firearms and firearms technology that are otherwise readily available do not provide such an advantage, whereas an M134 Minigun or the next generation squad automatic rifle continues to warrant USML control even if there is some limited civil availability for either. Second, to resolve jurisdictional confusion between the ITAR and EAR among the regulated community through revision to ''bright line'' positive lists. Third, to provide clarity to the regulated community thereby making it easier for exporters to comply with the regulations and enable them to compete more successfully in the global marketplace. Finally, to develop a regulatory system that supports enhanced interoperability between the United States and its allies and partners and thereby better supports our ability to address shared security challenges.

With respect to revisions of Categories I–III, the review was focused on identifying the defense articles that are now controlled on the USML that are either (i) inherently military and otherwise warrant control on the USML or (ii) if of a type common to non-military firearms applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States. If a defense article satisfies one or both of those criteria, it remained on the USML. For example, while the U.S. military supplies some of its service members with sidearms for military use, a sidearm also has many uses outside of the military, such that its function is not inherently military and therefore it does not warrant control on the USML. Alternatively, squad automatic weapons do not generally have such non-military uses and remain controlled on the USML in this final rule. Any single non-military use, however, does not negate such a weapon's inherently military function. In summary, the Department analyzes the patterns, both current and anticipated, of use and availability of the defense articles and the utility they provide to the U.S. military or intelligence community to inform the ultimate determination as to whether control is merited on the USML.

The Department recognizes the sensitivities and foreign policy implications associated with the sale

and export of small arms, light weapons, and associated equipment and ammunition as expressed in the President's National Security Policy Memorandum Regarding U.S. Conventional Arms Transfer Policy of April 19, 2018 (Conventional Arms Transfer Policy). Those sensitivities and foreign policy implications will continue to be addressed through the licensing and enforcement requirements of the Department of Commerce. All export license applications for the items transitioning to Commerce jurisdiction are subject to review by the interagency, specifically the Departments of State, Defense, and Energy, as appropriate. The Department will continue to advance its foreign policy mission by reviewing all license applications submitted to the Department of Commerce for the export of firearms and related technology.

Multiple commenters took issue with the proposed transfer from the USML to the CCL of weapons that the Department determined, in conjunction with its interagency partners, are not inherently for military end-use, citing the fact that military and law enforcement personnel regularly use them. As previously noted, the fact that a military uses a specific piece of hardware is not a dispositive factor when determining whether it has an inherently military function. Given that the majority of the items referenced in these comments that will transfer to the CCL through this rule are widely available in retail outlets in the United States and abroad, and widely utilized by the general public in the United States, it is reasonable for the Department to determine that they do not serve an inherently military function, absent specific characteristics that provide military users with significantly enhanced utility, such as automatic weapons, sound suppressors, and high capacity magazines.

Several commenters disputed that the U.S. market should be the basis for assessing the commercial availability of firearms, as this is not the market to which the proposed rule would be directed. The Department recognizes that there are variations in commercial availability of firearms not only between nations, but also within the domestic market itself; however, this variation in availability does not overcome the Department's assessment that the subject firearms do not provide a critical military or intelligence advantage such that they warrant control under the ITAR. In addition, all exports of firearms are subject to the laws of the importing country, and the U.S. government does not issue licenses for exporters to ship firearms to countries where the end-use is illegal.

Several commenters predicted that the rule will make it easier for foreign manufacturers to obtain U.S.-origin components and proprietary technology, thereby causing U.S. firearms manufacturers to lose global market share. The Department refers the commenters to the above-stated objectives of this review effort, which include making it easier for exporters to comply with export control regulations and enabling them to compete more successfully in the global marketplace. The Department further notes that this rule is expected to provide certain key advantages that will substantially benefit domestic manufacturers by: (1) Amending the regulatory burden on the U.S. commercial firearms and ammunition industry; (2) clarifying the regulatory requirements for independent gunsmiths; and (3) enabling foreign manufacturers to source from small- and medium-sized U.S. companies more easily.

Several commenters predicted that this rule will diminish the United States' ability to set global normative standards for arms transfers and non-proliferation. The Department strongly disagrees and remains fully committed to the goals outlined in the AECA. In particular, the Department takes seriously its responsibility to implement the AECA's declaration that: ''It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments'' (22 U.S.C. 2751). The Department will continue to meet this responsibility, in part, by reviewing export license applications for items subject to the EAR that were formerly controlled by the ITAR, including those on the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement) control lists. The Department will continue to take into account the considerations of Section 3 of the Conventional Arms Transfer Policy, such as the national security and foreign policy interests of the United States, when making arms transfer decisions, both for firearms that remain subject to the ITAR and firearms that are subject to the EAR.

Other commenters suggested that this rule contravenes international commitments the United States has made through mechanisms such as the Wassenaar Arrangement. The transfer of the concerned items to the CCL does not contravene U.S. international commitments, as the U.S. government will continue to apply a high level of control to these items and require U.S. government authorization for all exports of firearms and major components.

Multiple commenters raised concerns about the role and function of the Department of Commerce regarding the items that are transferred from the USML to the CCL. Some commenters expressed concerns that the Department of Commerce has neither the appropriate resources nor the appropriate expertise or mission to process associated applications for export. Other commenters asserted that because the Department of Commerce, unlike the Department of State, does not charge registration or licensing fees, the transfer to the CCL constitutes an unnecessary burden on taxpayers. As stated previously, the Department is engaged in an effort to revise the USML so that its scope is limited to those defense articles that warrant the U.S. government's highest level of export control because those defense articles offer a critical military or intelligence advantage or, in the case of weapons, have an inherently military function. The revisions implemented by the Department are necessary in order to focus our resources on such defense articles. This effort in general, and this rule in particular, were developed in close consultation with other departments and agencies, including the Department of Commerce. While the Department of Commerce is best suited to address the specific details of the implementation of its regulations and its allocation of appropriated resources, the Department is confident that the framework for control of firearms, and parts and components thereof, across the EAR and the ITAR is sufficient to address the concerns of the U.S government and does not diminish or damage the national security or foreign policy interests of the United States. The Department does not share the concerns expressed about the Department of Commerce's expertise or mission, and the Department further notes that the Department of Commerce has been licensing shotguns and shotgun ammunition, as well as various firearms-related articles such as sighting devices and a range of other similar articles and technologies, for decades. Additionally, the Department of Commerce has investigated and disrupted numerous diversion rings related to EAR-controlled items and will apply its years of export control enforcement expertise to the items this rule transfers to its jurisdiction.

Multiple commenters expressed a general concern that the transfer to the

CCL increases the risk of overseas trafficking, proliferation, or diversion. Multiple commenters also raised concerns about the Department of Commerce's end-use monitoring (EUM) capabilities and the impact this rule has on the Department of State's EUM programs. This rule does not deregulate the export of firearms. All firearms and major components being transferred to the CCL will continue to require export authorization from the Department of Commerce. Further, the Department of Commerce has both a robust EUM program and a law enforcement division sufficiently capable of monitoring foreign recipients' compliance with their obligations regarding the transfer, use, and protection of items on the CCL. Additionally, the Federal Bureau of Investigation and the Department of Homeland Security will continue to investigate and enforce criminal violations of the export control laws as appropriate. This rule also will not impact the Department's ability to execute the Blue Lantern EUM program required by section 40A of the AECA, 22 U.S.C. 2785. Finally, this rule will not affect existing federal or state public safety laws that address domestic criminal conduct.

Several commenters expressed concern that the Department of Commerce will not have access to the same databases and background information that the Department of State uses to evaluate license applications. Similarly, some commenters expressed concern that as a result of this rule some exporters will no longer be subject to U.S. government registration requirements, thereby depriving regulators of an important source of information and decreasing transparency and reporting regarding firearms exports. The Department considered these concerns and determined that the interagency license review process maintains appropriate oversight of the articles at issue. The Department of Commerce's export licensing requirements and process are calibrated both to the sensitivity of the article and the proposed destination. Additionally, all requests for export licenses for firearms remain subject to interagency review, including by the Department of State.

Several commenters suggested that the Department create a registration exemption or reduce registration fees for small volume non-exporting firearms manufacturers. Multiple commenters similarly suggested modifying ITAR § 122.1 to include a minimum size requirement for registration. Modification of the requirements of part 122 is outside the scope of this rulemaking; however, the Department highlights that the Department of Commerce does not have a registration requirement for manufacturers and exporters of the items under its jurisdiction. Therefore, gunsmiths that do not manufacture, export, or broker articles that remain subject to the ITAR after this rule's effective date will no longer need to determine if they are required to register under the ITAR. They may, however, still be required to comply with ATF licensing requirements. Any additional changes to the ITAR related to the registration requirement would be addressed in a separate rulemaking.

On the issue of registration, one commenter noted that as a result of this rule some U.S. manufacturers may no longer have to register with the Department of State and be subject to the requirements in ITAR § 122.4(b) for advance notification of intended sales or transfers to foreign persons of ownership or control of the registrant. The commenter asserted that without the advance notification requirement foreign entities could potentially influence the sales and marketing activities of U.S. manufacturers in a manner that would be detrimental to U.S. national security. The Department notes in response that its regulatory authorities are limited to export-related activities for defense articles and services, and highlights that other federal regulatory regimes, such as the Committee on Foreign Investment in the United States, have the ability to address potential foreign ownership or control issues that may impact national security.

Multiple commenters expressed concerns that this rule would reduce congressional oversight of arms transfers since the Department of Commerce does not have to notify Congress of firearms sales in excess of $1 million as the Department of State does. The Department acknowledges those concerns and notes that those firearms that the U.S. government deemed through the interagency review process to warrant continued control under the ITAR as defense articles will remain subject to congressional notification requirements in conformity with section 36 of the AECA and Executive Order 13637.

A number of commenters suggested the proposed rule, if made final, may have a negative impact on human rights in foreign countries. As stated previously, the Department of Commerce will continue its longstanding end-use monitoring efforts, including vetting of potential end-users, to help prevent human rights abuses. Similarly, as part of the aforementioned continuing interagency review of export licenses for firearms, the Departments of Defense and State will review export license applications on a case-by-case basis for national security and foreign policy reasons, including the prevention of human rights abuses.

One commenter expressed concern that foreign law enforcement personnel in particular are at risk of having the transferred CCL items used against them. These concerns are mitigated by the fact that, as stated previously: (1) These articles remain subject to the Department of Commerce's EUM programs that vet potential end-users of concern, and (2) license applications for CCL items will be approved only if their end-use is permitted under the laws of the importing country.

Multiple commenters expressed concerns that, as a result of the revision of the USML to remove items from Category I, the rule will also remove from the USML the technical data directly related to these items, thereby lifting a purported block on the domestic dissemination of computer-aided design (CAD) files for the three-dimensional (3–D) printing or CAD-enabled production of firearms. Commenters suggested that use of these files in the United States could lead to a potential increase in the number of unserialized firearms in circulation, or the manufacture or distribution of a non-metal firearm otherwise prohibited under federal law. Some commenters also expressed concerns that foreign dissemination of such files could provide adversaries with a military or intelligence advantage.

The Department considered the concerns of the commenting parties. While the Department concluded that these concerns do not warrant modification to the controls on the USML, the Department of Commerce, as described below, determined that certain modifications to its companion rule are warranted to address similar concerns expressed by commenters to its proposed rule.

As an initial matter, the Department reiterates that the scope of this rulemaking is limited to the Department's delegated authority under the AECA. Neither the AECA nor ITAR expressly provide the Department with authority to regulate the distribution of technical data in the United States to U.S. persons. This applies to all technical data subject to the ITAR, regardless of whether it is for the manufacture of ITAR-controlled firearms or any other defense article. Furthermore, the Department notes that the AECA does not provide the

Department with the authority to (1) prohibit the domestic manufacture or possession of firearms, whether produced from CAD files with a 3–D printer or otherwise, or (2) regulate the domestic distribution among U.S. persons of any defense article, including firearms. Domestic activities that do not involve release to foreign persons are generally left to other federal agencies—and the states—to regulate. The manufacture, import, sale, shipment, delivery, transfer, receipt, or possession of firearms that are undetectable as provided in federal law is a federal crime, punishable by fine and/or up to five years in prison. 18 U.S.C. 924(f). Among other statutes, the Undetectable Firearms Act of 1988 prohibits the manufacture, possession, sale, import, shipment, delivery, receipt, or transfer of undetectable firearms. *See* 18 U.S.C. 922(p).

When determining whether nonautomatic and semi-automatic firearms to .50 caliber (12.7mm) inclusive should be removed from the USML, and the technical data directly related thereto, the Department evaluated whether the hardware and its directly related technical data would confer a critical military or intelligence advantage or whether they are inherently military based on their function. The Department made a determination that neither the hardware nor its directly related technical data met these criteria. In response to the specific comments related to the potential uses for CAD files that can be used to 3–D print firearms, the Department confirms that it did consider the potential uses for these CAD files in its review. The Department determined, in consultation with the Department of Defense and other interagency partners, that these CAD files do not confer a critical military or intelligence advantage and are not inherently military based on their function. This determination took into account the effect that a transfer to the CCL would have on the national security and foreign policy interests of the United States, consistent with the AECA and ITAR, to include the degree to which it would limit the ability of a foreign person to obtain CAD files, publish them on the internet, and subsequently manufacture CCL-controlled firearms, including those that are unserialized or manufactured from a non-metallic material.

Although the Department determined that such hardware and its directly related technical data do not confer a critical military or intelligence advantage or perform an inherently military function for purposes of maintaining inclusion on the USML, the Department agrees with the Department of Commerce that maintaining controls over such exports under the EAR remains in the national security and foreign policy interests of the United States. The Department of Commerce has recognized in its companion rule that concerns raised over the possibility of widespread and unchecked availability of 3–D printing technology and software, the lack of government visibility into production and use, and the potential damage to U.S. counter-proliferation efforts warrant making certain technology and software capable of producing firearms subject to the EAR when posted on the internet, as described in the Department of Commerce's companion rule. The Department agrees that EAR controls on technology and software for firearms previously controlled in USML Category I(a)—and for all other items this rule removes from the USML—sufficiently address the U.S. national security and foreign policy interests relevant to export controls. In sum, while Commerce controls over such items and technology and software are appropriate, continued inclusion of them on the USML is not.

This rule is consistent with broader USML to CCL review efforts. During the multi-year process of reviewing and revising the USML, the Department has exercised its discretion, authorized by delegation in section 38(a)(1) of the AECA, to determine which national security and foreign policy interests warrant consideration within the context of export controls. Under its current standard, the Department assesses the national security and foreign policy interests against factors, such as those discussed above and in other **Federal Register** notices, in assessing whether items merit inclusion on the USML; this analysis has resulted in a number of items previously included in other USML categories being transferred to the EAR (*see, e.g.,* 78 FR 22740 (Apr. 16, 2013), 81 FR 70340 (Oct. 12, 2016)). Through this rule, the Department is now applying this standard to Categories I, II, and III of the USML. As previously noted, the AECA requires periodic review of the USML, and the Department will continue to evaluate technological advancements, including those related to 3–D printing, to inform future revisions to the USML.

One commenter predicted that the rule's effect of removing licensing requirements for temporary imports of the items removed from the USML would create another channel for criminal elements to obtain weapons in the United States. The Department did not receive any further information to support the assertion that the hypothetical diversion of temporary imports of firearms from foreign countries would appreciably bolster criminal access to such items. The Department additionally notes that other departments and agencies possess enforcement capabilities relevant to criminal acquisition of firearms within the United States.

One commenter recommended coordinating proposed changes with ATF so that the corresponding changes are made to the U.S. Munitions Import List (USMIL) at the same time, which would prevent businesses from having to consult both the USML and USMIL when deciding whether a transaction involves brokering. The USML and the USMIL are separate lists of AECA defense articles with both shared as well as different AECA objectives, and as such warrant the retention as separate lists for AECA defense article and control purposes.

Effective Date

The Department has determined that the appropriate effective date for this final rule is March 9, 2020. The Department notes that the Department has previously articulated a policy of providing a 180-day transition period between the publication of the final rule for each revised USML category and the effective date of the transition to the CCL for items that will undergo a change in export jurisdiction. *See* 78 FR 22,740, 22,747 (Apr. 16, 2013). In addition, some commenters suggested that the final rule should have a delayed effective date or a split effective date for companies of a particular size. However, in consultation with interagency partners, the Department has determined that, based on the nature of the items at issue, a 180-day transition period or a delayed or a split effective date for certain companies is not necessary.

Revision of Category I

This final rule renames Category I as ''USML Category I—Firearms and Related Articles'' (formerly ''Category I—Firearms, Close Assault Weapons and Combat Shotguns'') and amends the category to control only defense articles that are inherently military or that are not otherwise widely available for commercial sale. In particular, the amended category does not include non-automatic and semi-automatic firearms to .50 caliber (12.7mm) inclusive, formerly controlled under paragraph (a), and all of the parts, components, accessories, and attachments for those

articles. Such items are subject to the new controls in Export Control Classification Numbers 0A501, 0A502, 0A503, 0A504, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E502, 0E504, and 0E505, which also includes the items moved from Category II described below. Such controls in Category 0 of the CCL are being published in the companion rule by the Department of Commerce.

Paragraph (a) of amended USML Category I covers firearms that fire caseless ammunition. Paragraph (b) continues to cover fully automatic firearms, which are firearms that shoot more than one bullet by a single function of the trigger, to .50 caliber (12.7mm) inclusive. Paragraph (c) covers firearms specially designed to integrate fire control, automatic tracking, or automatic firing systems, and all weapons previously described in paragraph (c) that remain on the USML are now covered by paragraphs (a), (b) or (c) of this category or by Category II. Specially designed parts and components for the defense articles that remain in paragraph (c) are moved to Category I paragraph (h) of this final rule. This change from the proposed rule is necessary to allow for the designation of the end-item defense articles in paragraph (c) as Significant Military Equipment (SME) whereas the specially designed parts and components therefor are not. Paragraph (d) covers fully automatic shotguns. Paragraph (e) continues to cover silencers, mufflers, and sound suppressors. However, for the same reason as paragraph (c) above, specially designed parts and components for those defense articles in paragraph (e) are moved to paragraph (h) so as not to be designated SME. Flash suppressors are removed from paragraph (e) and are transferred to the CCL. The text of paragraph (f) is removed and the subsection is reserved, thereby removing as a controlled item ''[r]iflescopes manufactured to military specifications.'' However, any firearms sighting device (including riflescopes) that fits within the controls in USML Category XII (*see e.g.,* XII(c)(2) regarding night vison or infrared capabilities) remains subject to the ITAR under that category. Other riflescopes are transferred to the CCL. Paragraph (g) continues to cover barrels, receivers (frames), bolts, bolt carriers, slides, or sears, specially designed for the firearms that remain in Category I. Paragraph (h) covers high capacity (greater than 50 rounds) magazines, and parts and components to convert a semi-automatic firearm into a fully automatic firearm, and accessories or attachments specially designed to automatically stabilize aim (other than gun rests) or for automatic targeting. In a change from the proposed rule, this final rule paragraph (h) includes a new paragraph (h)(3) to control parts and components specially designed for defense articles in (c) and (e) as described above. This addition necessitated the renumbering of proposed paragraph (h)(3) to (h)(4) in this final rule. Paragraph (i) covers the technical data and defense services directly related to all of the defense articles in the category as well as classified technical data directly related to items controlled in ECCNs 0A501, 0B501, 0D501, and 0E501 and defense services using the classified technical data. This is a change from the proposed rule, in which defense articles in paragraph (c) were inadvertently omitted from the technical data paragraph.

This rule adds a new (x) paragraph to USML Category I, allowing ITAR licensing for all commodities, software, and technology subject to the EAR, provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category I *and* are described in the purchase documentation submitted with the license application.

The text of the note to Category I is removed and replaced with a note containing a slightly revised interpretation of the term ''firearm,'' (formerly included at (j)(1)) and to add interpretations of the terms ''fully automatic'' and ''caseless ammunition.''

Several commenters requested clarification regarding the proposed Note 1 to USML Category I. The Department determined that the control text of the category sufficiently describes the defense articles to be controlled, and, as a result, the final rule removes the proposed Note 1 to Category I in order to avoid possible confusion.

One commenter recommended changes to the text of paragraph (b) in an effort to avoid potential overlap with other paragraphs in the category. The Department believes these changes are unnecessary because the control text adequately differentiates the controlled defense articles to allow for self-determination. If an exporter or manufacturer requires a definitive determination of category, they may submit a commodity jurisdiction request to DDTC.

Several commenters expressed concern about the designation of certain parts and components in USML Category I as SME. The Department recognizes these concerns, and, in response, the final rule revises the proposed rule by moving the specially designed parts and components for paragraphs (c) and (e) to (h) where they are not designated as SME.

Multiple commenters suggested that the rule should remove firearm sound suppressors (silencers) from paragraph (e) and transfer them to the CCL. The Department recognizes that sound suppressors (silencers) are sold commercially in some jurisdictions, often for use at ranges or for hunting in certain environments, although their availability in retail markets varies significantly within the United States as well as foreign countries. However, sound suppressors (silencers) provide the capability to muffle the sound of weapons fire, which can degrade the ability of an adversary to localize the source of the incoming rounds and return fire or raise an alarm. The Department has determined, in coordination with the interagency, that silencers continue to warrant control on the USML.

One commenter requested clarification regarding paragraph (g) and the barrels, receivers (frames), bolts, bolt carriers, slides, or sears that are common to semi-automatic and automatic firearms on the civilian market. The commenter noted that the lack of clarity arises from the difference between the control text in USML Category I(g) and Note 1 to Category I in the proposed rule. The commenter also requested clarification about which specially designed articles are controlled under this paragraph. The commenter's concerns can be resolved by applying the definition of ''specially designed'' in ITAR § 120.41(b)(3), as any article that is common to a non-automatic or semiautomatic firearm that is on the CCL (*i.e.,* not on the USML) is not specially designed and thus is not subject to the ITAR (but is subject to the EAR).

One commenter suggested amending the Canadian exemptions located in ITAR § 126.5 to allow exports of receivers and breech mechanisms under paragraph (g). The Department is not revising Supplement No. 1 to ITAR § 126 or the provisions of the Canadian exemptions through this rulemaking. However, the Department is currently undertaking a review of Supplement No. 1 to ITAR Part 126 and any changes will be the subject of a separate rulemaking.

Multiple commenters suggested that paragraph (h)(1) under this rule should exclude high-capacity magazines, *i.e.,* drums or magazines for firearms with a capacity of greater than 50 rounds. The Department recognizes that civilians can purchase magazines and drums with a

capacity of greater than 50 rounds; however, these high-capacity magazines provide an inherently military function and warrant continued control on the USML due to their utility in enabling effective use of automatic weapons and combat tactics.

One commenter requested clarification regarding paragraph (h)(3) in order to differentiate the terms ''automatic targeting'' and ''automatic tracking'' or ''automatic firing.'' However, the comment did not identify any specific confusion. The Department believes that the control text appropriately describes the capabilities that warrant control, so the final rule does not make any changes to this provision.

One commenter noted that the technical data and defense service control in paragraph (i) did not apply to USML Category I(c) and suggested that the Department include paragraph (c) in the list of paragraphs to which the technical data and defense service controls applies. This was an oversight and final rule paragraph (i) is revised to exclude the paragraph identifiers in the proposed rule. Excluding the paragraph identifiers clarifies that technical data and defense services for all USML Category I articles are controlled.

Revision of Category II

This final rule revises USML Category II, covering guns and armament, establishing a bright line between the USML and the CCL for the control of these articles.

Most significantly, amended paragraph (j), controlling parts and components, is revised to enumerate the items controlled therein. In a change from the proposed rule explained below, proposed paragraph (j)(10) is revised to clarify that the control applies only to recoil systems specially designed to mitigate the shock associated with the firing process of guns integrated into air platforms. When reviewing proposed paragraph (j) for this final rule, the Department noted that proposed paragraphs (10) and (13) described related defense articles, as did proposed paragraphs (j)(9) and (j)(11). In order to keep related articles in consecutive paragraphs within the category, the Department reorganized the paragraphs such that the control text of paragraph (10) of the proposed rule is found at paragraph (14) of the final rule and the control text of paragraphs (9) and (11) of the proposed rule are found at paragraphs (10) and (9) of the final rule, respectively. In addition, a new paragraph (12) is added to (j) to clarify that systems and equipment for the defense articles in the category for programming ammunition are controlled on the USML. Where necessary, paragraphs are renumbered to accommodate movement of proposed paragraphs (j)(10) and (9) and the addition of new paragraph (12). The Note to proposed paragraph (j)(9) is also revised from the proposed rule to include reference to mounts for surface vessels and special naval equipment controlled in Category VI.

Amended paragraph (a) enumerates the items controlled in that paragraph. The item formerly covered in paragraph (c) (*i.e.,* apparatus and devices for launching or delivering ordnance) is removed, and defense articles still warranting control on the ITAR are described in new paragraph (a)(4). A new paragraph (a)(5) is added for developmental guns and armaments funded by the Department of Defense and the specially designed parts and components of those items. The item formerly controlled in paragraph (f), (*i.e.,* engines specifically designed or modified for the self-propelled guns and howitzers controlled in paragraph (a)), is removed from the USML and placed on the CCL in ECCN 0A606 pursuant to the companion rule. Tooling and equipment specifically designed or modified for the production of items controlled in USML Category II, formerly in paragraph (g), is also removed from the USML and transferred to the CCL in ECCN 0B602 through the Commerce rule. Test and evaluation equipment and test models, formerly in paragraph (h), is removed from the USML and transferred to the CCL in ECCN 0B602 through the Commerce rule. Certain autoloading systems formerly controlled in paragraph (i) are moved to paragraphs (j)(9) and components therefor to (j)(10) (paragraph (j)(11) of the proposed rule). In a change from the proposed rule explained below, final paragraph (j)(11) now contains a specific reference to ''ammunition feeder systems.''

This rule adds a new (x) paragraph to USML Category II, allowing ITAR licensing for all commodities, software, and technology subject to the EAR, provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category II *and* are described in the purchase documentation submitted with the application.

One commenter recommended defining the term ''gun'' as it is used in both the category title and in paragraph (a)(1). The control text in the proposed rule appropriately described the capabilities that warrant control, and so the final rule does not make any changes in this regard.

One commenter pointed out that U.S law classifies firearms as antique if they were made on or before 1898 and took issue with the usage of the year 1890 in Note 1 to paragraph (a). The Gun Control Act of 1968 does define antique firearms for domestic purposes, in part, as any firearm manufactured in or before 1898. *See* 18 U.S.C. 921(a)(16)(A). However, as this rule is regarding the export of firearms, it uses the year 1890 in order for the United States to remain consistent with its international export control commitments under the Wassenaar Arrangement, which uses 1890 as the cutoff year to identify many firearms and armaments that are not on the control list.

One commenter requested clarification regarding what is considered to be part of the firing mechanisms listed in paragraph (j)(4) and inquired whether the rule controls electronic firing mechanisms. The language in the rule appropriately describes the capabilities that warrant control and confirms that the control does include electronic firing mechanisms.

One commenter requested a note be added to proposed paragraph (j)(9) (final paragraph (j)(10)) to clarify what constitutes an independently powered ammunition handling system and platform interface components. The control text appropriately describes the capabilities of concern that warrant control and confirms that an independently-powered ammunition handling system need not be external to the gun or platform for the control to apply.

One commenter expressed concern that proposed paragraphs (j)(9) and (j)(11) (final paragraphs (j)(10) and (j)(9), respectively) may capture the same parts and components and recommended deleting proposed paragraph (j)(11) if the paragraphs are redundant. These paragraphs are distinct, as proposed (j)(9) identifies certain components for the end-item ammunition handling system that are controlled and proposed (j)(11) controls the end-item independent ammunition handling system itself. Because these paragraphs are not redundant, the final rule retains both of them. The Department revised proposed paragraph (j)(11) (final paragraph (j)(9)) to clarify its scope in response to this comment.

Proposed paragraph (j)(10) (final paragraph (j)(14)) is revised in this final rule with language limiting recoil systems to those specially designed to mitigate the shock associated with the firing process of guns integrated into air platforms. This revision was made in response to a commenter who

highlighted that the language in the proposed rule would have controlled recoil systems solely due to end-use platform and not due to the performance capability.

One commenter suggested that the Department reconcile proposed paragraphs (j)(10) and (j)(13) (final paragraphs (j)(14) and (j)(13), respectively) to prevent an overlap in the control text. Proposed (j)(10) and (j)(13) are adequately differentiated to allow for self-determination. If an exporter or manufacturer requires a definitive determination of category, they may submit a commodity jurisdiction request to DDTC.

One commenter submitted a question about whether specific ammunition containers that are independent of a cannon system would be controlled under the proposed paragraph (j)(12) (final paragraph (j)(11)). Although absent a commodity jurisdiction request the Department cannot make a definitive determination, it is unlikely that the ammunition container is controlled because proposed paragraph (j)(12) requires that the ammunition container be specially designed for the gun or armament, not for the ammunition. The control text appropriately describes the capabilities that warrant control, and so the final rule does not make any changes to this provision.

One commenter also recommended adding clarifying language to proposed paragraph (j)(12) (final paragraph (j)(11)) regarding whether ''conveyor elements'' are intended to relate to large caliber ammunition or medium caliber ammunition. As the control is not limited, it applies to all such systems. To clarify the scope of the control, the Department adds ''ammunition feeder systems'' to the text of final paragraph (j)(11).

Revision of Category III

This final rule renames Category III as ''USML Category III—Ammunition and Ordnance'' (formerly ''Category III—Ammunition/Ordnance'') and revises its content to establish a bright line between the USML and the CCL for the control of these articles and to be consistent with the changes to Category I.

Most significantly, paragraphs (a) and (d) are revised to remove broad catch-alls and enumerate the articles controlled therein. For example, paragraph (a), which controls ammunition for articles in USML Categories I and II, is amended to specifically list the ammunition that it controls. In a change from the proposed rule, paragraph (a)(7) regarding ammunition for automatic and superposed (or stacked) guns and firearms is revised to clarify the control text. A new paragraph (a)(10) is added for developmental ammunition funded by the Department of Defense and the parts and components specially designed for such developmental ammunition. In a change from the proposed rule, the SME designator is moved from paragraph (a) in its entirety to only those paragraphs of III(a) warranting control as SME and the SME designation is removed from paragraph (a)(10), to be consistent with the controls on developmental defense articles funded by the Department of Defense in other categories of the USML. Ammunition formerly controlled in paragraph (a) that is not now specifically enumerated in paragraph (a) or captured by paragraph (a)(10) is transferred to the CCL pursuant to the companion rule. Likewise, revised paragraph (d), which controls parts and components, enumerates the items it controls; those parts and components previously captured via the catch-all and not now enumerated are transferred to the CCL.

Additionally, paragraph (c) is removed and placed into reserve. The production equipment and tooling formerly controlled in that paragraph is now controlled by the CCL pursuant to the companion rule.

In a change from the proposed rule, the references to steel tipped ammunition, and hardened core or solid projectiles made of tungsten, steel, or beryllium copper alloys are moved from (d)(1) to paragraph (d)(6) for additional clarity.

This rule adds a new (x) paragraph to USML Category III, allowing ITAR licensing for all commodities, software, and technology subject to the EAR, provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category III *and* are described in the purchase documentation submitted with the application.

In addition, in this final rule, DDTC revised the format of the notes to Category III from the proposed rule in order to make them consistent with concluding notes to other categories (*see, e.g.,* notes to Category VII). In place of three notes within one heading of ''Notes to Category III'' as in the proposed rule, this final rule identifies each clearly as Note 1, Note 2, and Note 3.

One commenter highlighted that the placement of the asterisk beside paragraph (a) in the proposed rule created inconsistencies with other USML category provisions concerning developmental defense articles funded by the Department of Defense (DoD). The Department agrees, and the final rule revises the category in order to clarify that DoD-funded developmental ammunition is not SME. In particular, the final rule adds a specific SME identifier to each relevant subcategory and removes one from paragraph (a)(10).

One commenter suggested removing paragraph (a)(2) on the grounds that the underlying commodity does not fundamentally change when it is incorporated into an ammunition link. The control appropriately identifies the object that warrants control (linked or belted ammunition) which are used primarily for automatic weapons. Consequently, the final rule makes no changes to the text of paragraph (a)(2).

One commenter suggested revising proposed paragraph (a)(4) to remove the language ''manufactured with smokeless powder'' on the grounds that the rule could be interpreted to mean caseless ammunition manufactured with anything besides smokeless powder, which is controlled on the CCL. The Department disagrees because the control text accurately describes the defense article to be controlled. Caseless ammunition that is not manufactured with smokeless powder is not controlled by the subcategory. The Department controls ammunition in paragraph (a)(4) because smokeless powder has higher energy than other propellants and is more readily adapted to a sustained fire.

One commenter suggested removing the articles under paragraphs (a)(5) and (a)(8) and transferring them to the CCL. The Department disagrees, as lightweight and railgun ammunition offer a significant military advantage because lightweight ammunition significantly improves battlefield activities and railguns are a uniquely military capability in which the United States enjoys a critical advantage, in part due to our projectiles, and therefore warrant control on the USML.

One commenter recommended revising paragraph (a)(6) to address the potential redundancy with (a)(1) and to clarify whether the ammunition control parameters in the paragraph are based on the pyrotechnic material, the tracer materials, or the specification that it must be able to be seen by night vision optical systems. While it is possible that there may be some overlap between these controls for specific articles, each control correctly identifies a capability that warrants control on the USML. To clarify the control text, the Department replaces the word ''and'' in paragraph (a)(6) of the proposed rule with ''or'' in this final rule to identify that these are separate articles. If an exporter or

manufacturer requires a definitive determination of category, they may submit a commodity jurisdiction determination request to DDTC.

One commenter highlighted that paragraph (a)(7) in the proposed rule could be interpreted to cover all ammunition for fully automatic firearms, which could take ammunition currently controlled by the Department of Commerce and change it into SME if for use in a fully automatic firearm. The Department notes this concern and has revised the control to limit the scope of the control to ammunition that is not used with semi or non-automatic firearms (*i.e.,* firearms not on the USML).

One commenter suggested changing the description of ''primers'' in paragraph (d)(10) to ''cap type primers'' on the grounds that the provision as written is overly broad. The Department disagrees, as the final rule appropriately reflects the primers that warrant control on the USML. The final rule does not make any changes to this provision.

One commenter assessed that certain production equipment previously controlled on the USML would not be captured by the revised USML Category III or by the corresponding Department of Commerce rule. The Department of Commerce's companion rule to this final rule expands the relevant ECCNs 0B505.a as a control for all production equipment specially designed for USML Category III, and 0B501.e, for all production equipment specially designed for USML Category I.

One commenter expressed concern that paragraph (d)(1) appears to overlap with the control text in paragraphs (a)(1) and (6) and (d)(2) and (6). While it is possible that there may be some overlap between these controls for specific articles, each correctly identifies a capability that warrants control on the USML. To add additional clarity, the Department is removing the reference to steel tipped and core or solid projectiles made from tungsten, steel, or beryllium copper alloys, and addressing those fully in (d)(6). If an exporter or manufacturer requires a definitive determination of category, they may submit a commodity jurisdiction determination request to DDTC.

One commenter suggested deleting the word ''tracer'' from paragraph (d)(2) on the grounds that that would make the provision consistent with (d)(1). Because certain tracer shotgun shells are non-pyrotechnic and warrant control on the USML, no change is made in this final rule.

One commenter suggested deleting ''specially designed parts and components'' from paragraph (d)(4) on the basis that the language adds duplicative controls on parts that are also subject to the controlled parts in paragraphs (d)(7) and (d)(11). The Department believes that the paragraphs are not duplicative and the language appropriately describes the capabilities that warrant control, so the final rule does not make any changes to this provision.

One commenter recommended adding language to paragraph (d)(6) in the proposed rule to clarify whether the paragraph is intended to capture all armor piercing rounds. The Department did not adopt this recommendation, as the control text adopted in this rule provides objective criteria that more effectively identifies the ammunition types that warrant control on the USML.

Multiple commenters recommend revising paragraph (d)(7). One commenter suggested adding ''specially designed for items controlled in USML Category II'' to ensure that articles common to those used with non-USML items are not described. The Department agrees and made this change.

One commenter suggested modifying the wording in paragraph (d)(11) to capture all artillery and ammunition fuses and to delete ''specially designed parts therefor'' to align with bomb fusing wording in Category IV(h)(25). The control correctly identifies a capability warranting control on the USML; fuses and arming and safing devices for Category III articles cover a wider range of sensitive devices that provide the United States with a critical military advantage, separate and apart from the control in Category IV(h)(25), for fuses specific to that category, so the Department is not implementing any change to paragraph (d)(11).

One commenter noted that paragraph (e) controls technical data and defense services directly related to the defense articles controlled in paragraphs (a), (b), and (d) and that technical data and defense services in these areas would not be controlled on the USML as they are already in the public domain. Information that is in the public domain (*see* ITAR § 120.11), is not controlled; however, defense services remain controlled, as would any controlled technical data.

Conforming ITAR Changes

Additionally, this final rule makes conforming changes to several sections of the ITAR that referred to the control of articles formerly in USML Category I(a). These sections are amended because they all refer to firearms that are now controlled on the CCL. The firearms exemptions formerly at § 123.17(a) through (e) are removed and the subsections reserved as a consequence of the removal from the USML of non-automatic and semi-automatic firearms and their transfer to the CCL. Section 123.17 is renamed ''Exemption for personal protective gear'' (formerly ''Exports of firearms, ammunition, and personal protective gear'') to accurately reflect the articles permitted for export without a license by that section. Sections 123.16(b)(2) and (6) are amended to make conforming changes to reflect the removal of the § 123.17 firearms exemptions, as is the policy guidance on Zimbabwe found at § 126.1(s). The text of § 123.18 is removed, as it described exemptions for firearms that are now controlled for export by the Department of Commerce, and the section placed into reserve. The text of § 123.16(b)(7) referencing the removed § 123.18 exemption is also removed and the subsection placed in reserve. In addition, § 124.14(c)(9) is amended to remove the example of ''sporting firearms for commercial resale.''

Section 129.1(b) of the ITAR is amended to clarify that the regulations on brokering activities in part 129 apply to those defense articles and defense services designated as such on the USML and those items described on the USMIL (27 CFR 447.21). Section 129.4 of the ITAR is also amended to clarify brokering requirements for items on the USMIL that are subject to the brokering requirements of the AECA. The articles that are transferred to the CCL for export control purposes, yet are on the USMIL for permanent import control purposes, remain subject to the brokering requirements of part 129 with respect to all brokering activities, including facilitation in their manufacture abroad, permanent import, transfer, reexport, or retransfer. In a change from the proposed rule, this final rule revises slightly the proposed language of § 129.2(b)(2)(vii), renumbers it as (viii), and adds a new paragraph (b)(2)(vii) to that section, in order to definitively exclude from the definition of brokering activities certain domestic activities related to the manufacture of EAR controlled items and their export. The revisions to § 129.4 also clarify that foreign defense articles that are on the USMIL require brokering authorizations.

One commenter asserted that this rule's revisions to § 123.15 will unnecessarily expand congressional notification requirements to parts, components, and accessories under Categories I(e) and I(g). The commenter recommended that § 123.15 be revised to limit the notification requirements to ''USML Category I paragraphs (a) through (d).'' Contrary to the

commenter's assertion, this rule does not extend congressional notification requirements to parts, components, and accessories. Department practice is, and has been, to notify Congress of the proposed exports of all Category I(e) and (g) articles that meet the threshold value requirement of $1,000,000.

One commenter expressed concern that the proposed rule's removal and placement of ITAR § 123.16(b)(7) in reserve could potentially affect the exemption at ITAR § 123.18 regarding firearms for personal use by civilian and active duty members of the U.S. Armed Forces. The Department notes in response that amendatory instruction number 5 of the proposed rule directed the removal and reserving of paragraph (b)(7) of § 123.16. In order to eliminate any confusion regarding this action, the final rule includes exemplary text showing the subsection as reserved.

Several commenters suggested raising the value of the low value shipment exemption in ITAR § 123.17(a) from $100 to $500 because although the rule's changes increase the eligible amount, they then reduce it by shifting the definition of value from wholesale to selling price. The Department appreciates this suggestion, but notes in response that amendatory instruction 6 of the proposed and final rules directs the removal of ITAR § 123.17(a).

One commenter noted that the current language in ITAR § 125.4(b)(6) refers to ''. . . firearms not in excess of caliber .50 and ammunition for such weapons . . .'' and suggested a review to ensure consistency with language in other areas of the ITAR. The Department appreciates the commenter's suggestion and directs the commenter's attention to the Note to Category I of the final rule, paragraph (1), which uses a similar description to the one in ITAR § 125.4(b)(6) and which has been present since the 2003 CFR. The Department believes the regulated community clearly understands caliber demarcation and declines to make changes at this time. The Department notes the commenter's concern for future consideration.

Multiple commenters expressed concerns that this rule would remove license requirements for brokers, or potentially relinquish enforcement authority over brokers. The Department asserts that this rule makes no changes to the statutory requirements for the registration and licensing of brokers, which remain the same under section 38(b)(1)(A)(ii) of the AECA (*see* 28 U.S.C. 2778) and are implemented through ITAR part 129, which will continue to apply to all firearms listed on the USMIL in addition to those on the USML. Regarding enforcement, the Department retains its civil enforcement capacity for violations of the ITAR, including all articles subject to the brokering regulations, and the Department of Commerce retains its civil enforcement authority over items subject to its jurisdiction. Additionally, the Department of Justice retains the ability under separate authorities to prosecute persons criminally for violations involving firearms on the CCL or for brokering violations under the AECA.

One commenter expressed concern that this rule will create a double licensing requirement because the scope of ''brokering activities'' requiring registration, fee payments, and licensing under ITAR part 129 includes many types of activities that occur before the Department of Commerce will issue a license. The Department does not intend to impose a double licensing requirement for individuals undertaking activities on behalf of another to facilitate a transaction that will require licensing by the Department of Commerce. Therefore, the Department is revising the proposed § 129.2(b)(2)(vii) and adding a new (b)(2)(viii) to clarify that activities to facilitate the domestic manufacture or export of items subject to the EAR are not brokering under the ITAR and do not require authorization or registration.

One commenter requested clarification regarding whether ''brokering activities'' as defined in § 129.2(b)(2) apply to activities to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of items designated on the USMIL. The Department directs the commenter to the preambles of the proposed rule and this final rule, which state the regulations in part 129 apply to both USML and USMIL defense articles and defense services.

One commenter requested clarification regarding whether the proposed rule's revision to § 129.2(b)(2)(vii) would apply not only to items currently controlled in USML Categories I, II, and III, or to all items on the USMIL that are currently subject to the EAR (*i.e.,* to include 600 series items previously transferred to the EAR). The commenter also recommended specifying whether the paragraph (b)(2)(vii) exclusion would apply to activities related to exports, reexports, or transfers of an items subject to the EAR that does not require use of an EAR license or license exception (*i.e.,* No License Required (NLR)). The commenter assessed that the language at (b)(2)(vii) appears to provide a broad carve-out to the brokering activities definition. The commenter also requested clarification regarding whether the language was intended to convey that any ITAR or EAR approval for the items in question is sufficient to meet this criteria and that the approvals do not have to list the specific consignees or end-users for the future export, reexport, or transfer. The Department confirms that new provisions in § 129.2(b)(2)(vii) and (viii) apply to all items subject to the EAR, not just those that transitioned from USML Categories I, II or III, to the extent that other items subject to the EAR are also included on the USMIL. These provisions also clarify the use of the NLR designation and revise the scope of the exclusion from brokering activities to include those activities that are controlled by the Department of Commerce.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a military or foreign affairs function of the United States government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this final rule is exempt from the rulemaking provisions of the APA, the Department published this rule as a proposed rule (83 FR 24198) with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this final rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking has been found not to be a major rule within the meaning

of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). The Department believes that the benefits of this rulemaking largely outweigh any costs, in that many items currently controlled on the more-restrictive USML are being moved to the CCL.

Executive Order 13563 emphasizes the importance of considering both benefits and costs, both qualitative and quantitative, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

The Department believes the effect of this rule will decrease the number of license applications submitted to the Department under OMB Control No. 1405–0003 by approximately 10,000 annually, for which the average burden estimates are one hour per form, which results in a burden reduction of 10,000 hours per year.

The Department of Commerce estimates that 4,000 of the 10,000 licenses that were required by the Department are eligible for license exceptions or otherwise not require a separate license under the EAR. The Department of Commerce estimates that 6,000 transactions require an individual validated license. The Department of Commerce collects the information necessary to process license applications under OMB Control No. 0694–0088. The Department of Commerce estimates that each manual or electronic response to that information collection takes approximately 43.8 minutes. The Department of Commerce estimates that the 6,000 licenses constitute a burden of 4,380 hours for this collection.

The Department estimates a reduction in burden of 10,000 hours due to the transition of these items to the Department of Commerce. The Department of Commerce estimates that the burden of submitting license applications for these items to the Department of Commerce is 4,380 burden hours. Therefore, the net burden is reduced by 5,620 hours. The Department estimates that the burden hour cost for completing a license application is $44.94 per hour. Therefore, the estimated net reduction of 5,620 burden hours per year is estimated to result in annual burden hour cost reduction of $252,562.80.

In addition to the reduction in burden hours, there are direct cost savings to the State Department that result from the 10,000 license applications no longer required under the ITAR for items transferred to the EAR. Pursuant to the AECA, ITAR, and associated delegations of authority, every person who engages in the business of brokering activities, manufacturing, exporting, or temporarily importing any defense articles or defense services must register with the Department of State and pay a registration fee. The Department of State adopted the current fee schedule to align the registration fees with the cost of licensing, compliance and other related activities. The Department of Commerce will incur additional costs to administer these controls and process license applications. However, the Department of Commerce does not charge a registration fee to exporters under the EAR and we are unable to estimate the increase in costs to the Department of Commerce to process the new license applications. Therefore, we are unable to provide an estimate of the net change in resource costs to the government from moving these items from the ITAR to the EAR. It is the case, however, that the movement of these items from the ITAR will result in a direct transfer of $2,500,000 per year from the government to the exporting public, less the increased cost to taxpayers, because they will no longer pay fees to the State Department and there is no fee charged by the Department of Commerce to apply for a license.

Estimated Cost Savings

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States government and that rules implementing this function are exempt from Executive Order 13771 (82 FR 9339, February 3, 2017). Although the Department is of the opinion that this final rule is exempt from E.O. 13771 and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function, this rule is an E.O. 13771 deregulatory action. The Department has conducted this analysis in close consultation with the Department of Commerce.

The total cost savings will be $1,376,281 in present (2017) dollars. To allow for cost comparisons under E.O. 13771, the value of these costs savings in 2016 dollars is $1,353,574. Assuming a 7% discount rate, the present value of these cost savings in perpetuity is $19,336,771. Since the costs savings of this rule are expected to be permanent and recurring, the annualized value of these cost savings is also $1,353,574 in 2016 dollars.

Executive Order 12988

The Department of State reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number.

The Department of State believes there will be a reduction in burden for the following forms: OMB Control No. 1405–0003, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data; OMB control number 1405–0092, Application for Amendment of a DSP–5 License;

OMB control number 1405–0013, Application/License for Temporary Import of Unclassified Defense Articles; OMB control number 1405–0092, Application for Amendment to a DSP–61 License ; OMB control number 1405–0023, Application/License for Temporary Export of Unclassified Defense Articles; OMB control number 1405–0092, Application for Amendment to a DSP–73 License ; OMB control number 1405–0022, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data; OMB control number 1405–0174, Request for Advisory Opinion; and OMB control number 1405–0173, Request To Change End User, End Use and/or Destination of Hardware. This form is an application that, when completed and approved by Department of State, constitutes the official record and authorization for the commercial export of unclassified U.S. Munitions List articles and technical data, pursuant to the AECA and ITAR. For an analysis of the reduction in burden for OMB Control No. 1405–0003, see the above Section for E.O. 12866.

The proposed version of this rule referenced only the first of these forms. However, subsequent its release, the Department of State submitted the remaining eight forms for public notice via **Federal Register** Public Notice 10646 on February 12, 2019. As such, this final rule is being amended to reflect all nine forms associated with the changes reflected in this rule.

List of Subjects in 22 CFR Parts 121, 123, 124, 126, and 129

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 121, 123, 124, 126, and 129 are amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

■ 1. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 121.1 is amended by revising U.S. Munitions List Categories I, II, and III to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category I—Firearms and Related Articles

*(a) Firearms using caseless ammunition.

*(b) Fully automatic firearms to .50 caliber (12.7 mm) inclusive.

*(c) Firearms specially designed to integrate fire control, automatic tracking, or automatic firing (*e.g.,* Precision Guided Firearms).

Note 1 to paragraph (c): Integration does not include only attaching to the firearm or rail.

*(d) Fully automatic shotguns regardless of gauge.

*(e) Silencers, mufflers, and sound suppressors.

(f) [Reserved]

(g) Barrels, receivers (frames), bolts, bolt carriers, slides, or sears specially designed for the articles in paragraphs (a), (b), and (d) of this category.

(h) Parts, components, accessories, and attachments, as follows:

(1) Drum and other magazines for firearms to .50 caliber (12.7 mm) inclusive with a capacity greater than 50 rounds, regardless of jurisdiction of the firearm, and specially designed parts and components therefor;

(2) Parts and components specially designed for conversion of a semi-automatic firearm to a fully automatic firearm;

(3) Parts and components specially designed for defense articles described in paragraphs (c) and (e) of this category; or

(4) Accessories or attachments specially designed to automatically stabilize aim (other than gun rests) or for automatic targeting, and specially designed parts and components therefor.

(i) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles described in this category and classified technical data directly related to items controlled in ECCNs 0A501, 0B501, 0D501, and 0E501 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.)

(j)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (*see* § 123.1(b) of this subchapter).

Note 1 to Category I: The following interpretations explain and amplify the terms used in this category:

(1) A firearm is a weapon not over .50 caliber (12.7 mm) which is designed to expel a projectile by the deflagration of propellant;

(2) A fully automatic firearm or shotgun is any firearm or shotgun that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger; and

(3) Caseless ammunition is firearm ammunition without a cartridge case that holds the primer, propellant, and projectile together as a unit.

Category II—Guns and Armament

(a) Guns and armament greater than .50 caliber (12.7 mm), as follows:

*(1) Guns, howitzers, artillery, and cannons;

*(2) Mortars;

*(3) Recoilless rifles;

*(4) Grenade launchers; or

(5) Developmental guns and armament greater than .50 caliber (12.7 mm) funded by the Department of Defense and specially designed parts and components therefor.

Note 1 to paragraph (a)(5): This paragraph does not control guns and armament greater than .50 caliber (12.7 mm):

(a) in production;

(b) determined to be subject to the EAR via a commodity jurisdiction determination (*see* § 120.4 of this subchapter); or

(c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(5): Note 1 to pargraph (a)(5) does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(5): This provision is applicable to those contracts or other funding authorizations that are dated January 23, 2021, or later.

Note 1 to paragraph (a): This paragraph does not include: Non-automatic and non-semi-automatic rifles, carbines, and pistols between .50 (12.7 mm) and .72 caliber (18.288 mm) that are controlled on the CCL under ECCN 0A501; shotguns controlled on the CCL under ECCN 0A502; black powder guns and armaments manufactured between 1890 and 1919 controlled on the CCL under ECCN 0A602; or black powder guns and armaments manufactured earlier than 1890.

Note 2 to paragraph (a): Guns and armament when integrated into their

carrier (*e.g.,* surface vessels, ground vehicles, or aircraft) are controlled in the category associated with the carrier. Self-propelled guns and armament are controlled in USML Category VII. Towed guns and armament and stand-alone guns and armament are controlled under this category.

(b) Flamethrowers with an effective range greater than or equal to 20 meters.

(c) [Reserved]

*(d) Kinetic energy weapon systems specially designed for destruction or rendering mission-abort of a target.

Note 1 to paragraph (d): Kinetic energy weapons systems include but are not limited to launch systems and subsystems capable of accelerating masses larger than 0.1g to velocities in excess of 1.6 km/s, in single or rapid fire modes, using methods such as: Electromagnetic, electrothermal, plasma, light gas, or chemical. This does not include launch systems and subsystems used for research and testing facilities subject to the EAR, which are controlled on the CCL under ECCN 2B232.

(e) Signature reduction devices specially designed for the guns and armament controlled in paragraphs (a), (b), and (d) of this category (*e.g.,* muzzle flash suppression devices).

(f)–(i) [Reserved]

(j) Parts, components, accessories, and attachments, as follows:

(1) Gun barrels, rails, tubes, and receivers specially designed for the weapons controlled in paragraphs (a) and (d) of this category;

(2) Sights specially designed to orient indirect fire weapons;

(3) Breech blocks for the weapons controlled in paragraphs (a) and (d) of this category;

(4) Firing mechanisms for the weapons controlled in paragraphs (a) and (d) of this category and specially designed parts and components therefor;

(5) Systems for firing superposed or stacked ammunition and specially designed parts and components therefor;

(6) Servo-electronic and hydraulic elevation adjustment mechanisms;

(7) Muzzle brakes;

(8) Bore evacuators;

(9) Independent ammunition handling systems for the guns and armament controlled in paragraphs (a), (b), and (d) of this category;

(10) Components for independently powered ammunition handling systems and platform interface, as follows:

(i) Mounts;

(ii) Carriages;

(iii) Gun pallets;

(iv) Hydro-pneumatic equilibration cylinders; or

(v) Hydro-pneumatic systems capable of scavenging recoil energy to power howitzer functions;

Note 1 to paragraph (j)(10): For weapons mounts specially designed for surface vessels and special naval equipment, *see* Category VI. For weapons mounts specially designed for ground vehicles, *see* Category VII.

(11) Ammunition containers/drums, ammunition chutes, ammunition conveyor elements, ammunition feeder systems, and ammunition container/drum entrance and exit units, specially designed for the guns and armament controlled in paragraphs (a), (b), and (d) of this category;

(12) Systems and equipment for the guns and armament controlled in paragraphs (a) and (d) of this category for use in programming ammunition, and specially designed parts and components therefor;

(13) Aircraft/gun interface units to support gun systems with a designed rate of fire greater than 100 rounds per minute and specially designed parts and components therefor;

(14) Recoil systems specially designed to mitigate the shock associated with the firing process of guns integrated into air platforms and specially designed parts and components therefor;

(15) Prime power generation, energy storage, thermal management, conditioning, switching, and fuel-handling equipment, and the electrical interfaces between the gun power supply and other turret electric drive components specially designed for kinetic weapons controlled in paragraph (d) of this category;

(16) Kinetic energy weapon target acquisition, tracking fire control, and damage assessment systems and specially designed parts and components therefor; or

*(17) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

Note 1 to paragraph (j)(17): ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or intergovernmental organization.

(k) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles described in paragraphs (a), (b), (d), (e), and (j) of this category and classified technical data directly related to items controlled in ECCNs 0A602, 0B602, 0D602, and 0E602 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.)

(l)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (*see* § 123.1(b) of this subchapter).

Category III—Ammunition and Ordnance

(a) Ammunition, as follows:

*(1) Ammunition that incorporates a projectile controlled in paragraph (d)(1) or (3) of this category;

*(2) Ammunition preassembled into links or belts;

*(3) Shotgun ammunition that incorporates a projectile controlled in paragraph (d)(2) of this category;

*(4) Caseless ammunition manufactured with smokeless powder;

Note 1 to paragraph (a)(4): Caseless ammunition is ammunition without a cartridge case that holds the primer, propellant, and projectile together as a unit.

*(5) Ammunition, except shotgun ammunition, based on non-metallic cases, or non-metallic cases that have only a metallic base, which result in a total cartridge mass 80% or less than the mass of a brass- or steel-cased cartridge that provides comparable ballistic performance;

*(6) Ammunition employing pyrotechnic material in the projectile base or any ammunition employing a projectile that incorporates tracer materials of any type having peak radiance above 710 nm and designed to be observed primarily with night vision optical systems;

*(7) Ammunition for fully automatic firearms that fire superposed or stacked projectiles or for guns that fire superposed or stacked projectiles;

*(8) Electromagnetic armament projectiles or billets for weapons with a design muzzle energy exceeding 5 MJ;

*(9) Ammunition, not specified above, for the guns and armaments controlled in Category II; or

(10) Developmental ammunition funded by the Department of Defense and specially designed parts and components therefor.

Note 1 to paragraph (a)(10): This paragraph does not control ammunition:

(a) in production;

(b) determined to be subject to the EAR via a commodity jurisdiction

determination (*see* § 120.4 of this subchapter); or

(c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (a)(10): Note 1 does not apply to defense articles enumerated on the U.S. Munitions List, whether in production or development.

Note 3 to paragraph (a)(10): This provision is applicable to those contracts or other funding authorizations that are dated January 23, 2021, or later.

(b) Ammunition/ordnance handling equipment specially designed for the articles controlled in this category, as follows:

(1) Belting, linking, and de-linking equipment; or

(2) Fuze setting devices.

(c) [Reserved]

(d) Parts and components for the articles in this category, as follows:

(1) Projectiles that use pyrotechnic tracer materials that incorporate any material having peak radiance above 710 nm or are incendiary or explosive;

(2) Shotgun projectiles that are flechettes, incendiary, tracer, or explosive;

Note 1 to paragraph (d)(2): This paragraph does not include explosive projectiles specially designed to produce noise for scaring birds or other pests (*e.g.,* bird bombs, whistlers, crackers).

(3) Projectiles of any caliber produced from depleted uranium;

(4) Projectiles not specified above, guided or unguided, for the items controlled in USML Category II, and specially designed parts and components therefor (*e.g.,* fuzes, rotating bands, cases, liners, fins, boosters);

(5) Canisters or sub-munitions (*e.g.,* bomblets or minelets), and specially designed parts and components therefor, for the guns or armament controlled in USML Category II;

(6) Projectiles that employ tips (*e.g.,* M855A1 Enhanced Performance Round (EPR)) or cores regardless of caliber, produced from one or a combination of the following: Tungsten, steel, or beryllium copper alloy;

(7) Cartridge cases, powder bags, or combustible cases specially designed for the items controlled in USML Category II;

(8) Non-metallic cases, including cases that have only a metallic base, for the ammunition controlled in paragraph (a)(5) of this category;

(9) Cartridge links and belts for fully automatic firearms and guns controlled in USML Categories I or II;

(10) Primers other than Boxer, Berdan, or shotshell types;

Note 1 to paragraph (d)(10): This paragraph does not control caps or primers of any type in use prior to 1890.

(11) Safing, arming, and fuzing components (to include target detection and proximity sensing devices) for the ammunition in this category and specially designed parts therefor;

(12) Guidance and control components for the ammunition in this category and specially designed parts therefor;

(13) Terminal seeker assemblies for the ammunition in this category and specially designed parts and components therefor;

(14) Illuminating flares or target practice projectiles for the ammunition controlled in paragraph (a)(9) of this category; or

*(15) Any part, component, accessory, attachment, equipment, or system that:

(i) Is classified;

(ii) Contains classified software; or

(iii) Is being developed using classified information.

Note 1 to paragraph (d)(15): ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or intergovernmental organization.

(e) Technical data (*see* § 120.10 of this subchapter) and defense services (*see* § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a), (b), and (d) of this category and classified technical data directly related to items controlled in ECCNs 0A505, 0B505, 0D505, and 0E505 and defense services using the classified technical data. (*See* § 125.4 of this subchapter for exemptions.)

(f)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (*see* § 120.42 of this subchapter) used in or with defense articles.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles where the purchase documentation includes commodities, software, or technology subject to the EAR (*see* § 123.1(b) of this subchapter).

Note 1 to Category III: This category does not control ammunition crimped without a projectile (blank star) and dummy ammunition with a pierced powder chamber.

Note 2 to Category III: This category does not control cartridge and shell casings that, prior to export, have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

Note 3 to Category III: Grenades containing non-lethal or less lethal projectiles are under the jurisdiction of the Department of Commerce.

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 3. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228; Sec. 520, Pub. L. 112–55; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 4. Section 123.15 is amended by revising paragraph (a)(3) to read as follows:

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) * * *

(3) A license for export of defense articles controlled under Category I paragraphs (a) through (g) of the United States Munitions List, § 121.1 of this subchapter, in an amount of $1,000,000 or more.

* * * * *

■ 5. Section 123.16 is amended by revising paragraphs (b)(2) introductory text and (b)(6) and removing and reserving paragraph (b)(7) to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of parts or components without a license when the total value does not exceed $500 in a single transaction and:

* * * * *

(6) For exemptions for personal protective gear, refer to § 123.17.

(7) [Reserved]

* * * * *

■ 6. Section 123.17 is amended by revising the section heading, removing and reserving paragraphs (a) through (e), and revising paragraph (j) to read as follows:

§ 123.17 Exemption for personal protective gear.

* * * * *

(j) If the articles temporarily exported pursuant to paragraphs (f) through (i) of

this section are not returned to the United States, a detailed report must be submitted to the Office of Defense Trade Controls Compliance in accordance with the requirements of § 127.12(c)(2) of this subchapter.

* * * * *

§ 123.18 [Removed and Reserved]

■ 7. Section 123.18 is removed and reserved.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT, AND OTHER DEFENSE SERVICES

■ 8. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105–261; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 9. Section 124.14 is amended by revising paragraph (c)(9) to read as follows:

§ 124.14 Exports to warehouses or distribution points outside the United States.

* * * * *

(c) * * *

(9) Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (*e.g.,* cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: ''Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained.''

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 10. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 11. Section 126.1 is amended by revising paragraph (s) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(s) *Zimbabwe.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Zimbabwe, except that a license or other approval may be issued, on a case-by-case basis, for the temporary export of firearms and ammunition for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe).

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 12. The authority citation for part 129 continues to read as follows:

Authority: Section 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.

■ 13. Section 129.1 is amended by revising paragraph (b) to read as follows:

§ 129.1 Purpose.

* * * * *

(b) All brokering activities identified in this subchapter apply equally to those defense articles and defense services designated in § 121.1 of this subchapter and those items designated in 27 CFR 447.21 (U.S. Munitions Import List).

■ 14. Section 129.2 is amended by:

■ a. In paragraph (b)(2)(v), removing the word ''or'' at the end of the paragraph;

■ b. Removing the ''.'' at the end of paragraph (b)(2)(vi) and adding '';'' in its place; and

■ c. Adding paragraphs (b)(2)(vii) and (viii).

The addition reads as follows:

§ 129.2 Definitions.

* * * * *

(b) * * *

(2) * * *

(vii) Activities by persons to facilitate the manufacture in the United States or export of an item subject to the EAR; or

(viii) Activities by persons to facilitate the reexport, or transfer of an item subject to the EAR that has been approved pursuant to a license, license exception, or no license required authorization under the EAR or a license or other approval under this subchapter.

* * * * *

■ 15. Section 129.4 is amended by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 129.4 Requirement for approval.

(a) * * *

(1) Any foreign defense article or defense service enumerated in part 121 of this subchapter (*see* § 120.44 of this subchapter, and § 129.5 for exemptions) and those foreign origin items on the U.S. Munitions Import List (*see* 27 CFR 447.21); or

(2) * * *

(i) Firearms and other weapons of a nature described by Category I(a) through (d), Category II(a) and (d), and Category III(a) of § 121.1 of this subchapter or Category I(a) through (c), Category II(a), and Category III(a) of the U.S. Munitions Import List (*see* 27 CFR 447.21);

* * * * *

■ 16. Section 129.6 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 129.6 Procedures for obtaining approval.

* * * * *

(b) * * *

(3) * * *

(i) The U.S. Munitions List (*see* § 121.1 of this subchapter) or U.S. Munitions Import List (*see* 27 CFR 447.21) category and sub-category for each article;

* * * * *

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–00574 Filed 1–17–20; 11:15 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9891]

RIN 1545–BM95

Transfers of Certain Property by U.S. Persons to Partnerships With Related Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance applicable to transfers of appreciated property by U.S. persons to partnerships with foreign partners related to the transferor. Specifically, when a U.S. person transfers appreciated property to a partnership with a foreign partner related to the transferor, the regulations override the general nonrecognition rule unless the partnership adopts the remedial allocation method and certain other requirements are satisfied. The

regulations affect U.S. partners in domestic or foreign partnerships.

DATES:

Effective Date: These regulations are effective on January 17, 2020.

Applicability Dates: For dates of applicability, see §§ 1.197–2(l)(5)(i), 1.704–1(f), 1.704–3(g)(1), 1.721(c)–1(e), 1.721(c)–2(e), 1.721(c)–3(e), 1.721(c)–4(d), 1.721(c)–5(g), 1.721(c)–6(g), and 1.6038B–2(j)(4).

FOR FURTHER INFORMATION CONTACT: Chadwick Rowland, (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 721(c) was added to the Internal Revenue Code (the ''Code'') by the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788). In section 721(c), Congress granted the Secretary regulatory authority to override the application of the nonrecognition provision of section 721(a) to gain realized on the transfer of property to a partnership (domestic or foreign) if the gain, when recognized, would be includible in the gross income of a person other than a U.S. person.

On August 6, 2015, the Department of the Treasury (the ''Treasury Department'') and the IRS issued Notice 2015–54, 2015–34 I.R.B. 210, which announces an intent to issue regulations under section 721(c).

On January 19, 2017, the Treasury Department and the IRS published temporary and final regulations (T.D. 9814) under sections 721(c), 197, 704, and 6038B in the **Federal Register** (82 FR 7582) (the ''temporary regulations''). A notice of proposed rulemaking (REG–127203–15) cross-referencing the temporary regulations was published in the same issue of the **Federal Register** (82 FR 6368 (the ''proposed regulations'' and together with the temporary regulations the ''2017 regulations'').

No public hearing on the 2017 regulations was requested or held; however, the Treasury Department and the IRS received one written comment with respect to the 2017 regulations. The Comment Summary and Explanation of Revisions section summarizes the comment and discusses relevant provisions of the 2017 regulations.

Comment Summary and Explanation of Revisions

I. Overview

The Treasury Department and the IRS received one comment regarding the 2017 regulations. After full consideration of the comment, this Treasury Decision adopts the rules contained in the proposed regulations with certain modifications. This Comment Summary and Explanation of Provisions section summarizes the comment received, explains the Treasury Department and the IRS's response to that comment, and discusses the modifications to the proposed regulations adopted in this Treasury Decision.

II. Comment

The comment expressed concern that an intercompany transaction between a U.S. person and a foreign person may result in a deemed or ''accidental partnership,'' despite no intention by the partners to create one and no realization one was created. As a consequence, the requirements under the regulations would not be met to avoid gain recognition under section 721(c). The comment recommended an additional exception to gain recognition under section 721(c) in these circumstances if the taxpayer has reasonably determined that the property in question was not contributed to a partnership, the taxpayer is not amortizing or depreciating the property for section 704(b) purposes with respect to the arrangement for which the property owner has entered into a transaction with a related party, and all parties involved consistently treat the arrangement, with respect to the subject property, as one to which subchapter K of the Code does not apply.

The final regulations do not adopt this recommendation. The issue of what constitutes deemed or accidental partnerships and any relief that should be provided for them is not unique to the application of these regulations and, thus, goes beyond the scope of this Treasury Decision. Nevertheless, when an accidental partnership exists as the comment describes, the filing obligations under § 1.6038B–2(a)(1)(iii) (which cross references the reporting requirements under § 1.721(c)–6(b)) will have not been fulfilled and, therefore, the limitations period on assessment under section 6501(c)(8) will remain open until three years after the IRS is provided the information required to be reported under section 6038B. Accordingly, a taxpayer that makes a contribution to an accidental partnership could file amended returns applying the gain deferral method, including fulfilling its reporting requirements (*see* § 1.721(c)–6(f)).

III. Modifications and Clarifications

A. Related Party Definition

Section 1.721(c)–1T(b) provides definitions that apply for purposes of the 2017 regulations. Section 1.721(c)–1T(b)(12) provides that a related person is, with respect to a U.S. transferor, a person that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor. A related foreign person is, with respect to a U.S. transferor, a related person (other than a partnership) that is not a U.S. person. *See* § 1.721(c)–1T(b)(11).

The Treasury Department and the IRS have determined that a modification to the definition of related person is appropriate to limit the application of these rules in certain situations. Specifically, a new paragraph is added in § 1.721(c)–1(b)(12) that provides that for purposes of determining if a person is a related person with respect to a U.S. transferor, section 267(b) is applied without regard to section 267(c)(3). This modification to the definition of related person provides relief when certain foreign individual partners of a partnership would be treated as a related person with respect to a domestic corporation by reason of section 267(c)(3). This change is consistent with section 707(b)(3) and is intended to address the following specific fact pattern, or a variation thereof:

A partnership (PRS1) has two partners: A foreign individual that holds 4 percent of the interests in PRS1's capital and profits and a U.S. individual (unrelated to the foreign individual) that holds 96 percent of the interests in PRS1's capital and profits. PRS1 wholly owns a domestic corporation (UST). In Year 1, UST forms a new partnership (PRS2); as part of the formation, UST contributes section 721(c) property (as defined in § 1.721(c)–1(b)(15)) in return for a 90 percent interest in PRS2's capital and profits, and a U.S. individual (unrelated to UST) contributes cash in return for the remaining interest in PRS2's capital and profits.

For purposes of determining whether PRS2 is a section 721(c) partnership (as defined in § 1.721(c)–1(b)(14)), the rules of section 267(b) must be applied to determine whether the foreign individual is a related foreign person with respect to UST. Section 267(b)(2) provides that an individual is related to a corporation if the individual holds, directly or indirectly, more than 50 percent in value of the corporation's outstanding stock. In applying section 267(b)(2), however, the constructive stock ownership rules of section 267(c) must be taken into account. Section 267(c)(1) provides that stock owned, directly or indirectly, by a partnership will be treated as owned proportionally by its partners. Section 267(c)(5)

provides that stock owned constructively by reason of section 267(c)(1) will be treated as actually owned for purposes of applying section 267(c)(3). Section 267(c)(3) provides that an individual owning any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner. But section 267(c)(3) will not apply, and will therefore not attribute stock ownership to an individual partner, if the individual does not actually own, or constructively own under section 267(c)(1), stock in the corporation that is owned directly or indirectly by or for another partner of the partnership. *See* § 1.267(c)–1(a)(2).

In the facts provided, section 267(c)(1) treats the foreign individual as constructively owning a proportionate share of the UST stock that is owned by PRS1; accordingly, the foreign individual is treated as constructively owning 4 percent of the UST stock. And because the foreign individual constructively owns stock in UST under section 267(c)(1), section 267(c)(3) attributes the stock owned by the U.S individual (the other partner in PRS1) to the foreign individual. As a result, the foreign individual is treated as owning all of the value of UST's outstanding stock for purposes of determining relatedness under section 267(b)(2); therefore, the foreign individual is a related person with respect to the U.S. transferor under the rule provided in § 1.721(c)–1T(b)(12) of the 2017 regulations. However, because the modified definition of related person provided in this Treasury Decision applies section 267(b) without regard to section 267(c)(3), the foreign individual will not be treated as a related person under § 1.721(c)–1(b)(12)(ii). As a consequence, PRS2 is not a section 721(c) partnership.

B. Consistent Allocation Method

Section 1.721(c)–3T(b) of the 2017 regulations provides the requirements of the gain deferral method. Among the requirements, a section 721(c) partnership is required to adopt the remedial allocation method and apply the consistent allocation method with respect to section 721(c) property. The consistent allocation method, as described in § 1.721(c)–3T(c)(1), provides that for each taxable year of a section 721(c) partnership in which there is remaining built-in gain in section 721(c) property, the section 721(c) partnership must allocate each book item of income, gain, deduction, and loss with respect to the section 721(c) property to the U.S. transferor in the same percentage for the taxable year. Although the consistent allocation method requires each book item of income, gain, deduction, and loss with respect to section 721(c) property to be allocated to a U.S. transferor in the same percentage for a single taxable year, the consistent allocation method does not require the allocations to be in the same percentage among all taxable years in which the gain deferral method is applied. The consistent allocation method, therefore, prevents a U.S. transferor from rendering the remedial allocation method ineffective by, for example, having the partnership allocate a higher percentage of book deprecation to the U.S. transferor than the U.S. transferor's percentage share of income or gain with respect to the section 721(c) property. *See* preamble to the temporary regulations (82 FR at 7589). The consistent allocation method, therefore, ensures that the built-in gain in section 721(c) property will be subject to U.S. tax.

The Treasury Department and the IRS have determined that a modification to § 1.721(c)–3T(c)(1) of the 2017 regulations is appropriate to clarify the application of the consistent allocation method. Specifically, a new sentence is added in § 1.721(c)–3(c)(1); the new sentence provides that upon a variation (as described in § 1.706–4(a)(1)) of a U.S. transferor's interest in a section 721(c) partnership, book items with respect to section 721(c) property that are allocated under the interim closing method (as described in § 1.706–4) will be treated as allocated in the same percentage for purposes of applying the consistent allocation method in a single taxable year unless the variation results from a transaction undertaken with a principal purpose of avoiding the tax consequences of the gain deferral method.

If any partner's interest in a partnership changes during a taxable year of the partnership, section 706(d) grants the Secretary regulatory authority to prescribe rules for determining each partner's distributive share of any partnership item for the taxable year that takes into account the partner's varying interests in the partnership. The variations described in section 706(d) include, among other things, a reduction in a partner's interest in a partnership, including a reduction that occurs due to the entry of a new partner. *See* § 1.706–4(a). If a partner's interest in a partnership is reduced during a taxable year, but not completely disposed of, the taxable year of the partnership will not close as a result of the variation. *See* section 706(c)(2)(B). Instead, if a variation occurs during the taxable year of a partnership, § 1.706–4(a)(3) generally allows the partnership to choose how to determine each partner's share of the partnership items for the taxable year under either the proration method or the interim closing method. *See* § 1.706–4(a)(3)(iii). The interim closing method divides the taxable year of the partnership into segments based on the interim closings of the partnership's books; the segments are then used to apportion the partnership items for the year among its segments, and to determine, taking into account the partners' interests during each segment, the partners' distributive shares of the partnership items. *See* generally § 1.706–4(a)(3).

The modification to the consistent allocation method when the interim closing method is applied is intended to clarify that a U.S. transferor continues to comply with the consistent allocation method following certain economic events that do not close the taxable year of the section 721(c) partnership. Given the high thresholds required to be subject to these rules, the Treasury Department and the IRS have determined that allowing the partnership to choose the proration method is not appropriate for the consistent allocation method: A section 721(c) partnership will have the resources and capabilities necessary to comply with the more precise interim closing method without imposing an undue burden on the partnership.

C. Reporting

The final regulations include the reporting requirements provided in the 2017 regulations regarding both gain deferral contributions and the annual reporting requirements with respect to section 721(c) property to which the gain deferral method applies. The 2017 regulations require much of the reporting to be on statements attached to returns. *See* §§ 1.721(c)-6T and 1.6038B–2T. Since the issuance of the 2017 regulations, however, the IRS has updated and added new schedules to Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships,* to facilitate compliance with these reporting requirements. The IRS has also issued new Form 8838–P, *Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).* The purpose of these changes was to include the information that previously was reported on the statements. The final regulations reference and require the use of these forms and schedules to fulfill the reporting requirements. For tax returns filed before March 17, 2020, however, § 1.721(c)–6(g)(3)(ii) provides relief for reporting that met the requirements of

§ 1.721(c)–6T (as in effect before January 1, 2020).

The final regulations also clarify the duration for which the U.S. transferor must extend the period of limitations on the assessment of tax under § 1.721(c)–6(b). Section 1.721(c)-6(b)(5) clarifies the relevant periods to which Form 8838–P applies by measuring each period by the number of months occurring after the relevant date; accordingly, the final regulations measure each period by a fixed term that is determinable on the date of contribution. The final regulations also provide a similar clarification in § 1.721(c)–6(f)(2).

D. Technical Terminations

Section 708(b) generally provides that a partnership will terminate if the partnership ceases to do business. Before the enactment of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''TCJA''), section 708(b)(1)(B) provided another way for a partnership to terminate: A partnership terminated if within any 12-month period, 50 percent or more of the total interest in partnership capital and profits was sold or exchanged. The termination described in section 708(b)(1)(B) is commonly referred to as a ''technical termination.'' The regulations in § 1.708–1(b)(4) provide that a technical termination results in a deemed contribution of all the terminated partnership's assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to both the purchasing partners and the remaining partners.

The TCJA repealed section 708(b)(1)(B) for all partnership taxable years beginning after December 31, 2017; therefore, technical terminations no longer apply. *See* Conference Report on H.R. 1, Tax Cuts and Jobs Act, H. Rept. 115–446, at 416.

The 2017 regulations provide rules regarding technical terminations in two contexts: They provide that a partnership will not be treated as a section 721(c) partnership (as defined in § 1.721(c)-1T(b)(14)) following a deemed contribution that occurs as a result of a technical termination, and they treat certain technical terminations as successor events for purposes of the acceleration event exceptions provided in § 1.721(c)–5T. *See* §§ 1.721(c)–2T(d)(2) and 1.721(c)–5T(c)(4).

The rules in the 2017 regulations regarding technical terminations are retained in this Treasury Decision. Although the TCJA repealed section 708(b)(1)(B), the applicability date for these final regulations relates back to the applicability date provided in the 2017 regulations, which is before the effective date provided in the TCJA. Accordingly, the rules provided in this Treasury Decision regarding technical terminations will have limited applicability; the rules will only apply to technical terminations occurring on or after the applicability date provided in the 2017 regulations but before the effective date for the repeal of section 708(b)(1)(B) provided in the TCJA.

E. Request for Comments

Under the final regulations, as well as the 2017 regulations, stock is excluded from the definition of section 721(c) property and, therefore, a contribution of stock of a controlled foreign corporation (within the meaning of section 957) (''CFC'') to a section 721(c) partnership is not subject to the final regulations. However, the Treasury Department and the IRS are concerned that taxpayers may avail themselves of partnerships to shift the tax liability, in whole or in part, with respect to earnings of a CFC attributable to subpart F income (within the meaning of section 952) or tested income (within the meaning of section 951A(c)(2)(A) and § 1.951A–2(b)(1)) to a related foreign partner that is not owned (within the meaning of section 958(a)) by a United States shareholder (within the meaning of section 951(b)). The Treasury Department and the IRS are studying the use of partnerships in this context, including under what circumstances it may be appropriate to apply section 721(c) to a contribution of stock of a CFC to a partnership. The Treasury Department and the IRS request comments on this matter.

Special Analyses

I. Regulatory Planning and Review

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Department of Treasury and the Office of Management and Budget (OMB).

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations include a $1,000,000 de minimis exception for certain transfers and exclude contributions of tangible property with built-in gain that does not exceed $20,000. In addition, the regulations apply only when a U.S. transferor contributes property to a partnership with a partner that is a related foreign person and persons related to the U.S. transferor own more than 80 percent of the interests in the partnership. Accordingly, the Treasury Department and the IRS expect that these regulations primarily will affect large domestic corporations. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

II. Paperwork Reduction Act

The collection of information imposed by these regulations is contained in §§ 1.721(c)–6 and 1.6038B–2. The collection of information provided by these regulations has been reviewed and approved by the Office of Management and Budget under control numbers 1545–1668 and 1545–0123. The information is required to comply with the gain deferral method, which generally allows a U.S. transferor to avoid immediate gain recognition upon a contribution of section 721(c) property to a section 721(c) partnership. The likely respondents are domestic corporations. Estimates for completing these forms can be located in the instructions to Forms 8865, 8838–P, and 1065.

Upon a contribution of section 721(c) property to a section 721(c) partnership, a U.S. transferor must comply with the gain deferral method described in § 1.721(c)–3 to avoid immediate gain recognition. To comply with the gain deferral method, § 1.721(c)–3(b)(3) provides that the procedural and reporting requirements of § 1.721(c)–6 must be met; additionally, § 1.721(c)–3(b)(4) provides that a U.S. transferor must consent to an extension of the period of limitations on assessment of tax as required by § 1.721(c)–6(b)(5).

Section 1.721(c)–6(b) describes the procedural and reporting requirements of a U.S. transferor. The collection of information described in §§ 1.721(c)–6(b)(2) and (c)(2) and 1.6038B–2(a)(1)(iii) regarding a gain deferral contribution is provided by the U.S. transferor to the IRS on any applicable Schedules to Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships,* and is mandatory; the relevant Schedules include, as

applicable, Schedule A–1, *Certain Foreign Partners;* Schedule A–2, *Foreign Partners of Section 721(c) Partnership;* Schedule G, *Statement of Application of the Gain Deferral Method Under Section 721(c);* Schedule H, *Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c);* and Schedule O, *Transfer of Property to a Foreign Partnership.* The information will be used by the U.S. transferor to comply with the gain deferral method.

The collection of information described in §§ 1.721(c)–6(b)(3) and 1.6038B–2(a)(1)(iii) is provided on Schedules G, H, and O of Form 8865 and is mandatory. The information will be used by the U.S. transferor to annually report information for each gain deferral contribution.

The collection of information described in § 1.721(c)–6(b)(3)(iii), if not already provided elsewhere, is provided on Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships,* and is mandatory. The information will be used by the U.S. transferor to comply with the gain deferral method.

The collection of information described in § 1.721(c)–6(b)(5) is provided by the U.S. transferor to the IRS on Form 8838–P, *Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)),* and is mandatory. The information will be used by the U.S. transferor to extend the period of limitations on the assessment of tax to ensure that the gain deferral method is properly applied.

If a section 721(c) partnership does not have a filing obligation under section 6031, the collection of information described in § 1.721(c)–6(c)(3) is provided by a section 721(c) partnership to a U.S. transferor on Schedule K–1 (Form 8865), *Partner's Share of Income, Deduction, Credits, etc.,* for all related foreign persons that are direct or indirect partners in the section 721(c) partnership. The information will be used by the U.S. transferor to annually report information for each gain deferral contribution.

If a section 721(c) partnership has a filing obligation under section 6031, the collection of information described in § 1.721(c)–6(d)(2) is provided by the section 721(c) partnership to the U.S. transferor on Schedule K–1 (Form 1065). The information will be used by the U.S. transferor to comply with the requirements of the gain deferral method provided in § 1.721(c)–6(b)(2) and (3).

REVISION OF EXISTING FORMS

	New	Revision of existing form	Number of additional respondents (estimated, rounded to nearest 100)
Form 8865		Y	<200
Form 8838–P		Y	<200
Form 1065		Y	<200

Source: RAAS:CDW and SOI.

The numbers of respondents in the Revision of Existing Forms table were estimated by the Research, Applied Analytics and Statistics Division of the IRS from the Compliance Data Warehouse and Statistics of Income, using tax year 2017. Data for each of the Forms 8865, 8838–P, and 1065 represent preliminary estimates of the total number of additional taxpayers that are expected to file these forms. The tax data for 2018 is not yet available.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Drafting Information

The principal authors of these regulations are Chadwick Rowland and Ronald M. Gootzeit, Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability

Notice 2015–54 (cited in this preamble) is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Effect on Other Documents

The following section of the following publication is obsolete as of January 17, 2020:

Section 4 of Notice 2015–54 (2015–34 I.R.B. 210).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the sectional authority citations for §§ 1.197–2T, 1.704–3T, 1.721(c)–1T through 1.721(c)–7T, and 1.6038B–2T and adding entries in numerical order for §§ 1.721(c)–1 through 1.721(c)–7 to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

Section 1.721(c)–1 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–2 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–3 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–4 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–5 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–6 also issued under 26 U.S.C. 721(c).

Section 1.721(c)–7 also issued under 26 U.S.C. 721(c).

* * * * *

■ **Par. 2.** Section 1.197–2 is amended by revising paragraphs (h)(12)(vii)(C) and (l)(5) to read as follows:

§ 1.197–2 Amortization of goodwill and certain other intangibles.

* * * * *

(h) * * *

(12) * * *

(vii) * * *

(C) *Rules for section 721(c) partnerships.* See § 1.704–3(d)(5)(iii) if there is a contribution of a section 197(f)(9) intangible to a section 721(c) partnership (as defined in § 1.721(c)–1(b)(14)).

* * * * *

(l) * * *

(5) *Applicability dates for section 721(c) partnerships*—(i) *In general.* Except as provided in paragraph (l)(5)(ii) of this section, paragraph (h)(12)(vii)(C) of this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(ii) *Application of the provisions described in paragraph (l)(5)(i)(A) of this section retroactively.* Paragraph (h)(12)(vii)(C) of this section may be applied with respect to a contribution occurring on or after August 6, 2015, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. A taxpayer applying paragraph (h)(12)(vii)(C) of this section retroactively must apply paragraph (h)(12)(vii)(C) of this section on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§ 1.197–2T [Removed]

■ **Par. 3.** Section 1.197–2T is removed.

■ **Par. 4.** Section 1.704–1 is amended by revising paragraphs (b)(2)(iv)(*f*)(*6*) and (f) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(*f*) * * *

(*6*) Notwithstanding paragraph (b)(2)(iv)(*f*)(*5*) of this section, the revaluation is required under § 1.721(c)–3(d)(1) as a condition of the application of the gain deferral method (as described in § 1.721(c)–3(b)) and is pursuant to an event described in this paragraph (b)(2)(iv)(*f*)(*6*). If an interest in a partnership is contributed to a section 721(c) partnership (as defined in § 1.721(c)–1(b)(14)), the partnership whose interest is contributed may revalue its property in accordance with this section. In this case, the revaluation by the partnership whose interest was contributed must occur immediately before the contribution. If a partnership that revalues its property pursuant to this paragraph owns an interest in another partnership, the partnership in which it owns an interest may also revalue its property in accordance with this section. When multiple partnerships revalue under this paragraph (b)(2)(iv)(f)(6), the revaluations occur in order from the lowest-tier partnership to the highest-tier partnership.

* * * * *

(f) *Applicability dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, paragraph (b)(2)(iv)(*f*)(*6*) of this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply the provisions described in paragraph (f)(1) of this section retroactively.* Paragraph (b)(2)(iv)(*f*)(*6*) of this section may, by election, be applied with respect to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying paragraph (b)(2)(iv)(*f*)(*6*) of this section on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§ 1.704–1T [Amended]

■ **Par. 5.** Paragraphs (b)(2)(iv)(*f*)(*6*) and (f) of § 1.704–1T are removed.

■ **Par. 6.** Section 1.704–3 is amended by revising paragraphs (a)(13), (d)(5)(iii), and (g) to read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(13) Rules for tiered section 721(c) partnerships—(i) Revaluations. If a partnership revalues its property pursuant to § 1.704–1(b)(2)(iv)(*f*)(*6*) immediately before an interest in the partnership is contributed to another partnership, or if an upper-tier partnership owns an interest in a lower-tier partnership, and both the upper-tier partnership and the lower-tier partnership revalue partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*)(*6*), the principles of paragraph (a)(9) of this section will apply to any reverse section 704(c) allocations made as a result of the revaluation.

(ii) *Basis-derivative items.* If a lower-tier partnership that is a section 721(c) partnership applies the gain deferral method, then, for purposes of applying this section, the upper-tier partnership must treat its distributive share of lower-tier partnership items of gain, loss, amortization, depreciation, or other cost recovery with respect to the lower-tier partnership's section 721(c) property as though they were items of gain, loss, amortization, depreciation, or other cost recovery with respect to the upper-tier partnership's interest in the lower-tier partnership. For purposes of this paragraph (a)(13)(ii), gain deferral method is defined in § 1.721(c)–1(b)(8), section 721(c) partnership is defined in § 1.721(c)–1(b)(14), and section 721(c) property is defined in § 1.721(c)–1(b)(15).

* * * * *

(d) * * *

(5) * * *

(iii) *Special rules for a section 721(c) partnership and anti-churning property*—(A) *In general.* Solely in the case of a gain deferral contribution of section 721(c) property that is a section 197(f)(9) intangible that was not an amortizable section 197 intangible in the hands of the contributor, the remedial allocation method is modified with respect to allocations to a related person to the U.S. transferor pursuant to paragraphs (d)(5)(iii)(B) through (F) of this section. For purposes of this paragraph (d)(5)(iii), gain deferral contribution is defined in § 1.721(c)–1(b)(7), related person is defined in § 1.721(c)–1(b)(12), section 721(c) partnership is defined in § 1.721(c)–

1(b)(14), section 721(c) property is defined in § 1.721(c)–1(b)(15), and U.S. transferor is defined in § 1.721(c)–1(b)(18). For an example applying the rules of this paragraph (d)(5)(iii), see § 1.721(c)–7(b)(6) (*Example 6*).

(B) *Book basis recovery.* The section 721(c) partnership must amortize the portion of the partnership's book value in the section 197(f)(9) intangible that exceeds the adjusted basis in the property upon contribution using any recovery period and amortization method available to the partnership as if the property had been newly purchased by the partnership from an unrelated party.

(C) *Effect of ceiling rule limitations.* If the ceiling rule causes the book allocation of the item of amortization of a section 197(f)(9) intangible under paragraph (d)(5)(iii)(B) of this section by a section 721(c) partnership to a related person with respect to the U.S. transferor to differ from the tax allocation of the same item to the related person (a ceiling rule limited related person), the partnership must not create a remedial item of deduction to allocate to the related person but instead must increase the adjusted basis of the section 197(f)(9) intangible by an amount equal to the difference solely with respect to that related person. The partnership simultaneously must create an offsetting remedial item in an amount identical to the increase in adjusted tax basis of the section 197(f)(9) intangible and allocate it to the contributing partner.

(D) *Effect of basis adjustment*—(*1*) *In general.* The basis adjustment described in paragraph (d)(5)(iii)(C) of this section constitutes an adjustment to the adjusted basis of a section 197(f)(9) intangible with respect to the ceiling rule limited related person only. No adjustment is made to the common basis of partnership property. Thus, for purposes of calculating gain and loss, the ceiling rule limited related person will have a special basis for that section 197(f)(9) intangible. The adjustment to the basis of partnership property under this section has no effect on the partnership's computation of any item under section 703.

(*2*) *Computation of a partner's distributive share of partnership items.* The partnership first computes its items of gain or loss at the partnership level under section 703. The partnership then allocates the partnership items among the partners, including the ceiling rule limited related person, in accordance with section 704, and adjusts the partners' capital accounts accordingly. The partnership then adjusts the ceiling rule limited related person's distributive share of the items of partnership gain or loss, in accordance with paragraph (d)(5)(iii)(D)(*3*) of this section, to reflect the effects of that person's basis adjustment under this section. These adjustments to that person's distributive shares must be reflected on Schedules K and K–1 of the partnership's return (Form 1065) (when otherwise required to be completed) and do not affect that person's capital account.

(*3*) *Effect of basis adjustment in determining items of income, gain, or loss.* The amount of a ceiling rule limited related person's gain or loss from the sale or exchange of a section 197(f)(9) intangible in which that person has a tax basis adjustment is equal to that person's share of the partnership's gain or loss from the sale of the asset (including any remedial allocations under this paragraph (d)), minus the amount of that person's tax basis adjustment for the section 197(f)(9) intangible.

(E) *Subsequent transfers*—(*1*) *In general.* Except as provided in paragraph (d)(5)(iii)(E)(*2*) of this section, if a ceiling rule limited related person transfers all or part of its partnership interest, the portion of the basis adjustment for a section 197(f)(9) intangible attributable to the interest transferred is eliminated. The transferor of the partnership interest remains the ceiling rule limited related person with respect to any remaining basis adjustment for the section 197(f)(9) intangible.

(*2*) *Special rules for substituted basis transactions.* Paragraph (d)(5)(iii)(E)(*1*) of this section does not apply to the extent a ceiling rule limited related person transfers its partnership interest in a transaction in which the transferee's basis in the partnership interest is determined in whole or in part by reference to the ceiling rule limited related person's basis in that interest. Instead, in such a case, the transferee succeeds to that portion of the transferor's basis adjustment for a section 197(f)(9) intangible attributable to the interest transferred. In such a case, the basis adjustment in a section 197(f)(9) intangible to which the transferee succeeds is taken into account for purposes of determining the transferee's share of the adjusted basis to the partnership of the partnership's property for purposes of §§ 1.743–1(b) and 1.755–1(b)(5). To the extent a transferee would be required to decrease the adjusted basis of a section 197(f)(9) intangible pursuant to §§ 1.743–1(b)(2) and 1.755–1(b)(5), the decrease first reduces the special basis adjustment described in paragraph (d)(5)(iii)(C) of this section, if any, to which the transferee succeeds.

(F) *Non-amortization of basis adjustment.* Neither the increase to the adjusted basis of a section 197(f)(9) intangible with respect to a ceiling rule limited related person nor the portion of the basis of any property that was determined by reference to such increase is subject to amortization, depreciation, or other cost recovery.

* * * * *

(g) *Applicability dates for rules for section 721(c) partnerships*—(1) *In general.* Notwithstanding paragraph (f) of this section, except as provided in paragraph (g)(2) of this section, paragraphs (a)(13) and (d)(5)(iii) of this section apply with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply the provisions described in paragraph (g)(1) of this section retroactively.* Paragraphs (a)(13) and (d)(5)(iii) of this section may, by election, be applied with respect to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying paragraph (a)(13) or (d)(5)(iii) of this section, as applicable, on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§ 1.704–3T [Removed]

■ **Par. 7.** Section 1.704–3T is removed.

■ **Par. 8.** Section 1.721(c)–1 is added to read as follows:

§ 1.721(c)–1 Overview, definitions, and rules of general application.

(a) *Overview*—(1) *In general.* This section and §§ 1.721(c)–2 through 1.721(c)–7 (collectively, the *section 721(c) regulations*) provide rules under section 721(c). This section provides definitions and rules of general application for purposes of the section 721(c) regulations. Section 1.721(c)–2 provides the general operative rules that override section 721(a) nonrecognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Section 1.721(c)–3

describes the gain deferral method, which may be applied in order to avoid the immediate recognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Section 1.721(c)–4 provides rules regarding acceleration events for purposes of applying the gain deferral method. Section 1.721(c)–5 identifies exceptions to the rules regarding acceleration events provided in § 1.721(c)–4(b). Section 1.721(c)–6 provides procedural and reporting requirements. Section 1.721(c)–7 provides examples illustrating the application of the section 721(c) regulations.

(2) *Scope*. Paragraph (b) of this section provides definitions. Paragraph (c) of this section describes the treatment of a change in form of a partnership. Paragraph (d) of this section provides an anti-abuse rule. Paragraph (e) of this section provides the dates of applicability.

(b) *Definitions*. The following definitions apply for purposes of the section 721(c) regulations. Unless otherwise indicated, the definitions apply on a property-by-property basis, as applicable.

(1) *Acceleration event*. An acceleration event has the meaning provided in § 1.721(c)–4(b).

(2) *Built-in gain*. Built-in gain is, with respect to property contributed to a partnership, the excess of the book value of the property over the partnership's adjusted tax basis in the property upon the contribution, determined without regard to the application of § 1.721(c)–2(b).

(3) *Consistent allocation method*. The consistent allocation method is the method described in § 1.721(c)–3(c).

(4) *Controlled partnership*. A partnership is a controlled partnership with respect to a U.S. transferor if the U.S. transferor and related persons control the partnership. For purposes of this paragraph (b)(4), control is determined based on all the facts and circumstances, except that a partnership will be deemed to be controlled by a U.S. transferor and related persons if those persons, in the aggregate, own (directly or indirectly through one or more partnerships) more than 50 percent of the interests in the partnership capital or profits.

(5) *Direct or indirect partner*. A direct or indirect partner is a person (other than a partnership) that owns an interest in a partnership directly or indirectly through one or more partnerships.

(6) *Excluded property*. Excluded property is—

(i) A cash equivalent;

(ii) A security within the meaning of section 475(c)(2), without regard to section 475(c)(4);

(iii) Tangible property with a book value exceeding adjusted tax basis by no more than $20,000 or with an adjusted tax basis in excess of book value; and

(iv) An interest in a partnership in which 90 percent or more of the property (as measured by value) held by the partnership (directly or indirectly through interests in one or more partnerships that are not excluded property) consists of property described in paragraphs (b)(6)(i) through (iii) of this section.

(7) *Gain deferral contribution*. A gain deferral contribution is a contribution of section 721(c) property to a section 721(c) partnership with respect to which the recognition of gain is deferred under the gain deferral method.

(8) *Gain deferral method*. The gain deferral method is the method described in § 1.721(c)–3(b).

(9) *Partial acceleration event*. A partial acceleration event is an event described in § 1.721(c)–5(d)(2) or (3).

(10) *Regulatory allocation*. A regulatory allocation is—

(i) An allocation pursuant to a minimum gain chargeback, as defined in § 1.704–2(b)(2);

(ii) A partner nonrecourse deduction, as determined in § 1.704–2(i)(2);

(iii) An allocation pursuant to a partner minimum gain chargeback, as described in § 1.704–2(i)(4);

(iv) An allocation pursuant to a qualified income offset, as defined in § 1.704–1(b)(2)(ii)(*d*);

(v) An allocation with respect to the exercise of a noncompensatory option described in § 1.704–1(b)(2)(iv)(*s*); and

(vi) An allocation of partnership level ordinary income or loss described in § 1.751–1(b)(3).

(11) *Related foreign person*. A related foreign person is, with respect to a U.S. transferor, a related person (other than a partnership) that is not a U.S. person.

(12) *Related person*—(i) *In general*. A related person is, with respect to a U.S. transferor, a person that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor.

(ii) *Modification to the application of section 267(b)*. For purposes of determining if a person is a related person with respect to a U.S. transferor, section 267(b) is applied without regard to section 267(c)(3).

(13) *Remaining built-in gain*—(i) *In general*. Remaining built-in gain is, with respect to section 721(c) property subject to the gain deferral method, the built-in gain reduced by decreases in the difference between the property's book value and adjusted tax basis, but, for purposes of this paragraph (b)(13)(i), without taking into account increases or decreases to the property's book value pursuant to § 1.704–1(b)(2)(iv)(*f*) or (*s*).

(ii) Special rule for tiered partnerships. If section 721(c) property is described in § 1.721(c)–3(d)(1)(ii), the remaining built-in gain includes the new positive reverse section 704(c) layer described in § 1.721(c)–3(d)(1)(ii), reduced by decreases in the difference between the property's book value and adjusted tax basis, but, for purposes of this paragraph (b)(13)(ii), without taking into account increases or decreases to the property's book value pursuant to § 1.704–1(b)(2)(iv)(f) or (s) that are unrelated to the revaluation described in § 1.721(c)–3(d)(1)(i).

(14) *Section 721(c) partnership*—(i) *In general*. A partnership (domestic or foreign) is a section 721(c) partnership if there is a contribution of section 721(c) property to the partnership and, after the contribution and all transactions related to the contribution—

(A) A related foreign person with respect to the U.S. transferor is a direct or indirect partner in the partnership; and

(B) The U.S. transferor and related persons own 80 percent or more of the interests in partnership capital, profits, deductions, or losses.

(ii) *Special rule for tiered partnerships*. A partnership described in § 1.721(c)–3(d)(1) or (2) is deemed to be a section 721(c) partnership for purposes of the gain deferral method.

(15) *Section 721(c) property*—(i) *In general*. Section 721(c) property is property, other than excluded property, with built-in gain that is contributed to a partnership by a U.S. transferor, including pursuant to a contribution described in § 1.721(c)–2(d) (partnership look-through rule). If the U.S. transferor is treated as contributing its share of property to a partnership pursuant to § 1.721(c)–2(d), the entire property will be section 721(c) property.

(ii) *Special rule for tiered partnerships*. Property described in § 1.721(c)–3(d)(1)(ii) and an interest in a partnership described in § 1.721(c)–3(d)(2)(ii) is deemed to be section 721(c) property.

(16) *Successor event*. A successor event is an event described in § 1.721(c)–5(c)(2), (3), (4), or (5).

(17) *Termination event*. A termination event is an event described in § 1.721(c)–5(b)(2), (3), (4), (5), (6), or (7).

(18) *U.S. transferor*—(i) *In general*. A U.S. transferor is a United States person within the meaning of section 7701(a)(30) (a *U.S. person*), other than a domestic partnership.

(ii) *Special rule for tiered partnerships*. Solely for purposes of applying the consistent allocation method, a U.S. transferor includes a partnership that is treated as a U.S. transferor under § 1.721(c)–3(d)(1)(iii) or (d)(2)(i).

(c) *Change in form of a partnership*. A mere change in identity, form, or place of organization of a partnership or a recapitalization of a partnership will not cause the partnership to become a section 721(c) partnership.

(d) *Anti-abuse rule*. If a U.S. transferor engages in a transaction (or series of transactions) or an arrangement with a principal purpose of avoiding the application of the section 721(c) regulations, the transaction (or series of transactions) or the arrangement may be recharacterized (including by aggregating or disregarding steps or disregarding an intermediate entity) in accordance with its substance.

(e) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (e)(2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions*. Except as provided in paragraph (e)(3) of this section, paragraphs (b)(6)(iv) and (c) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017. Except as provided in paragraph (e)(3) of this section, paragraph (b)(14)(i)(B) of this section applies by replacing ''80 percent or more'' with ''greater than 50 percent'' with respect to contributions that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to contributions that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015, but was filed on or after August 6, 2015 but before January 18, 2017. Except as provided in paragraph (e)(3) of this section, paragraph (b)(12)(ii) of this section applies to contributions occurring on or after January 17, 2020.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively*. Paragraphs (b)(6)(iv) and (c) of this section and paragraph (b)(14)(i)(B) of this section, without the modification described in paragraph (e)(2) of this section, may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must have been made by applying paragraph (b)(6)(iv) or (c) as described in paragraph (e)(2) of this section or paragraph (b)(14)(i)(B) of this section, without the modification described in paragraph (e)(2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017. Paragraph (b)(12)(ii) of this section, may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 17, 2020, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must be made by applying paragraph (b)(12)(ii) of this section to the contribution on a timely filed original return (including extensions) or an amended return filed no later July 17, 2020.

§ 1.721(c)–1T [Removed]

■ **Par. 9.** Section 1.721(c)–1T is removed.

■ **Par. 10.** Section 1.721(c)–2 is added to read as follows:

§ 1.721(c)–2 Recognition of gain on certain contributions of property to partnerships with related foreign partners.

(a) *Scope*. This section provides the general operative rules that override section 721(a) nonrecognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (b) of this section provides the general rule that nonrecognition of gain under section 721(a) does not apply to a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (c) of this section provides a de minimis exception to the application of the general rule in paragraph (b) of this section. Paragraph (d) of this section provides rules for identifying a section 721(c) partnership when a partnership in which a U.S. transferor is a direct or indirect partner contributes property to another partnership. Paragraph (e) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see § 1.721(c)–1(b).

(b) *General rule for contributions of section 721(c) property*. Except as provided in this paragraph (b), paragraph (c) of this section, and § 1.721(c)–3 (describing the gain deferral method), nonrecognition under section 721(a) will not apply to gain realized by the contributing partner upon a contribution of section 721(c) property to a section 721(c) partnership. This paragraph (b) does not apply to a direct contribution by a U.S. transferor if the U.S. transferor and related persons with respect to the U.S. transferor do not own 80 percent or more of the interests in partnership capital, profits, deductions, or losses.

(c) *De minimis exception*. Paragraph (b) of this section will not apply with respect to contributions to a section 721(c) partnership during a taxable year of the section 721(c) partnership for which the sum of the built-in gain with respect to all section 721(c) property contributed in that taxable year does not exceed $1 million. If, pursuant to the last sentence of paragraph (b) of this section, a direct contribution of property to the section 721(c) partnership by a U.S. transferor is not subject to paragraph (b) of this section, then such contribution is not taken into account for purposes of this paragraph (c).

(d) *Rules for identifying a section 721(c) partnership when a partnership contributes property to another partnership*—(1) *Partnership look-through rule*. If a U.S. transferor is a direct or indirect partner in a partnership (upper-tier partnership) and the upper-tier partnership contributes all or a portion of its property to another partnership (lower-tier partnership), then, for purposes of determining if the lower-tier partnership is a section 721(c) partnership, the U.S. transferor is treated as contributing to the lower-tier partnership its share of the property actually contributed by the upper-tier partnership to the lower-tier partnership.

(2) *Exception for a technical termination of a partnership*. Paragraph (d)(1) of this section will not apply to a deemed contribution that occurs as a result of a termination of a partnership described in section 708(b)(1)(B) (technical termination). If a partnership is a section 721(c) partnership immediately before a technical termination, see § 1.721(c)–5(c)(4) (which treats technical terminations as successor events in certain circumstances).

(e) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (e)(2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions*. Except as provided in paragraph (e)(3) of this section, the final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, and paragraph (d)(2) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively*. The final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, and paragraph (d)(2) of this section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying the final sentence of paragraph (b) of this section, the final sentence of paragraph (c) of this section, or paragraph (d)(2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§ 1.721(c)–2T [Removed]

■ **Par. 11.** Section 1.721(c)–2T is removed.

■ **Par. 12.** Section 1.721(c)–3 is added to read as follows:

§ 1.721(c)–3 Gain deferral method.

(a) *Scope*. This section describes the gain deferral method to avoid the immediate recognition of gain upon a contribution of section 721(c) property to a section 721(c) partnership. Paragraph (b) of this section provides the requirements of the gain deferral method, including the requirement to apply the consistent allocation method. Paragraph (c) of this section describes the consistent allocation method. Paragraph (d) of this section provides rules for tiered partnerships. Paragraph (e) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see § 1.721(c)–1(b).

(b) Requirements of the gain deferral method. A contribution of section 721(c) property to a section 721(c) partnership that would be subject to § 1.721(c)–2(b) will not be subject to § 1.721(c)–2(b) if the conditions in paragraphs (b)(1) through (5) of this section are satisfied with respect to that property.

(1) Either—

(i) Both—

(A) The section 721(c) partnership adopts the remedial allocation method described in § 1.704–3(d) with respect to the section 721(c) property; and

(B) The section 721(c) partnership applies the consistent allocation method provided in paragraph (c) of this section; or

(ii) For the period beginning on the date of the contribution of the section 721(c) property and ending on the date on which there is no remaining built-in gain with respect to that property, all distributive shares of income and gain with respect to the section 721(c) property for all direct and indirect partners that are related foreign persons with respect to the U.S. transferor will be subject to taxation as income effectively connected with a trade or business within the United States (under either section 871 or 882), and neither the section 721(c) partnership nor a related foreign person that is a direct or indirect partner in the section 721(c) partnership claims benefits under an income tax convention that would exempt the income or gain from tax or reduce the rate of taxation to which the income or gain is subject.

(2) Upon an acceleration event, the U.S. transferor recognizes an amount of gain equal to the remaining built-in gain with respect to the section 721(c) property or an amount of gain required to be recognized under § 1.721(c)–5(d) or (e), as applicable.

(3) The procedural and reporting requirements provided in § 1.721(c)–6(b) are satisfied.

(4) The U.S. transferor consents to extend the period of limitations on assessment of tax as required by § 1.721(c)–6(b)(5).

(5) If the section 721(c) property is a partnership interest or property described in the partnership look-through rule provided in § 1.721(c)–2(d), the applicable tiered-partnership rules provided in paragraph (d) of this section are applied.

(c) *Consistent allocation method*—(1) *In general*. For each taxable year of a section 721(c) partnership in which there is remaining built-in gain in the section 721(c) property, the section 721(c) partnership must allocate each book item of income, gain, deduction, and loss with respect to the section 721(c) property to the U.S. transferor in the same percentage. For purposes of this paragraph (c)(1), upon a variation (as defined in § 1.706–4(a)(1)) of a U.S. transferor's interest in a section 721(c) partnership, a book item of income, gain, deduction, and loss with respect to a section 721(c) property is treated as allocated in the same percentage if the item is allocated under the interim closing method (as described in § 1.706–4), unless the variation results from a transaction undertaken with a principal purpose of avoiding the tax consequences of the gain deferral method. For exceptions to the first sentence in this paragraph (c)(1), see paragraph (c)(4) of this section.

(2) *Determining income or gain with respect to section 721(c) property*. For purposes of applying paragraph (c)(1) of this section, a section 721(c) partnership must attribute book income and gain to each item of section 721(c) property in a consistent manner using any reasonable method taking into account all the facts and circumstances. All items of book income and gain attributable to an item of section 721(c) property will comprise a single class of gross income for purposes of applying paragraph (c)(3) of this section.

(3) *Determining deduction or loss with respect to section 721(c) property*. For purposes of applying paragraph (c)(1) of this section, a section 721(c) partnership must use the principles of §§ 1.861–8 and 1.861–8T to allocate and apportion its items of deduction, except for interest expense and research and experimental expenditures, and loss to the class of gross income with respect to each item of section 721(c) property as determined in paragraph (c)(2) of this section. Accordingly, a deduction or loss will be considered to be definitely related and therefore allocable to a class of gross income with respect to particular section 721(c) property whether or not there is any item of gross income in that class that is received or accrued during the taxable year and whether or not the amount of deduction or loss exceeds the amount of gross income in that class during the taxable year. If a deduction or loss is definitely related and therefore allocable to gross income attributable to more than one class of gross income of the section 721(c) partnership or if a deduction or loss is not definitely related to any class of gross income of the section 721(c) partnership, the section 721(c) partnership must apportion that

deduction or loss among its classes of gross income using a reasonable method that reflects to a reasonably close extent the factual relationship between the deduction or loss and the classes of gross income. The section 721(c) partnership may allocate and apportion its interest expense and research and experimental expenditures under any reasonable method, including, but not limited to, the methods prescribed in §§ 1.861–9 and 1.861–9T (interest expense) and § 1.861–17 (research and experimental expenditures). For purposes of this paragraph (c)(3), the section 721(c) partnership must allocate and apportion its deductions and losses without regard to the partners' percentage interests in the partnership.

(4) *Exceptions to the consistent allocation method*—(i) *Regulatory allocations*. A regulatory allocation (as defined in § 1.721(c)–1(b)(10)) of book income, gain, deduction, or loss with respect to section 721(c) property that otherwise would fail to satisfy paragraph (c)(1) of this section is nevertheless deemed to satisfy paragraph (c)(1) of this section if the allocation is—

(A) An allocation of income or gain to the U.S. transferor (or a member of its consolidated group as defined in § 1.1502–1(h));

(B) An allocation of deduction or loss to a partner other than the U.S. transferor (or a member of its consolidated group); or

(C) Treated as a partial acceleration event pursuant to § 1.721(c)–5(d)(2).

(ii) *Allocation of creditable foreign tax expenditures*. An allocation of a creditable foreign tax expenditure (as defined in § 1.704–1(b)(4)(viii)(b)) is not subject to the consistent allocation method.

(d) *Tiered partnership rules*. This paragraph (d) provides the tiered partnership rules referred to in paragraph (b)(5) of this section.

(1) *Section 721(c) property is a partnership interest*. If the section 721(c) property that is contributed to a section 721(c) partnership is an interest in a partnership (lower-tier partnership), then the lower-tier partnership, if it is a controlled partnership with respect to the U.S. transferor, and each partnership in which an interest is owned (directly or indirectly through one or more partnerships) by the lower-tier partnership and that is a controlled partnership with respect to the U.S. transferor, must satisfy the requirements of paragraphs (d)(1)(i), (ii), and (iii) of this section.

(i) The partnership must revalue all its property under § 1.704–1(b)(2)(iv)(f)(6) if the revaluation would result in a separate positive difference between book value and adjusted tax basis in at least one property that is not excluded property.

(ii) The partnership must apply the gain deferral method for each property (other than excluded property) for which there is a separate positive difference between book value and adjusted tax basis resulting from the revaluation described in paragraph (d)(1) of this section (*new positive reverse section 704(c) layer*). If the partnership has previously adopted a section 704(c) method other than the remedial allocation method for the property, the partnership satisfies the requirement of paragraph (b)(1)(i)(A) of this section by adopting the remedial allocation method for the new positive reverse section 704(c) layer.

(iii) The partnership must treat a partner that is a partnership in which the U.S. transferor is a direct or indirect partner as if it were the U.S. transferor with respect to the section 721(c) property solely for purposes of applying the consistent allocation method.

(2) *Section 721(c) property is indirectly contributed by a U.S. transferor under the partnership look-through rule*. If the U.S. transferor is a direct or indirect partner in the upper-tier partnership described in § 1.721(c)–2(d)(1), and under § 1.721(c)–2(d)(1), the U.S. transferor is treated as contributing the section 721(c) property (including an interest in a partnership described in paragraph (d)(1) of this section) to a section 721(c) partnership, then the requirements of paragraphs (d)(2)(i), (ii), and (iii) of this section must be satisfied.

(i) The section 721(c) partnership must treat the upper-tier partnership as the U.S. transferor of the section 721(c) property solely for purposes of applying the consistent allocation method;

(ii) The upper-tier partnership, if it is a controlled partnership with respect to the U.S. transferor, must apply the gain deferral method to its interest in the section 721(c) partnership; and

(iii) If the U.S. transferor is an indirect partner in the upper-tier partnership through one or more partnerships, the principles of paragraphs (d)(2)(i) and (ii) of this section must be applied with respect to those partnerships that are controlled partnerships with respect to the U.S. transferor.

(e) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (e)(2) and (3) of this section, this section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

(2) *Certain provisions*. Except as provided in paragraph (e)(3) of this section, paragraphs (b)(1)(ii), (c)(2) and (3), (c)(4)(i) and (ii), and (d)(1) and (2) of this section apply to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017. Except as provided in paragraph (e)(3) of this section, the second sentence of paragraph (c)(1) of this section applies to contributions occurring on or after January 17, 2020.

(3) *Election to apply the provisions described in paragraph (e)(2) of this section retroactively*. Paragraphs (b)(1)(ii), (c)(2) and (3), (c)(4)(i) and (ii), and (d)(1) and (2) of this section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must have been made by applying paragraph (b)(1)(ii), (c)(2) or (3), (c)(4)(i) or (ii), or (d)(1) or (2) of this section, as applicable, to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017. In order to elect to apply paragraph (c)(2) or (3) of this section to a contribution described in this paragraph (e)(3), an election must also have been made to apply paragraph (c)(3) or (2) of this section, respectively, to the contribution. The second sentence of paragraph (c)(1) of this section, may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 17, 2020, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election described in the preceding sentence must be made by applying the second sentence of paragraph (c)(1) of this section to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 17, 2020.

(4) *Transitional rules*. If a contribution is described in paragraph (e)(2) of this section and no election

described in paragraph (e)(3) of this section is made to apply one or more of paragraphs (c)(2) and (3) and (c)(4)(i) and (ii) of this section, as applicable, to the contribution, then, for purposes of paragraph (c)(1) of this section, the section 721(c) partnership must attribute book income, gain, loss, and deduction to the section 721(c) property in a consistent manner under any reasonable method taking into account all the facts and circumstances. If a contribution is described in paragraph (e)(2) of this section and no election described in paragraph (e)(3) of this section is made to apply paragraph (d)(1) or (2) of this section, as applicable, to the contribution, then, this section must be applied in a manner consistent with the purpose of the section 721(c) regulations. Thus, for example, if a U.S. transferor is a direct or indirect partner in a partnership and that partnership contributes section 721(c) property to a lower-tier partnership, or, if a U.S. transferor contributes an interest in a partnership that owns section 721(c) property to a lower-tier partnership, then paragraph (b) of this section applies as though the U.S. transferor contributed its share of the section 721(c) property directly.

§ 1.721(c)–3T [Removed]

■ **Par. 13.** Section 1.721(c)–3T is removed.

■ **Par. 14.** Section 1.721(c)–4 is added to read as follows:

§ 1.721(c)–4 Acceleration events.

(a) *Scope.* This section provides rules regarding acceleration events for purposes of applying the gain deferral method. Paragraph (b) of this section defines an acceleration event. Paragraph (c) of this section provides the consequences of an acceleration event. Paragraph (d) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see § 1.721(c)–1(b).

(b) *Definition of an acceleration event*—(1) *General rules.* Except as provided in this paragraph (b) and § 1.721(c)-5 (acceleration event exceptions), an acceleration event with respect to section 721(c) property is any event that either would reduce the amount of remaining built-in gain that a U.S. transferor would recognize under the gain deferral method if the event had not occurred or could defer the recognition of the remaining built-in gain. An acceleration event includes a contribution of section 721(c) property to another partnership by a section 721(c) partnership and a contribution of an interest in a section 721(c) partnership to another partnership. This paragraph (b) applies on a property-by-property basis.

(2) *Failure to comply with a requirement of the gain deferral method*—(i) *General rule.* An acceleration event with respect to section 721(c) property occurs when any party fails to comply with a condition of the gain deferral method with respect to the section 721(c) property.

(ii) Certain failures to comply with procedural and reporting requirements. Notwithstanding paragraph (b)(2)(i) of this section, an acceleration event will not occur solely as a result of a failure to comply with a requirement of § 1.721(c)–3(b)(3) that is not willful. See §§ 1.721(c)–6(f) and 1.6038B–2(h)(3).

(3) *Lower-tier partnership allocations.* Notwithstanding paragraph (b)(1) of this section, an acceleration event will not occur because of a reduction in remaining built-in gain in an interest in a partnership that is section 721(c) property that occurs as a result of allocations of book items of deduction and loss, or tax items of income and gain.

(4) *Deemed acceleration event.* A U.S. transferor may treat an acceleration event as having occurred with respect to section 721(c) property by both recognizing gain in an amount equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold the section 721(c) property immediately before the deemed acceleration event for fair market value and satisfying the reporting required by § 1.721(c)–6(b)(3)(i)(D). In this case, see paragraph (c) of this section regarding basis adjustments.

(c) *Consequences of an acceleration event.* Paragraphs (c)(1) and (2) of this section provide the consequences of an acceleration event with respect to section 721(c) property, a partial acceleration event with respect to section 721(c) property to the extent provided in § 1.721(c)–5(d)(1), and a transfer described in section 367 of section 721(c) property to the extent provided in § 1.721(c)–5(e).

(1) *U.S. transferor.* The U.S. transferor must recognize gain in an amount equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold the section 721(c) property immediately before the acceleration event for fair market value. The U.S. transferor will increase its basis in its partnership interest by the amount of gain recognized. If the U.S. transferor is an indirect partner in the section 721(c) partnership through one or more tiered partnerships, appropriate basis adjustments will be made to the interests in the tiered partnerships.

(2) *Section 721(c) partnership.* The section 721(c) partnership will increase its basis in the section 721(c) property by the amount of built-in gain recognized by the U.S. transferor under paragraph (c)(1) of this section. Any tax consequences of the acceleration event will be determined taking into account the increase in the partnership's adjusted tax basis in the section 721(c) property. If the section 721(c) property remains in the partnership after the acceleration event, the increase in basis of the section 721(c) property may be recovered using any applicable recovery period and depreciation (or other cost recovery) method (including first-year conventions) available to the partnership for newly purchased property of the same type placed in service on the date of the acceleration event. The section 721(c) property will no longer be subject to the gain deferral method.

(d) *Applicability dates.* This section applies to contributions occurring on or after August 6, 2015, and to contributions that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015.

§ 1.721(c)–4T [Removed]

■ **Par. 15.** Section 1.721(c)–4T is removed.

■ **Par. 16.** Section 1.721(c)–5 is added to read as follows:

§ 1.721(c)–5 Acceleration event exceptions.

(a) *Scope.* This section identifies exceptions to the acceleration events, which, like the rules regarding acceleration events provided in § 1.721(c)–4(b), apply on a property-by-property basis. Paragraph (b) of this section identifies the events that terminate the requirement to apply the gain deferral method. Paragraph (c) of this section identifies the successor events that allow for the continued application of the gain deferral method. Paragraph (d) of this section identifies the partial acceleration events. Paragraph (e) of this section provides special rules for transfers of section 721(c) property to a foreign corporation described in section 367. Paragraph (f) of this section allows for the continued application of the gain deferral method if there is a fully taxable disposition of a portion of an interest in a partnership. Paragraph (g) of this section provides the dates of applicability. For

definitions that apply for purposes of this section, see § 1.721(c)–1(b).

(b) *Termination events*—(1) *In general.* Notwithstanding § 1.721(c)–4(b)(1), a termination event with respect to section 721(c) property will not constitute an acceleration event. In these cases, the section 721(c) property will no longer be subject to the gain deferral method.

(2) *Transfers of section 721(c) property (other than a partnership interest) to a domestic corporation described in section 351.* A termination event occurs if a section 721(c) partnership transfers section 721(c) property (other than an interest in a partnership) to a domestic corporation in a transaction to which section 351 applies.

(3) *Certain incorporations of a section 721(c) partnership.* A termination event occurs upon an incorporation of a section 721(c) partnership into a domestic corporation by any method of incorporation (other than a method involving an actual distribution of partnership property to the partners, followed by a contribution of that property to a corporation), provided that the section 721(c) partnership is liquidated as part of the incorporation transaction.

(4) *Certain distributions of section 721(c) property.* A termination event occurs if a section 721(c) partnership distributes section 721(c) property either to the U.S. transferor or, if the U.S. transferor is a member of a consolidated group (as defined in § 1.1502–1(h)) at the time of the distribution and the distribution occurs outside the seven-year period described in section 704(c)(1)(B), to a member of the consolidated group.

(5) *Partnership ceases to have a partner that is a related foreign person.* A termination event occurs when a section 721(c) partnership ceases to have any direct or indirect partners that are related foreign persons with respect to the U.S. transferor, provided there is no plan for a related foreign person to subsequently become a direct or indirect partner in the partnership (or a successor). This paragraph (b)(5) does not apply to a distribution of section 721(c) property in redemption of a related foreign person's interest in a section 721(c) partnership.

(6) *Fully taxable dispositions of section 721(c) property.* A termination event occurs if a section 721(c) partnership disposes of section 721(c) property in a transaction in which all gain or loss, if any, is recognized.

(7) *Fully taxable dispositions of an entire interest in a section 721(c) partnership.* A termination event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner disposes of its entire interest in a section 721(c) partnership that owns the section 721(c) property in a transaction in which all gain or loss, if any, is recognized. This paragraph (b)(7) does not apply if a U.S. transferor is a member of a consolidated group (as defined in § 1.1502–1(h)) and the interest in the section 721(c) partnership is transferred in an intercompany transaction (as defined in § 1.1502–13(b)(1)); see paragraph (c)(3) of this section for a successor event rule applicable to these intercompany transactions.

(c) *Successor events*—(1) *In general.* Notwithstanding § 1.721(c)–4(b)(1), a successor event with respect to section 721(c) property will not constitute an acceleration event. If a portion of an interest in a partnership is transferred in a successor event described in this paragraph (c), the principles of § 1.704–3(a)(7) apply to determine the remaining built-in gain in section 721(c) property that is attributable to the portion of the interest that is transferred and the portion of the interest that is retained.

(2) *Transfers of an interest in a section 721(c) partnership by a U.S. transferor or upper-tier partnership to a domestic corporation in certain nonrecognition transactions.* A successor event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner transfers (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership to a domestic corporation in a transaction to which section 351 or 381 applies, and the gain deferral method is continued by treating the transferee domestic corporation as the U.S. transferor for purposes of the section 721(c) regulations. If the transfer described in this paragraph (c)(2) also results in a termination under section 708(b)(1)(B) of the section 721(c) partnership, see paragraph (c)(4) of this section.

(3) *Transfers of an interest in a section 721(c) partnership in an intercompany transaction.* A successor event occurs if a U.S. transferor that is a member of a consolidated group (as defined in § 1.1502–1(h)) transfers (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership in an intercompany transaction (as defined in § 1.1502–13(b)(1)), and the gain deferral method is continued by treating the transferee member as the U.S. transferor for purposes of the section 721(c) regulations. If the transfer described in this paragraph (c)(3) also results in a termination under section 708(b)(1)(B) of the section 721(c) partnership, see paragraph (c)(4) of this section.

(4) *Termination under section 708(b)(1)(B) of a section 721(c) partnership.* A successor event occurs if there is a termination under section 708(b)(1)(B) of a section 721(c) partnership, and the gain deferral method is continued by treating the new partnership as the section 721(c) partnership for purposes of the section 721(c) regulations.

(5) *Transactions involving tiered partnerships*—(i) *Contributions of section 721(c) property to a lower-tier partnership.* A successor event occurs if a section 721(c) partnership contributes the section 721(c) property to a partnership that is a controlled partnership with respect to the U.S. transferor (lower-tier section 721(c) partnership) and the requirements of paragraphs (c)(5)(i)(A) through (C) of this section are satisfied.

(A) The lower-tier section 721(c) partnership is a section 721(c) partnership or is treated as a section 721(c) partnership.

(B) The gain deferral method is applied with respect to the section 721(c) property in the hands of the lower-tier section 721(c) partnership.

(C) The gain deferral method is applied with respect to the section 721(c) partnership's interest in the lower-tier section 721(c) partnership. See § 1.721(c)–3(b)(5) and (d)(2).

(ii) *Contributions of an interest in a section 721(c) partnership to an upper-tier partnership.* A successor event occurs if a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner contributes (directly or indirectly through one or more partnerships) an interest in a section 721(c) partnership to a partnership that is a controlled partnership with respect to the U.S. transferor (upper-tier section 721(c) partnership) and the requirements of paragraphs (c)(5)(ii)(A) through (D) of this section are satisfied.

(A) The gain deferral method is continued with respect to the section 721(c) property in the hands of the section 721(c) partnership.

(B) The upper-tier section 721(c) partnership is, or is treated as, a section 721(c) partnership.

(C) If the upper-tier section 721(c) partnership directly owns its interest in the section 721(c) partnership, the gain deferral method is applied with respect to the upper-tier section 721(c) partnership's interest in the section 721(c) partnership. See § 1.721(c)–3(b)(5) and (d)(1).

(D) If the upper-tier section 721(c) partnership indirectly owns its interest in the section 721(c) partnership through one or more partnerships, the principles of paragraphs (c)(5)(ii)(B) and (C) of this section are applied with respect to each partnership through which the upper-tier section 721(c) partnership indirectly owns an interest in the section 721(c) partnership.

(d) *Partial acceleration events*—(1) *In general.* Notwithstanding § 1.721(c)–4, a partial acceleration event with respect to section 721(c) property does not constitute an acceleration event. In these cases, except as provided in paragraph (d)(3) of this section, the rules in § 1.721(c)–4(c) (concerning the consequences of an acceleration event) for making basis adjustments apply to the extent that the U.S. transferor is required to recognize gain under paragraph (d)(2) or (3) of this section. Furthermore, if there is remaining built-in gain with respect to the section 721(c) property after the application of this paragraph (d), the application of the gain deferral method with respect to the section 721(c) property must be continued in the same manner.

(2) *Regulatory allocations.* If a regulatory allocation is described in § 1.721(c)–3(c)(4)(i) but not in § 1.721(c)–3(c)(4)(i)(A) or (B), a partial acceleration event occurs with respect to section 721(c) property if the U.S. transferor recognizes an amount of gain (but not in excess of remaining built-in gain) equal to the amount of the allocation that, under the consistent allocation method, had the regulatory allocation not occurred, would have been allocated to the U.S. transferor in the case of income or gain, or would not have been allocated to the U.S. transferor in the case of deduction or loss.

(3) *Certain distributions of other partnership property to a partner that result in an adjustment under section 734.* A partial acceleration event occurs with respect to section 721(c) property if there is a distribution of other property by the section 721(c) partnership that results in a positive basis adjustment to the section 721(c) property under section 734. In these cases, the U.S. transferor must recognize an amount of gain (but not in excess of the remaining built-in gain) equal to the positive basis adjustment to the section 721(c) property under section 734, reduced (but not below zero) by the amount of gain recognized by the U.S. transferor (or a member of its consolidated group (as defined in § 1.1502–1(h))) under section 731(a). In these cases, the partnership will not increase its basis under § 1.721(c)–4(c)(2) by the amount of gain recognized by the U.S. transferor.

(e) *Transfers described in section 367 of section 721(c) property to a foreign corporation.* If a section 721(c) partnership transfers section 721(c) property, or a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner transfers (directly or indirectly through one or more partnerships) all or a portion of an interest in a section 721(c) partnership that owns section 721(c) property, to a foreign corporation in a transaction described in section 367, then the property will no longer be subject to the gain deferral method. To the extent any U.S. transferor is treated as transferring the section 721(c) property to the foreign corporation for purposes of section 367, the tax consequences will be determined under section 367. In this regard, see §§ 1.367(a)–1T(c)(3)(i) and (ii), 1.367(d)–1T(d)(1), and 1.367(e)–2(b)(1)(iii) (providing for the aggregate treatment of partnerships). However, for the remaining portion of the property (if any), the U.S. transferor must recognize an amount of gain equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the section 721(c) partnership had sold that portion of the section 721(c) property immediately before the transfer for fair market value. The stock in the transferee foreign corporation received will not be subject to the gain deferral method. The rules in § 1.721(c)–4(c) (concerning the consequences of an acceleration event) for making basis adjustments will apply to the extent that the U.S. transferor recognizes gain under this paragraph (e).

(f) *Fully taxable dispositions of a portion of an interest in a partnership.* If a U.S. transferor or a partnership in which a U.S. transferor is a direct or indirect partner disposes of (directly or indirectly through one or more partnerships) a portion of an interest in a section 721(c) partnership in a transaction in which all gain or loss, if any, is recognized, an acceleration event will not occur with respect to the portion of the interest transferred. The gain deferral method will continue to apply with respect to the section 721(c) property of the section 721(c) partnership. The principles of § 1.704–3(a)(7) will apply to determine the remaining built-in gain in section 721(c) property that is attributable to the portion of the interest in a section 721(c) partnership that is retained. This paragraph (f) will not apply to an intercompany transaction (as defined in § 1.1502–13(b)(1)).

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to contributions occurring on or after January 18, 2017, and to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply this section retroactively.* This section may, by election, be applied to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying this section to the contribution on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

§ 1.721(c)–5T [Removed]

■ **Par. 17.** Section 1.721(c)–5T is removed.

■ **Par. 18.** Section 1.721(c)–6 is added to read as follows:

§ 1.721(c)–6 Procedural and reporting requirements.

(a) *Scope.* This section provides procedural and reporting requirements that must be satisfied under § 1.721(c)–3(b)(3) of the gain deferral method. Paragraph (b) of this section describes the procedural and reporting requirements of a U.S. transferor. Paragraph (c) of this section describes information required to be reported with respect to related foreign persons and partnerships. Paragraph (d) of this section describes the procedural and reporting requirements of a section 721(c) partnership with a section 6031 filing obligation. Paragraph (e) of this section provides the proper signatory for the information provided under this section. Paragraph (f) of this section provides relief for certain failures to comply that are not willful. Paragraph (g) of this section provides the dates of applicability. For definitions that apply for purposes of this section, see § 1.721(c)–1(b).

(b) *Procedural and reporting requirements of a U.S. transferor*—(1) *In general.* This paragraph (b) describes the procedural and reporting requirements that a U.S. transferor (as defined § 1.721(c)–1(b)(18)(i)) must satisfy in applying the gain deferral method. The information required under this paragraph (b) must be included with the U.S. transferor's timely filed return on (or attached to) the appropriate forms or

schedules (or their successors) and must be submitted in the form and manner and to the extent prescribed by the forms and schedules (and their accompanying instructions).

(2) *Reporting of a gain deferral contribution.* A U.S. transferor must report the following information with respect to a gain deferral contribution:

(i) On Schedule A–1, Certain Foreign Partners, Schedule A–2, Foreign Partners of Section 721(c) Partnership, Schedule G, Statement of Application of the Gain Deferral Method Under Section 721(c), and Schedule H, Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c) (for each such Schedule, with respect to Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships), as applicable, the following information with respect to the section 721(c) property—

(A) A description of the property and recovery period (or periods) for the property;

(B) Whether the property is an intangible described in section 197(f)(9);

(C) A calculation of the built-in gain, the basis, and fair market value on the date of the contribution, including the amount of gain recognized by the U.S. transferor, if any, on the gain deferral contribution;

(D) The name, U.S. taxpayer identification number (if any), address, and country of organization (if any) of each direct or indirect partner in the section 721(c) partnership that is a related person with respect to the U.S. transferor, and a description of each partner's interest in capital and profits immediately after the gain deferral contribution; and

(E) When the section 721(c) property is a partnership interest, the information described in paragraphs (b)(2)(i)(A) through (D) of this section with respect to each property of a lower-tier partnership to which the gain deferral method is applied under § 1.721(c)–3(d)(1);

(ii) On Form 8838–P, Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)), an extension of the period of limitations on the assessment of tax as described in paragraph (b)(5) of this section;

(iii) A copy of the waiver of treaty benefits described in paragraph (c)(1) of this section (if any);

(iv) On Schedule A–1, Schedule A–2, and Schedule G (for each such Schedule, with respect to Form 8865), as applicable, information relating to the section 721(c) partnership described in paragraph (c)(2) of this section (if any);

(v) On, Schedule O, Transfer of Property to a Foreign Partnership (Form 8865) with respect to any foreign partnership, (or partnership treated as foreign under paragraph (b)(4) of this section), the information required under § 1.6038B–2(c)(1) through (7); and

(vi) The information required under paragraph (b)(3) of this section.

(3) *Annual reporting relating to gain deferral method.* A U.S. transferor must annually report information for each gain deferral contribution. The information reported must be with respect to the partnership taxable year that ends with, or within, the taxable year of the U.S. transferor, beginning with the partnership's taxable year that includes the date of the gain deferral contribution and ending with the last taxable year in which the gain deferral method is applied to the section 721(c) property. The information reported must include:

(i) For each deferral contribution, the U.S. transferor must report the following information on Schedule G and Schedule H (for each Schedule, with respect to Form 8865), as applicable:

(A) The amount of book income, gain, deduction, and loss and tax items allocated to the U.S. transferor with respect to the section 721(c) property, including a description of any regulatory allocations;

(B) The proportion (expressed as a percentage) in which the book income, gain, deduction, and loss with respect to the section 721(c) property was allocated among the U.S. transferor and related persons that are partners in the section 721(c) partnership under the consistent allocation method;

(C) The amount of remaining built-in gain at the beginning of the taxable year, the remedial income allocated to the U.S. transferor under the remedial allocation method, the amount of built-in gain taken into account by reason of an acceleration event or partial acceleration event (if any), the partnership's adjustment to its tax basis in the section 721(c) property, and the remaining built-in gain at the end of the taxable year;

(D) A declaration stating whether an acceleration event or partial acceleration event occurred during the taxable year, the date of the event, and a description of the event (including a citation to the relevant paragraph of § 1.721(c)–5(d) in the case of a partial acceleration event, and whether the acceleration event is described in § 1.721(c)–4(b)(4));

(E) A description of a termination event or any successor event that occurred during the taxable year with a citation to the relevant paragraph of § 1.721(c)–5(b) or (c), the date of the event, and, in the case of a successor event, the name, address, and U.S. taxpayer identification number (if any) of any successor partnership, lower-tier partnership, upper-tier partnership, or U.S. corporation (as applicable);

(F) A description of all transfers of section 721(c) property to a foreign corporation described in § 1.721(c)–5(e) that occurred during the taxable year, and for each transfer, the date of the transfer, the section 721(c) property transferred, and the name, address, and U.S. taxpayer identification number (if any) of the foreign transferee corporation; and

(G) With respect to section 721(c) property for which a waiver of treaty benefits was filed under paragraph (b)(2)(iii) of this section, a declaration that, after exercising reasonable diligence, to the best of the U.S. transferor's knowledge and belief, all income from the section 721(c) property allocated to the partners during the taxable year remained subject to taxation as income effectively connected with the conduct of a trade or business within the United States (under either section 871 or 882) for all direct or indirect partners that are related foreign persons with respect to the U.S. transferor (regardless of whether any such partner was a partner at the time of the gain deferral contribution), and, that neither the partnership nor any such partner has made any claim under any income tax convention to an exemption from U.S. income tax or a reduced rate of U.S. income taxation on income derived from the use of the section 721(c) property;

(ii) On Form 8838–P, an extension of the period of limitations on the assessment of tax, in the case of a gain deferral contribution, as described in paragraph (b)(5)(ii) of this section, and, in the case of certain contributions on which gain is recognized, as described in paragraph (b)(5)(iii) of this section;

(iii) If the section 721(c) partnership is a partnership that does not have a filing obligation under section 6031, the information described in § 1.6038–3(g) (contents of information returns required of certain United States persons with respect to controlled foreign partnerships), if not already reported elsewhere, without regard to whether the section 721(c) partnership is a controlled foreign partnership within the meaning of section 6038. If the U.S. transferor is not a controlling fifty-percent partner (as defined in § 1.6038–3(a)), the U.S. transferor complies with the requirement of this paragraph (b)(3)(iii) by providing the information described in § 1.6038–3(g)(1);

(iv) On Schedule O (Form 8865), a description of all section 721(c) property contributed by the U.S. transferor to the section 721(c) partnership (including pursuant to a contribution described in § 1.721(c)–2(d)(1)) during the taxable year to which the gain deferral method is not applied; and

(v) The information required in paragraphs (c)(2) and (3) of this section for related foreign persons that are direct or indirect partners in the section 721(c) partnership and the section 721(c) partnership itself (if any).

(4) *Domestic partnerships treated as foreign.* Solely for purposes of this section, a U.S. transferor must treat a domestic section 721(c) partnership as a foreign partnership if the partnership was formed on or after January 18, 2017. If the section 721(c) partnership has an information return filing obligation under section 6031, that requirement is not affected by the requirement of this paragraph (b)(4) that the U.S. transferor treat the partnership as a foreign partnership.

(5) *Extension of period of limitations on assessment of tax.* In order to comply with the gain deferral method, a U.S. transferor must extend the period of limitations on the assessment of tax using Form 8838–P:

(i) With respect to the gain realized but not recognized on a gain deferral contribution, through the date that is 96 months after the close of the U.S. transferor's taxable year that includes the date of the gain deferral contribution;

(ii) With respect to all book and tax items with respect to the section 721(c) property allocated to the U.S. transferor in the partnership's taxable year that includes the date of the gain deferral contribution and the subsequent two years, through the date that is 72 months after the close of such taxable year with which, or within which, the partnership's taxable year ends; and

(iii) With respect to the gain recognized on a contribution of section 721(c) property to a section 721(c) partnership for which the gain deferral method is not applied, if the contribution occurs within five partnership taxable years following a partnership taxable year that includes the date of a gain deferral contribution, through the date that is 60 months after the close of the U.S. transferor's taxable year that includes the date of the contribution on which gain is recognized.

(c) *Information with respect to section 721(c) partnerships and related foreign persons*—(1) *Effectively connected income.* If the gain deferral method is applied with respect to a contribution of section 721(c) property that satisfies the condition in § 1.721(c)–3(b)(1)(ii), the U.S. transferor must obtain a statement from the section 721(c) partnership and from each related foreign person that is a direct or indirect partner in the section 721(c) partnership, titled ''Statement of Waiver of Treaty Benefits under § 1.721(c)–6,'' pursuant to which the partner and the partnership waive any claim under any income tax convention (whether or not currently in force at the time of the contribution) to an exemption from U.S. income tax or a reduced rate of U.S. income taxation on income derived from the use of the section 721(c) property for the period during which the section 721(c) property is subject to the gain deferral method.

(2) *Partnerships in tiered-partnership structures applying the gain deferral method.* If the gain deferral method is applied as a result of a transaction described in § 1.721(c)–3(d), the U.S. transferor must supply all the information that a section 721(c) partnership would be required to report under paragraph (b) of this section if the section 721(c) partnership were a U.S. transferor.

(3) *Schedules K–1 for related foreign partners.* If a section 721(c) partnership does not have a filing obligation under section 6031, the U.S. transferor must obtain a Schedule K–1 (Form 8865), Partner's Share of Income, Deduction, Credits, etc., for all related foreign persons that are direct or indirect partners in the section 721(c) partnership.

(d) *Reporting and procedural requirements of a section 721(c) partnership with a section 6031 filing obligation*—(1) *Waiver of treaty benefits.* A section 721(c) partnership with a return filing obligation under section 6031 must include its waiver of treaty benefits described in paragraph (c)(1) of this section with its tax return for the taxable year that includes the date of the gain deferral contribution.

(2) *Information on Schedule K–1.* A section 721(c) partnership with a return filing obligation under section 6031 must provide the relevant information necessary for the U.S. transferor to comply with the requirements in paragraphs (b)(2) and (3) of this section (using the Forms and Schedules specified in paragraphs (b)(2) and (3) of this section) with the U.S. transferor's Schedule K–1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc. The partnership must also attach a Schedule K–1 (Form 1065) to its Form 1065 for each direct or indirect partner that is a related foreign person with respect to the U.S. transferor.

(e) *Signatory.* Any statements required in this section must be signed under penalties of perjury by an agent of the U.S. transferor, the related foreign person that is a direct or indirect partner in the section 721(c) partnership, or the section 721(c) partnership, as applicable, that is authorized to sign under a general or specific power of attorney, or by an appropriate party. For the U.S. transferor, an appropriate party is a person described in § 1.367(a)–8(e)(1). For a partnership with a section 6031 filing obligation, an appropriate party is any party authorized to sign Form 1065.

(f) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (f)(1) provides relief from the failure to comply with the procedural and reporting requirements of the gain deferral method prescribed by § 1.721(c)–3(b)(3) and provided in paragraph (b) of this section if there is a failure to file or to include information required by this section (failure to comply). A failure to comply will be deemed not to have occurred for purposes of § 1.721(c)–3(b)(3) if the U.S. transferor demonstrates that the failure was not willful using the procedure provided in this paragraph (f). For purposes of this paragraph (f), willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to comply was willful will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The U.S. transferor must submit a request for relief and an explanation as provided in paragraph (f)(2) of this section. A U.S. transferor whose failure to comply is determined not to be willful under this paragraph (f) will be subject to a penalty under section 6038B if it fails to satisfy the applicable reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–2(h). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–2(h).

(2) *Procedures for establishing that a failure to comply was not willful*—(i) *Time and manner of submission.* A U.S.

transferor's statement that a failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section as well as a written statement explaining the reasons for the failure to comply. The U.S. transferor also must file, with the amended return, a Schedule O (Form 8865) and Form 8838–P (as described in paragraph (b)(5) of this section), completed and executed as prescribed in forms and instructions, consenting to extend the period of limitations on assessment of tax with respect to the gain realized but not recognized on the gain deferral contribution to the later of the date that is 96 months after the close of the U.S. transferor's taxable year that includes the date of the gain deferral contribution (*date one*), or the date that is 36 months after the date on which the required information is provided to the Director (*date two*). However, the U.S. transferor is not required to file a Schedule O (Form 8865), with the amended return if both date one is later than date two and a consent to extend the period of limitations on assessment of tax with respect to the gain realized but not recognized on the gain deferral contribution for the U.S. transferor's taxable year that includes the date of the contribution was previously submitted with a Schedule O (Form 8865). The amended return and either a Schedule O (Form 8865) or a copy of the previously filed Schedule O (Form 8865), as the case may be, must be filed with the Internal Revenue Service at the location where the U.S. transferor filed its original return. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B–2(h)(3).

(ii) *Notice requirement.* In addition to the requirements of paragraph (f)(2)(i) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (f)(2)(ii). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return must be delivered to the Director.

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Reporting relating to effectively connected income.* Paragraphs (b)(2)(iii), (b)(3)(i)(G), and (d)(1) of this section apply to a contribution occurring on or after August 6, 2015, and to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015, and, in either case, provided § 1.721(c)–3(b)(1)(ii) applies to the contribution. To the extent that a previously filed return did not comply with paragraph (b)(2)(iii), (b)(3)(i)(G), or (d)(1) of this section, an amended return complying with such paragraphs must have been filed no later than July 18, 2017.

(3) *Transition rules*—(i) *Reporting under sections 6038, 6038B, and 6046A.* For transfers occurring on or after August 6, 2015, and for transfers that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015, a U.S. transferor (or a domestic partnership in which a U.S. transferor is a direct or indirect partner) must fulfill any reporting requirements imposed under sections 6038, 6038B, and 6046A with respect to the contribution of the section 721(c) property to the section 721(c) partnership.

(ii) *Reporting using statements instead of prescribed forms and schedules.* For tax returns filed before March 17, 2020, reporting that met the requirements of § 1.721(c)–6T (see 26 CFR part 1, revised as of April 1, 2019) as in effect before January 1, 2020, will be deemed to satisfy the corresponding requirements of this section.

§ 1.721(c)–6T [Removed]

■ **Par. 19.** Section 1.721(c)–6T is removed.

■ **Par. 20.** Section 1.721(c)–7 is added to read as follows:

§ 1.721(c)–7 Examples.

(a) *Presumed facts.* For purposes of the examples in paragraph (b) of this section, assume that there are no other transactions that are related to the transactions described in the examples and that all partnership allocations have substantial economic effect under section 704(b). For definitions that apply for purposes of this section, see § 1.721(c)–1(b). Except where otherwise indicated, the following facts are presumed—

(1) USP and USX are domestic corporations that each use a calendar taxable year. USX is not a related person with respect to USP.

(2) CFC1, CFC2, FX, and FY are foreign corporations.

(3) USP wholly owns CFC1 and CFC2. Neither FX nor FY is a related person with respect to USP or with respect to each other.

(4) PRS1, PRS2, and PRS3 are foreign entities classified as partnerships for U.S. tax purposes. A partnership interest in PRS1, PRS2, and PRS3 is not described in section 475(c)(2).

(5) A taxable year is referred to, for example, as year 1.

(6) A partner in a partnership has the same percentage interest in income, gain, loss, deduction, and capital of the partnership.

(7) No property is described in section 197(f)(9) in the hands of a contributing partner.

(8) No partnership is a controlled partnership solely under the facts and circumstances test in § 1.721(c)–1(b)(4).

(b) *Examples.* The application of the rules stated in §§ 1.721(c)–1 through 1.721(c)–6 may be illustrated by the following examples:

(1) *Example 1: Determining if a partnership is a section 721(c) partnership*—(i) *Facts.* In year 1, USP and CFC1 form PRS1 as equal partners. CFC1 contributes cash of $1.5 million to PRS1, and USP contributes three properties to PRS1: A patent with a book value of $1.2 million and an adjusted tax basis of zero, a security (within the meaning of section 475(c)(2)) with a book value of $100,000 and an adjusted tax basis of $20,000, and a machine with a book value of $200,000 and an adjusted tax basis of $600,000.

(ii) *Results.* (A) Under § 1.721(c)–1(b)(18)(i), USP is a U.S. transferor because USP is a U.S. person and not a domestic partnership. Under § 1.721(c)–1(b)(2), the patent has built-in gain of $1.2 million. The patent is not excluded property under § 1.721(c)–1(b)(6). Therefore, under § 1.721(c)–1(b)(15)(i), the patent is section 721(c) property because it is property, other than excluded property, with built-in gain that is contributed by a U.S. transferor, USP.

(B) Under § 1.721(c)–1(b)(2), the security has built-in gain of $80,000. Under § 1.721(c)–1(b)(6)(ii), the security is excluded property because it is described in section 475(c)(2). Therefore, the security is not section 721(c) property.

(C) The tax basis of the machine exceeds its book value. Under § 1.721(c)–1(b)(6)(iii), the machine is excluded property and therefore is not section 721(c) property.

(D) Under § 1.721(c)–1(b)(12), CFC1 is a related person with respect to USP, and

under § 1.721(c)–1(b)(11), CFC1 is a related foreign person. Because USP and CFC1 collectively own at least 80 percent of the interests in the capital, profits, deductions, or losses of PRS1, under § 1.721(c)–1(b)(14)(i), PRS1 is a section 721(c) partnership upon the contribution by USP of the patent.

(E) The de minimis exception described in § 1.721(c)–2(c) does not apply to the contribution because during PRS1's year 1 the sum of the built-in gain with respect to all section 721(c) property contributed in year 1 to PRS1 is $1.2 million, which exceeds the de minimis threshold of $1 million. As a result, under § 1.721(c)–2(b), section 721(a) does not apply to USP's contribution of the patent to PRS1, unless the requirements of the gain deferral method are satisfied.

(2) *Example 2: Determining if partnership interest is section 721(c) property*—(i) *Facts*. In year 1, USP and FX form PRS2. USP contributes a security (within the meaning of section 475(c)(2)) with a book value of $100,000 and an adjusted tax basis of $20,000 and a building located in country X with a book value of $30,000 and an adjusted tax basis of $8,000 in exchange for a 40-percent interest. FX contributes a machine with a book value of $195,000 and an adjusted tax basis of $250,000 in exchange for a 60-percent interest.

(ii) *Results*. PRS2 is not a section 721(c) partnership because FX is not a related person with respect to USP. USP's contributions to PRS2 are not subject to § 1.721(c)–2(b).

(iii) *Alternative facts and results*. (A) The facts are the same as in paragraph (b)(2)(i) of this section (the facts in Example 2). In addition, USP and CFC1 form PRS1 as equal partners. CFC1 contributes cash of $130,000 to PRS1, and USP contributes its 40-percent interest in PRS2.

(B) PRS2's property consists of a security and a machine that are excluded property, and a building with built-in gain in excess of $20,000. Under § 1.721(c)–1(b)(6)(iv), because more than 90 percent of the value of the property of PRS2 consists of excluded property described in § 1.721(c)–1(b)(6)(i) through (iii) (the security and the machine), any interest in PRS2 is excluded property. Therefore, the 40-percent interest in PRS2 contributed by USP to PRS1 is not section 721(c) property. Accordingly, USP's contribution of its interest in PRS2 to PRS1 is not subject to § 1.721(c)–2(b).

(3) *Example 3: Assets-over tiered partnerships*—(i) *Facts*. In year 1, USP and CFC1 form PRS1 as equal partners. USP contributes a patent with a book value of $300 million and an adjusted tax basis of $30 million (USP contribution). CFC1 contributes cash of $300 million. Immediately thereafter, PRS1 contributes the patent to PRS2 in exchange for a two-thirds interest (PRS1 contribution), and CFC2 contributes cash of $150 million in exchange for a one-third interest. The patent has a remaining recovery period of 5 years out of a total of 15 years. With respect to all contributions described in § 1.721(c)–2(b), the de minimis exception does not apply, and the gain deferral method is applied. Thus, the partnership agreements of PRS1 and PRS2 provide that the partnership will make allocations under section 704(c) using the remedial allocation method under § 1.704–3(d).

(ii) *Results: USP contribution*. PRS1 is a section 721(c) partnership as a result of the USP contribution.

(iii) *Results: PRS1 contribution*. (A) For purposes of determining whether PRS2 is a section 721(c) partnership as a result of the PRS1 contribution, under § 1.721(c)–2(d)(1), USP is treated as contributing to PRS2 its share of the patent that PRS1 actually contributes to PRS2. USP and CFC1 are each one-third indirect partners in PRS2. Taking into account the one-third interest in PRS2 directly owned by CFC2, USP, CFC1, and CFC2 collectively own at least 80 percent of the interests in PRS2. Thus, PRS2 is a section 721(c) partnership as a result of the PRS1 contribution.

(B) Under § 1.721(c)–2(b), section 721(a) does not apply to PRS1's contribution of the patent to PRS2, unless the requirements of the gain deferral method are satisfied. Under § 1.721(c)–3(b), the gain deferral method must be applied with respect to the patent. In addition, under § 1.721(c)–3(d)(2), because PRS1 is a controlled partnership with respect to USP, the gain deferral method must be applied with respect to PRS1's interest in PRS2, and, solely for purposes of applying the consistent allocation method, PRS2 must treat PRS1 as the U.S. transferor. As stated in paragraph (b)(3)(i) of this section (the facts in Example 3), the gain deferral method is applied. PRS2 is a controlled partnership with respect to USP. Under § 1.721(c)–5(c)(5)(i), the PRS1 contribution is a successor event with respect to the USP contribution.

(iv) *Results: application of remedial allocation method*. (A) Under § 1.704–3(d)(2), in year 1, PRS2 has $24 million of book amortization with respect to the patent ($6 million ($30 million of book value equal to adjusted tax basis divided by the 5-year remaining recovery period) plus $18 million ($270 million excess of book value over tax basis divided by the new 15-year recovery period)). PRS2 has $6 million of tax amortization. Under the PRS2 partnership agreement, PRS2 allocates $8 million of book amortization to CFC2 and $16 million of book amortization to PRS1. Because of the application of the ceiling rule, PRS2 allocates $6 million of tax amortization to CFC2 and $0 of tax amortization to PRS1. Because the ceiling rule would cause a disparity of $2 million between CFC2's book and tax amortization, PRS2 must make a remedial allocation of $2 million of tax amortization to CFC2 and an offsetting remedial allocation of $2 million of taxable income to PRS1.

(B) PRS1's distributive share of each of PRS2's items with respect to the patent is $16 million of book amortization, $0 of tax amortization, and $2 million of taxable income from the remedial allocation from PRS1. Under § 1.704–3(a)(9), PRS1 must allocate its distributive share of each of PRS2's items with respect to the patent in a manner that takes into account USP's remaining built-in gain in the patent. Therefore, PRS1 allocates $2 million of taxable income to USP. Under § 1.704–3(a)(13)(ii), PRS1 treats its distributive share of each of PRS2's items of amortization with respect to PRS2's patent as items of amortization with respect to PRS1's interest in PRS2. Under the PRS1 partnership agreement, PRS1 allocates $8 million of book amortization and $0 of tax amortization to CFC1, and $8 million of book amortization and $0 of tax amortization to USP. Because the ceiling rule would cause a disparity of $8 million between CFC1's book and tax amortization, PRS1 must make a remedial allocation of $8 million of tax amortization to CFC1. PRS1 must also make an offsetting remedial allocation of $8 million of taxable income to USP. USP reports $10 million of taxable income ($2 million of remedial income from PRS2 and $8 million of remedial income from PRS1).

(4) *Example 4: Section 721(c) partnership ceases to have a related foreign person as a partner*—(i) *Facts*. In year 1, USP and CFC1 form PRS1. USP contributes a trademark with a built-in gain of $5 million in exchange for a 60-percent interest, and CFC1 contributes other property in exchange for the remaining 40-percent interest. With respect to all contributions described in § 1.721(c)–2(b), the de minimis exception does not apply, and the gain deferral method is applied. On day 1 of year 4, CFC1 sells its entire interest in PRS1 to FX. There is no plan for a related foreign person with respect to USP to subsequently become a partner in PRS1 (or a successor).

(ii) *Results*. (A) PRS1 is a section 721(c) partnership.

(B) With respect to year 4, under § 1.721(c)–5(b)(5), the sale is a termination event because, as a result of CFC1's sale of its interest, PRS1 will no longer have a partner that is a related foreign person, and there is no plan for a related foreign person to subsequently become a partner in PRS1 (or a successor). Thus, under § 1.721(c)–5(b)(1), the trademark is no longer subject to the gain deferral method.

(5) *Example 5: Transfer described in section 367 of section 721(c) property to a foreign corporation*—(i) *Facts*. In year 1, USP, CFC1, and USX form PRS1. USP contributes a patent with a built-in gain of $5 million in exchange for a 60-percent interest, CFC1 contributes other property in exchange for a 30-percent interest, and USX contributes cash in exchange for a 10-percent interest. With respect to all contributions described in § 1.721(c)–2(b), the de minimis exception does not apply, and the gain deferral method is applied. In year 3, when the patent has remaining built-in gain, PRS1 transfers the patent to FX in a transaction described in section 351.

(ii) *Results*. (A) PRS1 is a section 721(c) partnership.

(B) With respect to year 3, the transfer of the patent to FX is a transaction described in section 367(d). Therefore, under § 1.721(c)–5(e), the patent is no longer subject to the gain deferral method. Under §§ 1.367(d)–1T(d)(1) and 1.367(a)–1T(c)(3)(i), for purposes of section 367(d), USP and USX are treated as transferring their proportionate share of the patent actually transferred by PRS1 to FX. Under § 1.721(c)–5(e), to the extent USP and USX are treated as transferring the patent to FX, the tax consequences are determined under section

367(d) and the regulations under section 367(d). With respect to the remaining portion of the patent, if any, which is attributable to CFC1, USP must recognize an amount of gain equal to the remaining built-in gain that would have been allocated to USP if PRS1 had sold that portion of the patent immediately before the transfer for fair market value. Under § 1.721(c)–4(c)(1), USP must increase the basis in its partnership interest in PRS1 by the amount of gain recognized by USP and under § 1.721(c)–4(c)(2), immediately before the transfer, PRS1 must increase its basis in the patent by the same amount. The stock in FX received by PRS1 is not subject to the gain deferral method.

(6) *Example 6: Limited remedial allocation method for anti-churning property with respect to related partners*—(i) *Facts.* USP, CFC1, and FX form PRS1. On January 1 of year 1, USP contributes intellectual property (IP) with a book value of $600 million and an adjusted tax basis of $0 in exchange for a 60-percent interest. The IP is a section 197(f)(9) intangible (within the meaning of § 1.197–2(h)(1)(i)) that was not an amortizable section 197 intangible in USP's hands. CFC1 contributes cash of $300 million in exchange for a 30-percent interest, and FX contributes cash of $100 million in exchange for a 10-percent interest. The IP is section 721(c) property, and PRS1 is a section 721(c) partnership. The gain deferral method is applied. The partnership agreement provides that PRS1 will make allocations under section 704(c) with respect to the IP using the remedial allocation method under § 1.704–3(d)(5)(iii). All of PRS1's allocations with respect to the IP satisfy the requirements of the gain deferral method. On January 1 of year 16, PRS1 sells the IP for cash of $900 million to a person that is not a related person. During years 1 through 16, PRS1 earns no income other than gain from the sale of the IP in year 16, has no expenses or deductions other than from amortization of the IP, and makes no distributions.

(ii) *Results: Year 1.* Under § 1.704–3(d)(5)(iii)(B), PRS1 must recover the excess of the book value of the IP over its adjusted tax basis at the time of the contribution ($600 million) using any recovery period and amortization method that would have been available to PRS1 if the property had been newly purchased property from an unrelated party. Thus, under section 197(a), PRS1 must amortize $600 million of the IP's book value ratably over 15 years for book purposes, and PRS1 will have $40 million of book amortization per year without any tax amortization. Under the partnership agreement, in year 1, PRS1 allocates book amortization of $24 million to USP, $12 million to CFC1, and $4 million to FX. Because in year 1 the ceiling rule would cause a disparity between FX's allocations of book and tax amortization, PRS1 makes a remedial allocation of tax amortization of $4 million to FX and an offsetting remedial allocation of $4 million of taxable income to USP. In year 1, the ceiling rule would also cause a disparity between CFC1's allocations of book and tax amortization. However, § 1.197–2(h)(12)(vii)(B) precludes PRS1 from making a remedial allocation of tax amortization to CFC1. Instead, pursuant to § 1.704–3(d)(5)(iii)(C), PRS1 increases the adjusted tax basis in the IP by $12 million, and pursuant to § 1.704–3(d)(5)(iii)(D), that basis adjustment is solely with respect to CFC1. Pursuant to § 1.704–3(d)(5)(iii)(C), PRS1 also makes an offsetting remedial allocation of $12 million of taxable income to USP.

(iii) *Results: Years 2–15.* At the end of year 15, PRS1 has book basis and adjusted tax basis of $0 in the IP. PRS1 has amortized $600 million for book purposes by allocating total book amortization deductions of $360 million to USP, $180 million to CFC1, and $60 million to FX. For U.S. tax purposes, by the end of year 15, PRS1 has made remedial allocations of $60 million of tax amortization to FX and increased the adjusted tax basis in the IP by $180 million solely with respect to CFC1. PRS1 has also made total remedial allocations of $240 million of taxable income to USP (attributable to $60 million of remedial tax amortization to FX and $180 million of tax basis adjustments with respect to CFC1). With respect to their partnership interests in PRS1, USP has a capital account and an adjusted tax basis of $240 million, CFC1 has a capital account of $120 million and an adjusted tax basis of $300 million, and FX has a capital account and an adjusted tax basis of $40 million.

(iv) *Results: Sale of property in year 16.* PRS1's sale of the IP for cash of $900 million on January 1 of year 16 results in $900 million of book and tax gain ($900 million – $0). PRS1 allocates the book and tax gain 60 percent to USP ($540 million), 10 percent to FX ($90 million), and 30 percent to CFC1 ($270 million). However, under § 1.704–3(d)(5)(iii)(D)*(3)*, CFC1's tax gain is $90 million, equal to its share of PRS1's gain ($270 million), minus the amount of the tax basis adjustment ($180 million). After the sale, PRS1's only property is cash of $1.3 billion. With respect to their partnership interests in PRS1, USP has a capital account and an adjusted tax basis of $780 million, CFC1 has a capital account and an adjusted tax basis of $390 million, and FX has a capital account and an adjusted tax basis of $130 million.

§ 1.721(c)–7T [Removed]

■ **Par. 21.** Section 1.721(c)–7T is removed.

■ **Par. 22.** Section 1.6038B–2 is amended by:

■ 1. Revising paragraphs (a)(1)(iii), (a)(3), and (c)(8) and (9).

■ 2. In paragraph (h)(1) introductory text, removing ''§ 1.721(c)–6T'' and adding ''§ 1.721(c)–6'' in its place.

■ 3. Revising paragraphs (h)(3) and (j)(4) and (5).

The revisions read as follows:

§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.

(a) * * *

(1) * * *

(iii) The United States person is a U.S. transferor (as defined in § 1.721(c)–1(b)(18)) that makes a gain deferral contribution and is required to report under § 1.721(c)–6(b)(2). The reporting required under this paragraph (a) includes the annual reporting required by § 1.721(c)–6(b)(3). For purposes of applying this paragraph (a)(1)(iii) to partnerships formed on or after January 18, 2017, a domestic partnership is treated as a foreign partnership pursuant to section 7701(a)(4).

* * * * *

(3) *Indirect transfer through a foreign partnership.* Solely for purposes of this section, if a foreign partnership transfers section 721(c) property (as defined in § 1.721(c)–1(b)(15)) to another foreign partnership in a transfer described in § 1.721(c)–3(d) (tiered-partnership rules), then the transferor foreign partnership's partners will be considered to have transferred a proportionate share of the property to the foreign partnership.

* * * * *

(c) * * *

(8) With respect to reporting required under § 1.721(c)–6(b)(2) and paragraph (a)(1)(iii) of this section with regard to a gain deferral contribution, the information required by § 1.721(c)–6(b)(2); and

(9) With respect to section 721(c) property for which reporting is required under § 1.721(c)–6(b)(3) and paragraph (a)(1)(iii) of this section, the information required by § 1.721(c)–6(b)(3).

* * * * *

(h) * * *

(3) *Reasonable cause exception.* Under section 6038B(c)(2) and this section, the provisions of paragraph (h)(1) of this section will not apply if the United States person shows, in a timely manner, that a failure to comply was due to reasonable cause and not willful neglect. A United States person's statement that the failure to comply was due to reasonable cause and not willful neglect will be considered timely only if, promptly after the United States person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to comply. If any taxable year of the United States person is under examination when the amended return is filed, a copy of the amended return must be delivered to the Internal Revenue Service personnel conducting the examination when the amended return is filed. If no taxable year of the United States person is under

examination when the amended return is filed, a copy of the amended return must be delivered to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director). Whether a failure to comply was due to reasonable cause and not willful neglect will be determined by the Director under all the facts and circumstances.

* * * * *

(j) * * *

(4) *Transfers of section 721(c) property.* Paragraph (c)(8) of this section applies to transfers occurring on or after August 6, 2015, and to transfers that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701–3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. Paragraphs (a)(1)(iii), (a)(3), and (c)(9) of this section apply to transfers occurring on or after January 18, 2017, and to transfers that occurred before January 18, 2017 resulting from entity classification elections made under § 301.7701–3 of this chapter that were effective on or before January 18, 2017 but were filed on or after January 18, 2017.

(5) *Reasonable cause exception.* Paragraph (h)(3) of this section applies to all requests for relief for transfers of property to partnerships filed on or after January 18, 2017.

§ 1.6038–2T [Removed]

■ **Par. 23.** Section 1.6038B–2T is removed.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 11, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2020–00383 Filed 1–17–20; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0955]

Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida. This deviation will test a change to the drawbridge operation schedule to determine if the proposed operating schedule changes will meet the reasonable needs of maritime traffic and railway traffic. This deviation will allow the drawbridge to operate a more predictable schedule.

DATES: This deviation is effective without actual notice from January 23, 2020 through 11:59 p.m. on June 26, 2020. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on January 4, 2020, until January 23, 2020.

Comments and related material must reach the Coast Guard on or before March 30, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0955 using Federal eRulemaking Portal at *http://www.regulations.gov*.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305–535–4307, email *Samuel.Rodriguez-Gonzalez@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida is a single-leaf bascule railroad bridge with a four foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.313(c). Navigation on the waterway is commercial and recreational. There has been an increase in rail traffic across the bridge in recent years due the start of passenger rail service. The bridge owner, Florida East Coast Railway, has requested to test an alternate drawbridge operating schedule to determine if the needs of railway traffic and maritime traffic can be better accommodated. This test deviation provides for bridge openings a fixed times throughout the day allowing for a more predictable drawbridge operating schedule.

Under this deviation, the Florida East Coast (FEC) Railroad Bridge shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic, inspections and minor repairs. The drawbridge shall open and remain open to navigation for a fixed 10-minute period each hour, except that the drawbridge shall be open at the following times which shall serve as the hourly fixed 10-minute period:

—7 a.m. until 7:10 a.m.
—9 a.m. until 9:10 a.m.
—4 p.m. until 4:10 p.m.
—6 p.m. until 6:10 p.m.
—10 p.m. until 10:10 p.m.

Additionally, in each hour from Noon to 2:59 p.m., the drawbridge shall open and remain open to navigation for an additional 10-minute period. The fixed 10-minute opening periods shall be published on a quarterly basis by the drawbridge owner and reflected on the owner's website and mobile application. In any case, the drawbridge shall not be closed to navigation for more than 60 consecutive minutes.

The drawbridge shall have a drawbridge tender onsite at all times who is capable of physically tending and operating the drawbridge by local control, if necessary, or when ordered by the Coast Guard. The drawbridge tender shall provide estimated times of drawbridge openings and closures, upon request. Operational information will be provided 24 hours a day on VHF–FM channels 9 and 16 or by telephone at (305) 889–5572. Signs shall be posted visible to marine traffic and displaying VHF radio contact information, website and application information, and the telephone number for the bridge tender.

In the event of a drawbridge operational failure, or other emergency circumstances impacting normal drawbridge operations, the drawbridge owner shall immediately notify the Coast Guard Captain of the Port Miami and provide an estimated time of repair and return to normal operations.

A drawbridge log shall be maintained including drawbridge opening and closing times. The drawbridge log should include reasons for those drawbridge closings that interfere with scheduled openings in this part. This log shall be provided to the Coast Guard upon request.

A website and mobile application shall be maintained to publish: Drawbridge opening times required by this subsection; timely updates to schedules; at least 24-hour advance notice for each schedule in order to facilitate planning by maritime

operators; and to the extent reasonably practicable, at least 60-minutes advance notice of schedule changes or delays.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

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

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

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

Dated: January 3, 2020.

Barry Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2020–00115 Filed 1–22–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0910]

Drawbridge Operation Regulation; Bayou Sara, Saraland, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the CSX Transportation Railroad swing bridge across Bayou Sara, mile 0.1 near Saraland, Alabama. This deviation is needed to collect and analyze information on vessel traffic when the bridge tender is moved to a geographically remote centralized control point located in Mobile, AL. The Coast Guard is seeking comments from the public about the impact to vessel traffic generated by this change.

DATES: This deviation is effective from 6 a.m. January 23, 2020 through 6 p.m. March 23, 2020.

Comments and related material must be received by the Coast Guard on or before March 23, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0910 using Federal eRulemaking Portal at *http://www.regulations.gov*.

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

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

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

CSX Railroad has established a central location to operate CSX drawbridges. They have requested to relocate the Bayou Sara bridge tender to their centralized location in Mobile, AL. This CSX swing bridge is located at Bayou Sara, mile 0.1, Mobile County, near Saraland, AL. It has a vertical clearance of 5′ in the closed to vessel position. The bridge operates according to 33 CFR 117.105. Bayou Sara is used primarily by recreational vessels. The bridge opens for vessels about 6 times per day and vessels that do not need the bridge to open may pass.

This deviation will last for 60 days. CSX will collect data on all bridge openings to ensure that the remote operations will not impact navigation. CSX will immediately return the tender to the bridge location if there are any system failures or weather conditions that will not allow the bridge tender to operate the bridge from Mobile.

The Coast Guard will publish information about this temporary deviation in our Local and Broadcast Notice to Mariners so that mariners are informed of this operating change and our request for comments on the change.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

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

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

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

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

Dated: January 7, 2020.

Douglas Allen Blakemore, Sr.,

Bridge Administrator, Eighth Coast Guard District.

[FR Doc. 2020–00292 Filed 1–22–20; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2017–7]

Modernizing Copyright Recordation

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Supplemental interim rule.

SUMMARY: The United States Copyright Office is issuing a supplemental interim rule amending its regulations governing recordation of transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. This rule supplements the Office's current interim recordation regulations in anticipation of the Office's forthcoming pilot program through which participating remitters will be able to record certain types of documents electronically online. The supplemental interim rule and pilot program are the next step in the recordation modernization process, which will lead to a full public release of the Office's electronic recordation system in the future.

DATES: Effective February 24, 2020.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Copyright Act of 1976, the U.S. Copyright Office is responsible for recording documents pertaining to works under copyright, such as assignments, licenses, and grants of security interests.[1] The Office is also responsible for recording notices of termination.[2] As discussed in a notice of proposed rulemaking published in the **Federal Register** on May 18, 2017 (''NPRM''),[3] the current recordation process is a time-consuming and labor-intensive paper-based one, requiring remitters to submit their documents in hard copy.

As previously detailed, the Office is engaged in an effort to modernize the recordation process by developing a fully electronic, online system through which remitters will be able to submit their documents and all applicable indexing information to the Office for recordation. In conjunction with the anticipated development effort, the Office issued the NPRM to propose updates to the Office's regulations to govern the submission of documents to the Office for recordation once the new electronic system is developed and launched. The NPRM explained that while the Office could not estimate when the new system would be completed, public comments were being sought because the Office needed to make a number of policy decisions critical to the design of the to-be-developed system.[4]

In addition, the NPRM further stated that while the proposed amendments were designed with a new electronic submission system in mind, at least some of the proposed changes could be implemented sooner, without the new system. Thus, the Office noted that, to the extent possible under the Office's current paper system, the Office intended to adopt some aspects of the proposed rule on an interim basis until such time as the electronic system is complete and a final rule is enacted.[5] The Office adopted such regulations pursuant to an interim rule published in the **Federal Register** on November 13, 2017.[6] For details about the changes made by that interim rule, please consult the **Federal Register** notice.

II. Pilot Program

Since adoption of the interim regulations in late 2017, the Office, through the Library of Congress's Office of the Chief Information Officer, has been engaged in development efforts to build the electronic recordation system discussed in the NPRM. The first iteration of that system is nearing completion and is planned to be released on a limited basis through a pilot program, which the Office will initiate through a separate announcement. The pilot release will be made available to certain remitters (''pilot remitters'') intended to be a representative sample of the spectrum of those who submit documents for recordation. At launch, it is planned that these pilot remitters will be able to electronically submit to the Office for recordation most types of transfers of copyright ownership and other documents pertaining to a copyright under 17 U.S.C. 205. Notices of termination, however, will not be part of the pilot program when initially launched. System development will be ongoing throughout the pilot, and will eventually lead to a full public release of the Office's electronic recordation system. Some features may be released into the pilot as they are developed, while others may be held for or may not be ready until the full public release. Starting with a limited pilot release will help the Office to work with users to address feedback while development continues.

III. Supplemental Interim Rule

The Office is issuing a supplemental interim rule to establish the regulatory groundwork for the pilot, in advance of its commencement. The supplemental interim rule makes no changes to the Office's recordation rules for submissions made outside of the pilot program. For pilot program submissions, the supplemental interim rule makes electronic submissions permissible and provides that such submissions are to be made in accordance with special pilot program rules that the Office will separately establish and issue to pilot remitters. This will allow the Office the flexibility to be able to update and modify relevant pilot rules, procedures, and instructions as quickly as needed, without resorting to further rulemaking.[7] This flexibility is necessary because development will be ongoing throughout the pilot and the Office may need to address unanticipated issues that may arise. For the same reasons, the supplemental interim rule also specifies that the special pilot program rules will supersede any conflicting regulation, rule, instruction, or guidance.

[1] 17 U.S.C. 205.

[2] A ''notice of termination'' is a notice that terminates a grant to a third party of a copyright in a work or any rights under a copyright. Only certain grants may be terminated, and only in certain circumstances. Termination is governed by three separate provisions of the Copyright Act, with the relevant one depending on a number of factors, including when the grant was made, who executed it, and when copyright was originally secured for the work. *See* 17 U.S.C. 203, 304(c), 304(d).

[3] 82 FR 22771 (May 18, 2017).

[4] *Id.* at 22771.

[5] *Id.* at 22771–72.

[6] 82 FR 52213 (Nov. 13, 2017).

[7] For similar reasons, the Office previously adopted such an approach to its instructions for preparing and submitting electronic title lists that may be included with paper recordation submissions. *See* 37 CFR 201.4(e)(3)(i) (''The electronic list must be prepared and submitted to the Office in the manner specified by the Copyright Office in instructions made available on its website.''); 82 FR at 52214 (''This change will allow the Office to develop more flexible instructions for remitters that can be updated and modified as needed without resorting to a rulemaking.'').

The rule includes two other provisions specific to pilot remitters. First, the supplemental interim rule makes clear that participation in the pilot is optional and pilot remitters may continue to submit documents for recordation in paper form. Second, the rule provides that if there is any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, the Office may, in its discretion, equitably assign a date of recordation if the problem is caused by an issue with the electronic system.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Interim Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 201.4 as follows:
■ a. In the second sentence of paragraph (a), remove ''A document'' and add in its place ''Except as otherwise provided pursuant to paragraph (h) of this section, a document''; and
■ b. Add paragraph (h).
The addition reads as follows:

§ 201.4 Recordation of transfers and other documents pertaining to copyright.

* * * * *

(h) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (''pilot remitters''). This paragraph (h) shall govern such submissions to the extent they are permitted under the pilot program.

(1) *Electronic submission.* Pilot remitters may submit permitted types of documents for recordation using the Copyright Office's electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(2) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit documents for recordation pursuant to paragraph (e) of this section.

(3) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance issued by the Copyright Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(4) *Reliance on remitter-provided information.* Paragraph (f) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(5) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

■ 3. Amend § 201.10 as follows:
■ a. In the first sentence of paragraph (f) introductory text, remove ''A copy'' and add in its place ''Except as otherwise provided pursuant to paragraph (f)(6) of this section, a copy''; and
■ b. Add paragraph (f)(6).
The addition reads as follows:

§ 201.10 Notices of termination of transfers and licenses.

* * * * *

(f) * * *

(6) *Pilot program for electronic submission.* The Copyright Office is implementing a limited pilot program through which certain types of documents may be electronically submitted for recordation online by certain remitters (''pilot remitters''). This paragraph (f)(6) shall govern such submissions for notices of termination to the extent they are permitted under the pilot program.

(i) *Electronic submission.* Pilot remitters may submit permitted types of notices for recordation using the Copyright Office's electronic system pursuant to this section and special pilot program rules provided to pilot remitters by the Office.

(ii) *Participation.* No remitter may participate in the pilot program without the permission of the Copyright Office. Participation in the pilot program is optional and pilot remitters may continue to submit notices for recordation pursuant to paragraph (f)(2) of this section.

(iii) *Conflicting rules.* To the extent any special pilot program rule conflicts with this section or any other regulation, rule, instruction, or guidance issued by the Copyright Office, such pilot program rule shall govern submissions made pursuant to the pilot program.

(iv) *Reliance on remitter-provided information.* Paragraph (f)(5) of this section shall apply to all certifications and information provided to the Office through the electronic system.

(v) *Date of recordation.* In any situation where the date of recordation for a submission cannot be established or, if established, would ordinarily be changed, if due to an issue with the electronic system, the Office may assign an equitable date as the date of recordation.

Dated: January 14, 2020.

Maria Strong,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–01091 Filed 1–22–20; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190312234–9412–01]

RTID 0648–XX036

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From VA to NY

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

ACTION: Notification of quota transfer.

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

DATES: Effective January 17, 2020, until December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each

state is described in § 648.102 and final 2019 allocations were published on May 17, 2019 (84 FR 22392).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and, the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act. The Regional Administrator has determined these three criteria have been met for the transfer approved in this notice.

Virginia is transferring 8,787 lb (3,986 kg) of 2019 summer flounder commercial quota to New York. This transfer was requested to repay 2019 landings made by a Virginia-permitted vessel in New York under a safe harbor agreement. The transfer will retroactively apply to the state's 2019 summer flounder quota. Based on the revised 2019 Summer Flounder, Scup, and Black Sea Bass Specifications, the summer flounder quotas for 2019 are now: Virginia, 2,397,129 lb (1,087,319 kg); and, New York, 848,656 lb (384,943 kg). Given the time of the request, we were unable to process the transfer before the end of the 2019 fishing year that ended on December 31, 2019. The revised quotas will be used to calculate overages for the 2019 fishing year and adjust, as needed, 2020 summer flounder quotas.

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

Dated: January 16, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–01083 Filed 1–17–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RTID 0648–XY064

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2020 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 19, 2020, through 2400 hours, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2020 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,766 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and inseason adjustment (85 FR 19, January 2, 2020), and reallocation.

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2020 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 16, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 17, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–01107 Filed 1–17–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 15
Thursday, January 23, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600 and 1605

Simplification of Catch-Up Contribution Process

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Proposed rule.

SUMMARY: The FRTIB proposes to reduce paperwork burdens on participants who are eligible to make catch-up contributions, by removing the regulation that requires them to submit two different contribution election forms.

DATES: Comments must be received on or before February 24, 2020.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Background

A catch-up contribution is a contribution that exceeds a statutory limit on the amount of contributions a participant can normally make to the TSP in each calendar year. Congress's reason for permitting these extra contributions was to allow participants to ''catch up'' for years when they were not employed or were otherwise unable to contribute toward their retirement. *See* Federal Thrift Savings Plan Catch-Up Contributions Act, Public Law 107–304, H.R. REP. 107–686, 107 Cong. 2d Sess. (2002).

Normally, a TSP participant's contributions cannot exceed the statutory limits set forth in Internal Revenue Code (IRC) section 402(g) (limiting the amount of traditional and Roth contributions to $19,500 for calendar year 2020) and IRC section 415(c) (limiting the total amount of traditional, Roth, tax-exempt, matching, and automatic 1% contributions to the lesser of 100% of the participant's compensation or $57,000 for calendar year 2020). Participants who are age 50 or older are allowed to make catch-up contributions beyond these statutory limits—up to the dollar amount in IRC section 414(v), which is $6,500 for calendar year 2020.

Currently, participants who wish to make catch-up contributions are required to submit an election form called ''TSP–1–C/TSP–U–1–C, *Catch-up Contribution Election*'' (or electronic equivalent) to their employing agency. The catch-up contribution election form is separate, and in addition to, any other contribution election that a participant may already have on file. Upon receipt of a catch-up contribution election form, the participant's employing agency begins submitting catch-up contributions to the TSP on the participant's behalf, using special payroll records designed specifically for catch-up contributions. The payroll records that employing agencies use for submitting catch-up contributions are separate, and in addition to, the payroll records that employing agencies use for submitting other types of contributions.

Proposed Change

The FRTIB proposes to simplify the catch-up contribution process, by no longer requiring participants to submit separate catch-up contribution election forms in addition to their other contribution election forms. Instead, the TSP will simply continue to accept contributions based on the participant's contribution election that is already on file, until his/her contributions reach the combined limits on catch-up contributions and other types of contributions. Employing agency payroll offices will no longer submit catch-up contributions to the TSP on special payroll records designed specifically for catch-up contributions. Instead, payroll offices will submit catch-up contributions using the same payroll records that they use to submit other types of contributions.

The TSP recordkeeping system will automatically determine, based on the participant's date of birth, whether the participant is eligible to make catch-up contributions. When an employing agency payroll office submits contributions in excess of the 402(g) limit or the 415(c) limit on behalf of a catch-up eligible participant, the TSP recordkeeping system will automatically treat the excess contributions as catch-up contributions, without requiring any additional paperwork from the participant or any special payroll records from the payroll office.

Proposed Effective Date

The proposed effective date for this change is January 1, 2021.

Section-by-Section Analysis

Section 1600.23 Catch-Up Contributions

The FRTIB proposes to amend 5 CFR § 1600.23 by removing paragraph (b), which requires the use of a separate election form for catch-up contribution elections.

The FRTIB also proposes to remove 5 CFR § 1600.23 paragraph (h), which says that catch-up contributions cannot be matched. The FRTIB codified 5 CFR § 1600.23 paragraph (h) through an interim rule that was published on June 13, 2003. 68 FR 35491. In the preamble to the interim rule, the FRTIB cited to FERSA section 8432(c)(2) as the

rationale for why catch-up contributions cannot be matched. FERSA section 8432(c)(2) says nothing about catch-up contributions—it simply says that matching contributions cannot exceed a dollar-for-dollar match on the first 3% of basic pay that a participant contributes plus 50 cents on the dollar match for the next 2% of basic pay that a participant contributes. Removing the restriction on matching catch-up contributions will not increase an employing agency's potential outlay for matching contributions as the 5% limit described in the preceding sentence still applies. FERSA section 8432(c)(2) can justify a prohibition on matching catch-up contributions only if we assume that a participant will necessarily reach the FERSA section 8432(c)(2) limit on matching contributions before, or at the same time as, he/she reaches the IRC section 402(g) or 415(c) limit on contributions. To whatever extent this assumption was accurate in 2003, it is no longer accurate today. Today, it is not uncommon for a participant to reach one of the IRC's limits on contributions before he/she reaches FERSA's limit on matching contributions.

Section 1605.13 Back Pay Awards and Other Retroactive Pay Adjustments

The FRTIB proposes to amend § 1605.13 by making a technical conforming addition to paragraph (c)(2). This paragraph currently says that any corrective contributions attributable to prior years must not exceed the 402(g) limit or the 415(c) limit applicable to those years. The FRTIB proposes to add language making it clear that such contributions also cannot exceed the 414(v) catch-up contribution limit applicable to prior years.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the Thrift Savings Plan, and their beneficiaries. The TSP is a Federal defined contribution retirement savings plan created by FERSA and is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

List of Subjects

5 CFR Part 1600

Taxes, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB proposes to amend 5 CFR chapter VI as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS, CONTRIBUTION ALLOCATIONS, AND AUTOMATIC ENROLLMENT PROGRAM

■ 1. The authority citation for part 1600 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8432d, 8474(b)(5) and (c)(1), and 8440e.

■ 2. Amend § 1600.23 by removing and reserving paragraphs (b) and (h).

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 2. Amend § 1605.13 to read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

* * * * *

(c) * * *

(1) * * *

(2) Must not cause the participant to exceed the annual contribution limit(s) contained in sections 402(g), 415(c), or 414(v) of the I.R.C. (26 U.S.C. 402(g), 415(c), 414(v)) for the year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year; and

* * * * *

[FR Doc. 2020–00610 Filed 1–22–20; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2427

[FLRA Docket No. 0–PS–46]

Notice of Opportunity To Comment on a Request for a General Statement of Policy or Guidance on Agency-Head Review of Agreements That Continue in Force Until New Agreements Are Reached

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed issuance of a general statement of policy or guidance.

SUMMARY: The Federal Labor Relations Authority (Authority) solicits written comments on a request from the U.S. Department of Agriculture (USDA) for a general statement of policy or guidance (general statement) concerning expiring collective-bargaining agreements that state that they will remain in force until the parties reach new agreements. USDA asks for a general statement holding that, if an expiring agreement continues in force during renegotiations, then an agency head may review the legality of the expiring agreement as early as the agency head could review an expiring agreement that was renewed automatically for a fixed term. Comments are solicited on whether the Authority should issue a general statement, and, if so, what the Authority's policy or guidance should be.

DATES: To be considered, comments must be received on or before February 24, 2020.

ADDRESSES: You may send comments, which must include the caption ''USDA (Petitioner), Case No. 0–PS–46,'' by one of the following methods:

- *Email: FedRegComments@flra.gov.* Include ''USDA (Petitioner), Case No. 0–PS–46'' in the subject line of the message.
- *Mail or Hand Delivery:* Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424–0001.

Instructions: Do not mail or hand deliver written comments if they have been submitted via email. Interested persons who mail or hand deliver written comments must submit an original and 4 copies of each written comment, with any enclosures, on 8½ x 11 inch paper.

FOR FURTHER INFORMATION CONTACT: Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: In Case No. 0–PS–46, USDA requests that the Authority issue a general statement concerning agency-head review of expiring collective-bargaining agreements that state that they will remain in force until the parties reach new agreements. Interested persons are invited to express their views in writing as to whether the Authority should issue a general statement and, if it does, what the Authority's policy or guidance should be.

Proposed Guidance

To Heads of Agencies, Presidents of Labor Organizations, and Other Interested Persons:

USDA has requested, under Section 2427.2(a) of the Authority's rules and regulations (5 CFR 2427.2(a)), that the Authority issue a general statement of policy or guidance addressing when an agency head may, under Section 7114(c) of the Federal Service Labor-Management Relations Statute (the Statute), review the legality of an expiring collective-bargaining agreement that continues in force during renegotiations. Section 7114(c)(1) of the Statute states that ''[a]n agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency,'' and Section 7114(c)(2) states, in pertinent part, that ''[t]he head of the agency shall approve the agreement within [thirty] days from the date the agreement is executed if the agreement is in accordance with the provisions of [the Statute] and any other applicable law, rule, or regulation.''

A different provision of the Statute—Section 7116(a)(7)—makes it an unfair labor practice for an agency ''to enforce any rule or regulation (other than a rule or regulation implementing'' 5 U.S.C. 2302, which concerns prohibited personnel practices) that ''is in conflict with any applicable collective[-] bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.'' In other words, in most cases, if rules or regulations change while an agreement is in effect, and the changes conflict with that agreement, then Section 7116(a)(7) forbids an agency from enforcing those changes until the agreement is no longer in effect. But if such changes concern rules or regulations that implement the ban on prohibited personnel practices, then an agency may enforce those changes immediately, even if they conflict with a preexisting agreement.

The Authority has previously addressed how to apply Sections 7114(c) and 7116(a)(7) in cases where parties specify that, unless one or both of them request to renegotiate an expiring agreement, the agreement will be automatically renewed (or rolled over) for another term at the end of its current term. In such cases, the Authority has held that an automatically renewed agreement is subject to agency-head review under Section 7114(c), and that the automatically renewed agreement must comply with any government-wide rules or regulations that changed during the agreement's previous term. *Kan. Army Nat'l Guard, Topeka, Kan.,* 47 FLRA 937, 942 (1993). The Authority has also clarified that, in the context of automatically renewed agreements, the thirty-day period for agency-head review under Section 7114(c) begins ''the day after the expiration of the contractual window period for requesting renegotiation of the expiring agreement.'' *Id.* at 943.

USDA asks that the Authority clarify when an agency head may review the legality of an expiring agreement that includes a provision stating that, where renegotiations are requested, the existing agreement continues in force until the parties reach a new one (a continuance provision). Citing the Authority's decision in *U.S. Department of the Army, Headquarters III Corps & Fort Hood, Fort Hood, Texas,* 40 FLRA 636 (1991) (*Ford Hood*), USDA asserts that some arbitrators interpret continuance provisions to mean that, once renegotiations are requested, the existing agreement does not expire until renegotiations are complete, even if the agreement specifies an expiration date that passes during renegotiations. According to USDA, the consequence of such an interpretation is that, under § 7116(a)(7) of the Statute, for as long as the parties' renegotiations take, an agency may not enforce rule or regulation changes that occurred during the agreement's originally specified term. USDA asserts that a continuance provision that is interpreted in this manner is unjust because an agency that allows automatic renewal can enforce rule and regulation changes much earlier than an agency that requests renegotiations.

By contrast, citing the Authority's decision in *U.S. Department of Commerce, Patent & Trademark Office,* 65 FLRA 817 (2011) (*Commerce*), USDA asserts that other arbitrators interpret continuance provisions to mean that, even when renegotiations are requested, an agreement expires on the date that the parties originally specified, but the continuance provision causes the expired agreement to renew automatically for an additional term that lasts as long as the parties' renegotiations take. According to USDA, this interpretation allows an agency to enforce rule or regulation changes that occurred during the agreement's originally specified term throughout most, if not all, of the parties' renegotiations without violating Section 7116(a)(7) of the Statute. But USDA contends that an agency cannot know in advance whether an arbitrator will interpret a continuance provision in the manner discussed in *Ford Hood* or *Commerce.* USDA contends that, in order to avoid violating Section 7116(a)(7), an agency must assume that a continuance provision will be interpreted like the one in *Fort Hood,* thereby preventing the agency from enforcing rule and regulation changes for an indefinite and unknowable period of time during renegotiations.

In its request, USDA asks the Authority to issue a general statement holding that:

1. When a party requests to renegotiate an expiring agreement that contains a provision stating that the agreement remains in force until a new agreement is reached, an agency head may review the legality of the expiring agreement as early as Section 7114(c) of the Statute would allow the agency head to do so if the expiring agreement were automatically renewed; and

2. An expiring agreement that remains in force until the parties reach a new agreement is effectively renewed automatically every day, so, for as long as the expiring agreement continues in force during renegotiations, a new agency-head-review period begins each day.

Regarding the matters raised by USDA, the Authority invites written comments on whether issuance of a general statement of policy or guidance is warranted, under the standards set forth in Section 2427.5 of the Authority's rules and regulations (5 CFR 2427.5), and, if so, what the Authority's policy or guidance should be. Written comments must contain separate, numbered headings for each issue covered.

Dated: January 16, 2020.

Noah Peters,

Solicitor, Federal Labor Relations Authority.

[FR Doc. 2020–01007 Filed 1–22–20; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Document No. AMS–FTPP–19–0104]

National Bioengineered Food Disclosure Standard; Validation of Refining Processes

ACTION: Reopening of comment period.

SUMMARY: Notice is hereby given that the comment period for a proposed rule published in the **Federal Register** on December 17, 2019, is reopened. The document invited comments on draft instructions for validation of refining processes as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: The comment period for the proposed rule published December 17, 2019 at 84 FR 68816 is reopened. Comments are due by February 7, 2020.

ADDRESSES: We invite you to submit written comments via the internet at *http://www.regulations.gov.* All comments should refer to the date and page number of this issue of the **Federal Register**. All comments submitted in response to the notice, including the identity of individuals or entities submitting comments, will be made available to the public on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Trevor Findley, Deputy Director, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, telephone (202) 690–3460, email *trevor.findley@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule seeking comment on draft instructions for validation of refining processes was published in the **Federal Register** on December 17, 2019 (84 FR 68816). In the preamble to the final regulations establishing the Standard, USDA indicated that it would provide instructions to the industry to explain how they can ensure acceptable validation of refining processes in accordance with AMS standards (83 FR 65843). A draft of those instructions is available on the AMS bioengineered food disclosure website at *https://www.ams.usda.gov/rules-regulations/be.* AMS is seeking comments on these draft instructions.

After reviewing the comments on these draft instructions, AMS will publish final instructions on its website. The final instructions will be maintained and available on the AMS website. These final instructions pertain to the requirements of the existing regulations, which can be found at *https://www.federalregister.gov/documents/2018/12/21/2018-27283/national-bioengineered-food-disclosure-standard.*

The original 30-day comment period provided in the proposed rule closed on January 16, 2020. Stakeholders have requested an extension of the comment period. The Agricultural Marketing Service is reopening the public comment period for an additional 15 days to ensure that interested persons have sufficient time to review and comment on the proposed rule. The comment period is reopened for 15 days from the date of publication of this notice.

Authority: 7 U.S.C. 1639.

Dated: January 16, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–01019 Filed 1–22–20; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–8; NRC–2018–0017]

Requirements for the Storage of Spent Nuclear Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), submitted by Raymond Lutz and Citizens Oversight, Inc. (the petitioners), dated January 2, 2018. The petitioners requested that the NRC amend its regulations regarding spent nuclear fuel storage systems to embrace the Hardened Extended-life Local Monitored Surface Storage (HELMS) approach and identified multiple revisions to accommodate such an approach. The NRC is denying the petition because the petitioners do not present information that supports the requested changes to the regulations or that provides substantial increase in the overall protection of occupational or public health and safety. The NRC's current regulations and oversight activities continue to provide for the adequate protection of public health and safety and to promote the common defense and security.

DATES: The docket for PRM–72–8 is closed on January 23, 2020.

ADDRESSES: Please refer to Docket ID NRC–2018–0017 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–2018–0017. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, telephone: 301–415–7099, email: *Timothy.McCartin@nrc.gov,* or Gregory R. Trussell, telephone: 301–415–6244, email: *Gregory.Trussell@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards, the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Petition
II. Public Comments on the Petition
III. Reasons for Denial
IV. Availability of Documents
V. Conclusion

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation in 10 CFR chapter I. On January 2, 2018, the NRC received a petition from Raymond Lutz and Citizens Oversight, Inc. The NRC

docketed this petition on January 22, 2018, and assigned it Docket No. PRM–72–8. The NRC published a notice of docketing and request for public comment on March 22, 2018 (83 FR 12504). The petitioners request that the NRC amend 10 CFR part 72, ''Licensing requirements for the independent storage of spent nuclear fuel, high-level radioactive waste, and reactor-related greater than Class C waste,'' to embrace the HELMS approach, for the long-term storage of spent nuclear fuel.

The petitioners recommend a hardened storage system because they state that the current storage systems are not equipped to resist malicious attacks. The petitioners further state that the current storage casks will corrode and crack and are not designed for indefinite surface storage. However, the petitioners assert that spent nuclear fuel will continue to be stored on the surface for very long time periods, potentially indefinitely, due to the lack of a deep geologic repository for permanent disposal. The NRC regulations provide that storage casks can be initially licensed for up to 40 years with possible renewals of up to 40 years, with no restriction on the number of renewals. The petitioners assert this regulatory process creates an indefinite timeframe, which they contend requires a storage system designed for an extended life. For these reasons, the petitioners recommend that all spent fuel storage systems have a design life of 1,000 years, which includes a ''passive life'' of 300 years. The petitioners also assert that spent nuclear fuel needs to be moved to local consolidated interim storage sites away from water resources and dense populations. Additionally, the petitioners assert that the storage casks need a more robust monitoring system, including continuous monitoring during the initial 40 years.

The HELMS approach is discussed further in Section III, ''Reasons for Denial,'' of this document.

II. Public Comments on the Petition

The notice of docketing of the PRM invited interested persons to submit comments. The comment period closed on June 5, 2018, and the NRC received 70 comment submissions from members of the public, interested stakeholders, and industry groups. The discussion that follows consolidates and summarizes the relevant issues. The public comments are available in their entirety at *www.regulations.gov* under Docket ID NRC–2018–0017. A list of the public comments and their respective ADAMS Accession numbers is included in Section IV, ''Availability of Documents,'' of this document.

The NRC received 58 comment submissions in support of the petition. These commenters were opposed to indefinite storage, asserted that casks are too thin, and supported double-wall canisters. Additionally, many commenters supported the petitioners' recommendation for a 1,000-year design life. Commenters stated that interim storage facilities can be maintained for longer time periods with periodic replacement of the casks and adequate resources and attention to maintaining the storage facilities. Some commenters stated that a HELMS approach would address imminent terrorist attacks as well as unpredictable events by moving the waste to a half-dozen interim storage sites away from coastal areas or waterways.

The NRC received four comment submissions from stakeholders and industry groups that did not support the petition. In general, the commenters asserted the petition is without merit, the petitioners' suggestions are not supported by a technical basis, and costs were not considered. The commenters argued that existing regulations and oversight, including inspections, provide the necessary framework to ensure the safe storage of spent nuclear fuel. Additionally, the commenters stated that the petitioners disregarded the NRC's experience with spent fuel storage. One commenter noted that, in NRC's 2014 final rule on the continued storage of spent nuclear fuel (79 FR 56251; September 19, 2014), the Commission emphasized that the national policy remains to dispose of spent fuel in a geologic repository and that the petitioners did not provide a basis for revisiting the Commission's policy decisions. The commenters also claimed that the petition included factual inaccuracies; however, the commenters did not provide specific information that the NRC could evaluate.

One commenter who opposed the petition noted that hardened onsite storage would further fortify the structures with mounds of concrete, steel, and gravel. This commenter believed that this would result in the permanent-storage of spent nuclear fuel at the facility.

The NRC received a comment of general concern to stop the ''waste burial'' at San Onofre Nuclear Generating Station. The commenter stated that money was being put before public safety but did not provide specific information for the agency to evaluate.

The NRC also received several comment submissions that were outside of the scope of this petition.

III. Reasons for Denial

A. General Discussion

The petitioners assert a mismatch now exists between the NRC regulations for the storage of spent nuclear fuel in dry casks in 10 CFR part 72 and the status for the disposal and storage of spent nuclear fuel today. The petitioners note that a geologic repository for permanent disposal of spent nuclear fuel does not exist. Additionally, the petitioners state that storage of spent nuclear fuel at nuclear plants for an indefinite period is allowed under the NRC's regulations.[1] The petitioners request many revisions to the 10 CFR part 72 requirements and state these are needed to accommodate the indefinite surface storage of spent nuclear fuel.

Although the 10 CFR part 72 regulations were developed at a time when a geologic repository was expected to be operational in 1998, extensive work has been done since the initial development of the regulations to ensure that the continued storage of spent nuclear fuel is safe and secure. This work includes revisions to 10 CFR part 72 and the development of guidance documents. Additionally, the evaluation of operational data collected nationally and internationally demonstrates that the NRC's regulatory framework for the continued storage of spent nuclear fuel provides reasonable assurance of adequate protection of public health and safety. The Commission described the basis for the safety and security of continued storage most recently in the NRC's 2014 final rule on continued storage and accompanying NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel.'' In these two documents, the NRC discussed its current regulatory framework for the storage of spent nuclear fuel as a basis for the continued safe storage of spent nuclear fuel. The NRC explained that:

1. Decades of operating experience and ongoing NRC inspections demonstrate that the reactor and independent spent fuel storage installation (ISFSI) licensees continue to meet their obligation to safely store spent fuel in accordance with the requirements of 10 CFR parts 50, 52, and 72.

[1] The petitioners asserted that the NRC's 2014 final rule, ''Continued Storage of Spent Nuclear Fuel,'' authorized indefinite storage. As part of the development of the final rule, the NRC prepared a generic environmental impact statement that analyzed the environmental impacts of continued storage and provides a regulatory basis for the rule. The final rule did not authorize the production or storage of spent fuel, nor did it amend or extend the term of any license.

2. The NRC continues to improve its understanding of long-term dry storage issues and is separately examining the regulatory framework and potential technical issues related to extended storage and subsequent transportation of spent fuel for multiple ISFSI license renewal periods extending beyond 120 years.

3. The NRC also is closely following Department of Energy and industry efforts to study the effects of storing high burn-up spent fuel in casks.

4. If the NRC were to be informed of or to identify a concern with the safe storage of spent fuel, the NRC would evaluate the issue and take whatever action or change in its regulatory program is necessary to continue providing adequate protection of public health and safety and promoting the common defense and security.

The NRC has determined that regulatory oversight will continue in a manner consistent with the NRC's regulatory actions and oversight in place today in order to provide for continued storage of spent fuel in a safe manner until the fuel can be safely disposed of in a repository.

Since the publication of the 2014 final rule, the NRC has continued to evaluate issues associated with the storage of spent nuclear fuel in dry casks and has not identified any necessary changes to the regulations based on the concerns raised by the petitioners. Furthermore, the NRC routinely evaluates the safe storage of spent nuclear fuel through operating experience and inspection findings. If the NRC identified an area needing additional oversight, the NRC would revise the regulatory requirements. After consideration of the proposals presented by the petitioners, the rationale provided in the NRC's 2014 final rule, and the evaluations discussed in this document, the NRC finds the regulatory changes requested by the petitioners are not needed to provide reasonable assurance that continued storage of spent nuclear fuel in dry cask storage systems is safe and secure.

B. The HELMS Approach

The petitioners describe a strategy for the storage of spent nuclear fuel and request changes to 10 CFR part 72 to implement a HELMS approach. Therefore, the NRC's evaluation of the petitioners' requests is structured according to this approach.

1. Hardened Storage

The petitioners assert that ''hardened'' storage is needed to address concerns associated with safety (*e.g.,* unpredictable natural events such as earthquakes) and security (*e.g.,* terrorist activity).

Safety (Natural Events)

The NRC's regulations in 10 CFR part 72 include both siting requirements (subpart E, Siting Evaluation Requirements) and design criteria (subpart F, General Design Criteria) that require an applicant to evaluate the impact of natural events on the safety of dry cask storage systems and facilities. In particular, 10 CFR 72.122 requires that natural phenomena (*e.g.,* earthquakes, tornados, and floods) that exist or that could occur at a proposed site must be identified and assessed according to the potential to affect the safe operation of a dry cask storage system and facility. The applicant or licensee must assess the capabilities of the structures, systems, and components important to safety to withstand the effects of the severe natural phenomena and continue to perform their safety functions. For these reasons, the NRC finds its regulations in 10 CFR part 72 provide an adequate framework to evaluate the capabilities of dry cask storage systems and facilities to withstand a wide range of extreme natural events.

The petitioners also request that the NRC revise its regulations to indicate that storage is preferable ''east of 104° west longitude so as to avoid the region of high-seismic activity west of this line.'' The NRC finds that this specific revision is not necessary. The assessment of natural hazards required by 10 CFR part 72 provides data on natural events, such as earthquakes, that are used in the siting of dry cask storage facilities. The NRC regulations require assessment of the hazards, which takes into consideration the specific facility design and the magnitude of the seismic risk. This assessment incorporates an understanding of how structures, systems, and components relied on for safety are affected by the hazards for a specific site and design.

The NRC is aware of the variability in the seismic risk across the United States and incorporates these data in its regulations; 10 CFR 72.102 specifically identifies 104° west longitude in the requirements for geological and seismological characteristics. Additionally, the NRC evaluated and revised the investigation of seismic hazards for a spent nuclear storage facility in the 2003 final rule, Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations (68 FR 54143; September 16, 2003). The 2003 final rule revised 10 CFR part 72 to incorporate changes to: (1) Utilize the experience gained in applying the existing regulations and from recent seismic research; and (2) provide regulatory flexibility to incorporate state-of-the-art improvements in the geosciences and earthquake engineering into licensing actions. These revisions improved the evaluation of seismic hazards but did not categorically exclude regions solely on geographic location. The NRC's regulations recognize that geographic areas west of approximately 104° west longitude are known to have potential seismic activity and provide specific requirements for the evaluation of seismicity in these areas. The NRC, however, determined that the exclusion of storage of spent nuclear fuel west of approximately 104° west longitude is unnecessary to ensure that seismic events are appropriately investigated in the safety evaluation of storage of spent nuclear fuel.

Security (Terrorist Attacks)

The petitioners recommend that hardened storage such as ''an outer building of sufficient strength to resist terrorist attacks'' also should be considered to provide a measure of defense-in-depth.

The NRC provides security requirements for physical protection for spent fuel storage and transportation in 10 CFR part 72, 10 CFR part 73, ''Physical Protection of Plants and Materials,'' and orders that provide additional security measures. For example, the NRC's regulations at 10 CFR 73.51 include security measures to minimize the likelihood of a successful terrorist attack, including: (1) Spent nuclear fuel must be stored only within a protected area so that access requires passage through or penetration of two physical barriers, and one of the barriers is required to offer substantial penetration resistance; (2) the perimeter of the protected area must be subject to continual surveillance and be protected by an active intrusion alarm system; and (3) the primary alarm station must be located within a protected area and have bullet-resisting walls, doors, ceiling, and floor.

Additionally, the NRC initiated several actions designed to provide high assurance that a terrorist attack would not lead to a significant radiological event at an ISFSI. These include: (1) Continual evaluation of the threat environment by the NRC, in coordination with the intelligence and law enforcement communities, which provides, in part, the basis for the protective measures currently required; (2) protective measures in place to

reduce the likelihood of an attack that could lead to a significant release of radiation; (3) the robust design of storage casks, which provides substantial resistance to penetration; and (4) NRC security assessments of the potential consequences of terrorist attacks against ISFSIs. Over the past 20 years, no known or suspected attempts have taken place to: (1) Sabotage or to steal radioactive material from storage casks at ISFSIs; or (2) directly attack an ISFSI. Nevertheless, the NRC is continually evaluating the threat environment to determine whether any specific threat to ISFSIs exists.

The NRC conducted security assessments for ISFSIs using several storage cask designs that are representative of current NRC certified designs. The results of these security assessments contain sensitive unclassified information and therefore are not publicly available. Plausible threat scenarios considered in the generic security assessments for ISFSIs included a large aircraft impact similar in magnitude to the attacks of September 11, 2001, and ground assaults using expanded adversary characteristics consistent with the design basis threat for radiological sabotage for nuclear power plants. Based on these assessments, the NRC concluded there is no need for further security measures at ISFSIs beyond those currently required by regulation and imposed by orders issued after September 11, 2001. The post-9/11 orders are not publicly available because they contain safeguards information. Furthermore, the NRC is not aware of any threat analyses that support requirements for additional hardening of spent fuel casks.

2. Extended Life

To plan for indefinite storage, the petitioners request that the regulations be revised to require that dry cask storage systems be designed for a ''design life'' of 1,000 years, which includes a ''passive life'' of 300 years with a goal that during this period the storage system ''will remain safe, contained, and shielded'' without maintenance or other intervention. The petitioners describe a dual-wall container as one approach for extended dry cask storage.

The petitioners recommend that several sections in 10 CFR part 72 be changed to implement the 1,000-year design life. The petitioners suggest that a dual-wall container be required based, in part, on the petitioners' position that the single-wall canisters currently used in many storage system designs will inevitably be compromised due to cracking. However, the petitioners emphasize that the HELMS proposal does not rely on the adoption of this specific proposal, if the extended-life criterion is satisfied (Petition Attachment page 6).

Under the current regulations, dry cask storage systems are designed as passive systems, which rely on natural air circulation for cooling, and are inherently robust, massive, and highly resistant to damage. The NRC regulations at 10 CFR 72.128 and 72.236 specify requirements for ensuring dry cask storage facilities and systems are safe and will remain safe under normal, off-normal, and accident conditions.

The license terms for spent fuel storage systems must not exceed 40 years, as specified at 10 CFR 72.42 for a storage installation and at 10 CFR 72.238 for an initial certificate for spent fuel storage casks. However, a license or certificate may be renewed for a period not to exceed 40 years and multiple renewals may be requested. The NRC has determined that a 40-year licensing period, in conjunction with the slow degradation rates of spent fuel storage systems, provides reasonable assurance that significant storage, handling, and transportation issues do not arise during a single license period. Additionally, if information collected during a license period identifies emerging issues and concerns, there would be sufficient time to develop regulatory solutions and incorporate them into future licensing periods. The NRC requires that the collection of appropriate information and the implementation of aging management activities are part of license renewals. These include: (1) Time-limited aging analyses that demonstrate that the structures, systems, and components important to safety continue to perform their intended functions; and (2) aging management programs for specific issues known to be associated with aging, which could adversely affect structures, systems, and components important to safety.

The NRC determined its regulatory framework provides reasonable assurance for the continued safe and secure storage of spent fuel. Since the publication of NRC's 2014 final rule on the continued storage of spent nuclear fuel (79 FR 56251; September 19, 2014) the NRC has issued guidance that defines acceptable approaches to manage aging during extended storage through inspections, monitoring activities, and preventive actions. Two of the NRC's guidance documents addressing aging management are: (1) NUREG–1927, Revision 1, ''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel''; and (2) NUREG–2214, ''Managing Aging Processes in Storage (MAPS) Report.'' The Standard Review Plan, NUREG–1927, Revision 1, provides guidance for the staff's review of general information, scoping evaluation information, and aging management information in a renewal application. Specifically, the Standard Review Plan addresses the review of time-limited aging analyses and aging management programs to address issues associated with aging, including aging management programs for welded stainless steel canisters, reinforced concrete structures, and high burnup fuel. The MAPS report, NUREG–2214, provides a generic evaluation of aging mechanisms, which have the potential to undermine the ability of dry cask storage systems' structures, systems, and components to fulfill their important-to-safety functions. The MAPS report also updates the NRC's aging management program guidance and discusses additional aging management programs that were not described in NUREG–1927. For example, the MAPS report discusses a program for managing the aging of bolted cask storage systems, which is an alternative to welded canister-based designs.

The NRC also developed a temporary instruction, NRC Temporary Instruction 2690/011, ''Review of Aging Management Programs at Independent Spent Fuel Storage Installations.'' The temporary instruction serves as an information-gathering activity and the resulting data will be used to develop a new NRC inspection procedure to evaluate licensees' performance of these aging management activities.

The nuclear industry has recently contributed operational information, data, and proposals to address extended storage. This includes a system to collect and disseminate operating experience, for use by aging management programs at storage sites. The industry has also published guidance on developing aging management activities in license renewal applications. This guidance is entitled ''Format, Content and Implementation Guidance for Dry Cask Storage Operations-Based Aging Management'' (NEI 14–03) and is being reviewed by the NRC for endorsement. The NEI 14–03 provides a broad framework for integrating feedback from dry cask storage operating experience, research, monitoring and inspections into the management of aging-related degradation for structures, systems, and components at ISFSIs. Additionally, the Institute of Nuclear Power Operations

(INPO) implemented the Independent Spent Fuel Storage Installation Aging Management INPO Database that collects, aggregates, and shares aging-related operating information to inform the aging management programs of ISFSI licensees and certificate of compliance holders.

In addition to the activities mentioned above that generically address extended storage, the NRC has undertaken research and guidance development on more focused aging issues. Two focus areas are high-burnup fuel and stress corrosion cracking of spent fuel storage canisters.

The NRC recognizes that the cladding for high-burnup spent nuclear fuel may be subject to aging mechanisms (*e.g.,* hydride reorientation and creep) due to its service history (*e.g.,* time, temperature, pressure) that could affect performance during handling, storage, and transportation of spent fuel. Since the publication of the NRC's 2014 final rule on continued storage, the NRC continues to research the effects of extended storage of high-burnup spent nuclear fuel, as part of the NRC's effort to evaluate and update its regulations. In 2018, the NRC published for comment NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel.'' The NUREG–2224 report presents an engineering assessment of a wide range of recent studies and activities evaluating the mechanical performance of high-burnup spent nuclear fuel cladding. The studies evaluated in NUREG–2224 examined specific aspects of storage and transportation of high-burnup spent nuclear fuel, including:

- A study on fatigue strength provides data to allow for more accurate assessments of the structural behavior of high-burnup spent nuclear fuel under normal conditions of transportation and hypothetical accident conditions, as well as dry storage system drop and tip-over events (NUREG/CR–7198, Revision 1);
- A study on how the characteristics of high-burnup spent nuclear fuel could affect the mechanisms by which spent nuclear fuel can breach the cladding and the amount of spent nuclear fuel that can be released from the failed fuel rods (NUREG/CR–7203); and
- Investigations of the fatigue and bending strength performance of high-burnup spent nuclear fuel cladding in as-irradiated and hydride-reoriented conditions (Wang et al.).

Stress corrosion cracking of spent fuel storage canisters is another aspect of extended storage that has received significant NRC and stakeholder attention. The nuclear community has undertaken research and guidance development to understand this aging mechanism and to develop inspection approaches, including the creation of new rules for canister inspections in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. The nuclear industry, Federal government, the Department of Energy national laboratories, and suppliers of spent fuel dry storage systems participate in the Extended Storage Collaboration Program (ESCP), which investigates aging effects and mitigation options for the extended storage and transportation of spent nuclear fuel. In 2015, the ESCP published, ''Susceptibility Assessment Criteria for Chloride-Induced Stress Corrosion Cracking of Welded Stainless Steel Canisters for Dry Cask Storage Systems.'' This document summarizes the major factors that affect the susceptibility of stainless steel dry storage canisters to atmospheric chloride-induced stress corrosion cracking and identifies which dry cask storage systems will most likely need inspections and enhanced monitoring programs to detect the potential for initiation and propagation of chloride-induced stress corrosion cracking. In 2017. the ESCP also published, ''Aging Management Guidance to Address Potential Chloride-Induced Stress Corrosion Cracking of Welded Stainless Steel Canisters.'' This document provides guidance and recommendations for the development of an aging management program to address the potential for chloride-induced stress corrosion cracking of austenitic stainless steel canisters, with an emphasis on evaluating and incorporating user-generated information and operational experience, as they become available.

Significant work continues both nationally and internationally to enhance the understanding of the degradation of dry cask storage systems—including stress corrosion cracking of spent fuel storage containers—as well as the inspection and collection of operating experience. These efforts are consistent with the NRC's regulatory approach to enhance understanding of potential degradation mechanisms associated with dry cask storage systems. This enhanced understanding assists the NRC with identifying potential concerns with the safe storage of the spent fuel, with evaluating any such issues identified, and taking necessary actions, up to and including issuing orders or revising its regulations.

Although the petitioners request a long-lived waste package design with the goal of no maintenance or other interventions for the initial 300 years, the petitioners request that the NRC retain its current license term of up to 40 years for a certificate of compliance or license in 10 CFR part 72. The petitioners express the opinion that dry cask storage should be enhanced, but do not provide information to support the claim that the NRC's regulatory approach for dry cask storage is not safe and secure.

The NRC's current practice of renewing a certificate of compliance or a license for no more than 40 years allows for new technical and scientific information and operational data to be considered by the NRC when it decides whether to approve the renewal of a license or certificate of compliance. The NRC's licensing requirements in 10 CFR part 72 provide for a robust storage system design. However, the 40-year term does not mean a dry storage cask is no longer safe at the end of the licensing period. The NRC has determined that to renew a spent fuel storage cask design, the certificate holder or licensee must assess the need for maintenance and/or monitoring in the future. In NUREG–2157, the NRC evaluated environmental impacts by assuming ''the replacement of dry casks after 100 years of service life; however, actual replacement times will depend on actual degradation observed during ongoing regulatory oversight for maintaining safety during continued storage. Scientific studies and operational experience to date do not preclude a dry cask service life longer than 100 years'' (NUREG–2157; page B–18). The NRC continues to evaluate aging management programs and to monitor dry cask storage in order to update its service-life assumptions and to identify and address circumstances that could require repackaging of spent fuel earlier than anticipated.

If the repackaging of spent nuclear fuel becomes necessary, the regulations in 10 CFR 72.236(h) require that spent fuel storage systems be compatible with wet or dry spent fuel loading and unloading facilities. If a storage canister needs to be opened, the licensee must keep radioactive material confined, maintain the fuel in an arrangement that does not cause a nuclear chain reaction, and shield the workers and the public from radiation. The industry has decades of operating experience with wet transfer of new fuel and spent fuel, which involves spent fuel handling equipment and procedures that are similar to those used in a dry transfer system. The NRC concluded the safe transfer of spent fuel will occur regardless of whether a site maintains a

spent fuel pool (see Section 4.17.2 of NUREG–2157). Transfer operations at existing facilities routinely maintain public and occupational doses that are well within existing limits.

The NRC also notes the following design and operational characteristics of spent fuel storage systems continue to support safe storage of spent fuel:

- Dry cask storage systems are designed as passive systems that rely on natural air circulation for cooling and they are inherently robust, massive, and highly resistant to damage.
- Dry cask storage facilities and systems are designed to remain safe under normal, off-normal, and accident conditions.
- The degradation rates of spent fuel storage systems are sufficiently slow that significant storage, handling, and transportation issues are not expected to develop during a single 40-year license period.
- If information collected during a license period indicates any emerging issues and concerns, there would be sufficient time to develop technical and regulatory solutions and incorporate them into future licensing periods.

In summary, the NRC's regulatory approach uses the operational experience and scientific information collected and assessed during licensed operation to ensure the safe storage of spent nuclear fuel. The petitioners' proposal to specify a 1000-year lifetime for a storage system is unnecessary, arbitrary, and offers no commensurate benefit to public health and safety when compared with the NRC's current approach. The NRC's current regulatory framework requires a re-evaluation be conducted at least every 40 years to determine the continued safety of a dry cask storage system and to assess the need for maintenance and/or monitoring in the future. The technical arguments provided by the petitioners do not raise concerns that are not addressed by the NRC in both regulations and NUREG–2157. The NRC finds the recommended 1,000-year design life for a storage canister is not necessary to maintain the continued safe storage of spent nuclear fuel, consistent with the NRC regulations.

The NRC concludes that its current regulations at 10 CFR part 72 provide adequate protection of the public health and safety without the need for an extended design life as proposed by the petitioners.

3. Local Siting

The petitioners assert that spent fuel should be consolidated at a limited number of local sites, which according to the petitioners means locating a consolidated storage site ''near the source of the waste.'' The petitioners request the NRC's regulations be revised to restrict the siting of consolidated storage installations to: (1) At least 5 miles from any ocean, bay, river, lake, or other important water resource; (2) at least 300 feet above sea level if it is within 30 miles of any ocean; (3) at least 15 miles away from the boundary of any city, town, or other population and at least 5 miles from residential properties; (4) at least 5 miles from any major road, railroad, waterway, or industrial area; and (5) preferably east of 104° west longitude to avoid a region of high seismic activity.

The NRC's regulations in 10 CFR part 72 require that dry cask storage systems be compatible with the local geographical and environmental characteristics where the storage facility is located. In particular, the structures, systems, and components important to safety must be designed to: (1) Be compatible with site characteristics and environmental conditions associated with normal operations, maintenance, and testing; (2) withstand the effects of natural phenomena such as earthquakes, tornadoes, and floods; and (3) consider the most severe natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated. Additionally, an applicant must demonstrate that individual dose limits will be met for normal operations (10 CFR 72.104) and accident conditions (10 CFR 72.106). These public dose limits take into consideration local characteristics, such as the location of nearby residents and transportation routes that traverse the controlled area of the facility.

The NRC concludes its regulatory requirements for the safe storage of dry spent fuel at a specific location provide reasonable assurance of adequate protection of public health and safety. A license application for spent fuel storage evaluates the relevant hazards, conditions, and characteristics for a specific site in a safety evaluation report. The NRC finds the specific siting criteria suggested by the petitioners are unnecessary.

Chloride-induced stress corrosion cracking provides an example of how site-specific concerns are evaluated by the NRC. The petitioners cite this cracking phenomenon as being an unavoidable degradation of stainless steel canisters exposed to outside air. The petitioners request dual-wall containers, or another approach, be adopted to prevent a radiation release to the public and environment during extended storage. Areas near salt water bodies with chloride-containing salts at elevated levels may have increased potential for chloride-induced stress corrosion cracking of canisters. The NRC conducted testing to determine the conditions under which welded stainless steel canisters may be susceptible to stress corrosion cracking, including that caused by chlorides. The test results were published in two publicly-available reports: (1) NUREG/CR–7030, ''Atmospheric Stress Corrosion Cracking Susceptibility of Welded and Unwelded 304, 304L, and 316L Austenitic Stainless Steels Commonly Used for Dry Cask Storage Containers Exposed to Marine Environments'' (October 2010); and (2) NUREG/CR–7170, ''Assessment of Stress Corrosion Cracking Susceptibility for Austenitic Stainless Steels Exposed to Atmospheric Chloride and Non-Chloride Salts'' (February 2014).

The NUREG/CR–7030 report documents the NRC's evaluation of the stress corrosion cracking susceptibility of welded and unwelded austenitic stainless steels that are commonly used in dry storage systems in humid, chloride-rich environments. The test results reported in NUREG/CR–7030 indicate that chloride-induced stress corrosion cracking is highly dependent on the concentration of deposited sea salt, residual stress, cask temperature, and the relative humidity of the surrounding environment. The report recommends methods for determining salt deposition rates on the stainless steel canisters currently used in dry storage systems. The NRC assessed stress corrosion cracking susceptibility for austenitic stainless steels exposed to atmospheric chloride and non-chloride salts to determine the conditions under which dry storage canisters may be susceptible to stress corrosion cracking. These findings were presented in NUREG/CR–7170. Additional testing recommended in NUREG/CR–7170 is currently being undertaken at national laboratories and universities under the ESCP. The NRC will use the results of these additional studies to evaluate the adequacy of siting requirements. However, to date, the NRC has not identified information indicating the current siting requirements are inadequate.

The NRC concludes that its regulatory requirements for the safe storage of dry spent fuel at a specific location provide reasonable assurance of adequate protection of public health and safety. A licensee applying for approval of a spent fuel storage facility must evaluate the relevant hazards, conditions, and characteristics for a specific site in a

safety analysis report. A licensee must demonstrate that the facility will meet the safety limits for the release of radioactive materials in effluents and dose limits accounting for site characteristics, such as seismic hazards, the local population, tsunamis, and floods. Therefore, the NRC concludes it is not necessary to incorporate the petiitioners' proposed additional siting requirements into NRC's regulations.

4. Monitoring

The petitioners request that continuous monitoring be required during the initial licensing period of up to 40 years, to determine when corrective action would be needed. The petitioners suggest that periodic monitoring would be required after this initial period.

The NRC's regulations provide robust inspection and monitoring procedures for identifying conditions that could undermine safety. Additionally, the NRC's regulatory guidance assists licensees in meeting the requirements. The regulations at 10 CFR 72.44(c)(1)–(3) require that a licensee provide the surveillance requirements for inspecting and monitoring stored waste and for maintaining the integrity of required systems and components of an ISFSI in its technical specifications. The regulations at 10 CFR 72.122(h)(4) require that licensees be capable of monitoring spent fuel to identify concerns and take corrective actions as necessary to maintain safe storage conditions.

The NRC is evaluating licensees' aging management programs against NRC Temporary Instruction 2690/011, ''Review of Aging Management Programs at Independent Spent Fuel Storage Installations,'' as part of its oversight of renewed licenses and certificates of compliance. The NRC uses the inspection process to determine whether licensees have adequate processes or procedures planned or in place to implement approved aging management programs consistent with the requirements of 10 CFR part 72, and as provided in renewed ISFSI licenses and renewed certificates of compliance for casks. The temporary instruction includes a comprehensive evaluation of aging management programs, including the licensees' inspection and monitoring methods and techniques, and the frequency, sample size, data collection, and timing of licensee inspections.

Furthermore, NUREG–2157 summarizes technical information supporting low degradation rates of spent fuel in dry cask storage systems and concludes that dry cask storage systems will provide adequate protection for periods well beyond a 40-year license period. The NRC stated that scientific ''studies and operational experience to date do not preclude a dry cask service life longer than 100 years'' (see NUREG–2157, page B–18). Additionally, dry cask storage systems rely on passive structures, systems, and components to maintain safety and have no active or moving parts during storage. The 40-year license period is sufficiently short and the degradation of storage system materials is sufficiently slow that significant storage, handling, and transportation issues are not expected to arise during a single license period, and if information collected during a license period identifies emerging issues and concerns, there would be sufficient time to develop regulatory solutions and incorporate them into future licensing periods (NUREG–2157, Appendix B). Therefore, the NRC does not require continuous monitoring.

The NRC's regulations in 10 CFR part 72 provide the licensee flexibility in designing the monitoring program appropriate to its facility; however, the NRC inspects the monitoring and aging management programs to verify compliance with the regulations. Specifically, the NRC verifies through inspection that the functions of the structures, systems, and components important to safety are maintained throughout the period of extended operation. The NRC is not aware of technical information supporting the need for continuous monitoring of ISFSI systems, and the petitioners did not provide any such support.

5. Surface Storage

The petitioners assert that the NRC and the public should embrace surface storage of spent nuclear fuel and should plan to store it safely, passively, and indefinitely on the surface because that is how waste is currently stored. This assertion does not involve a proposed change to the existing regulations.

C. Summary

The NRC maintains that a strong regulatory framework including both regulatory oversight and licensee compliance is important to the continued safe storage of spent fuel. The NRC's regulatory framework for spent fuel storage is supported by well-developed regulatory guidance; voluntary domestic and international consensus standards; research and analytical studies; and processes for implementing licensing reviews, inspection programs, and enforcement oversight (NUREG–2157, page B–33). The technical information and operational experience collected and evaluated both internationally and nationally on dry cask storage continues to support the adequacy of 10 CFR part 72 to provide reasonable assurance of adequate protection of public health and safety and to promote the common defense and security.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	Date	Adams Accession No. or **Federal Register** citation or website
Petition for Rulemaking (PRM–72–8)	January 2, 2018	ML18022B207.
Requirements for the Indefinite Storage of Spent Nuclear Fuel, Petition for Rulemaking; Notice of Docketing and Request for Comment.	March 22, 2018	83 FR 12504.
Public Commenters List	May 9, 2019	ML19137A265.
Continued Storage of Spent Nuclear Fuel; Final Rule.	September 19, 2014	79 FR 56238.
NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel''.	September 2014	ML14196A105 (Vol. 1), ML14196A107 (Vol. 2), Also ML14198A440 (Package).
Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations; Final Rule.	September 16, 2003	68 FR 54143.

Document	Date	Adams Accession No. or **Federal Register** citation or website
NUREG–1927, Revision 1, ''Standard Review Plan for Renewal of Specific Licenses and Certificates of Compliance for Dry Storage of Spent Nuclear Fuel''.	June 2016	ML16179A148.
NUREG–2214, ''Managing Aging Processes in Storage (MAPS) Report''.	October 2017	ML19214A111.
NRC Temporary Instruction 2690/011, ''Review of Aging Management Programs at Independent Spent Fuel Storage Installations''.	January 2018	ML17167A268.
Nuclear Energy Institute NEI 14–03, Revision 2, ''Format, Content and Implementation Guidance for Dry Cask Storage Operations-Based Aging Management''.	December 2016	ML16356A210.
NUREG–2224, ''Dry Storage and Transportation of High Burnup Spent Nuclear Fuel'' (Draft for Comment).	July 2018	ML18214A132.
NUREG/CR–7198, Revision 1, ''Mechanical Fatigue Testing of High-Burnup Fuel for Transportation Applications''.	October 2017	ML17292B057.
NUREG/CR–7203, ''A Quantitative Impact Assessment of Hypothetical Spent Fuel Reconfiguration in Spent Fuel Storage Casks and Transportation Packages''.	September 2015	ML15266A413.
Oak Ridge National Laboratory; Wang, J.-A., H. Wang, H. Jiang, Y. Yan, B.B. Bevard, J.M. Scaglione; ''FY 2016 Status Report: Documentation of All CIRFT Data including Hydride Reorientation Tests''.	September 2016	ORNL/SR–2016/424, Available at: *https://www.energy.gov/sites/prod/files/2017/02/f34/10Documentation%20DataCollect CIRFT%20TestsRodEndsHydrideReorTest.pdf.*
Electric Power Research Institute, ''Susceptibility Assessment Criteria for Chloride-Induced Stress Corrosion Cracking (CISCC) of Welded Stainless Steel Canisters for Dry Cask Storage Systems''.	September 2015	EPRI–3002005371. The EPRI report is publicly available at the *www.epri.com* website.
Electric Power Research Institute, ''Aging Management Guidance to Address Potential Chloride-Induced Stress Corrosion Cracking of Welded Stainless Steel Canisters''.	March 2017	EPRI–3002008193. The EPRI report is publicly available at the *www.epri.com* website.
NUREG/CR–7030, ''Atmospheric Stress Corrosion Cracking Susceptibility of Welded and Unwelded 304, 304L, and 316L Austenitic Stainless Steels Commonly Used for Dry Cask Storage Containers Exposed to Marine Environments''.	October 2010	ML103120081.
NUREG/CR–7170, ''Assessment of Stress Corrosion Cracking Susceptibility for Austenitic Stainless Steels Exposed to Atmospheric Chloride and Non-Chloride Salts''.	February 2014	ML14051A417.
NUREG–1949, ''Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada,'' Volume 2: Repository Safety Before Permanent Closure.	January 2015	ML15022A146.

V. Conclusion

The NRC determined that the petitioners do not present information that supports the requested changes to the regulations or provides substantial increase in the overall protection of occupational or public health and safety. The NRC's current regulations continue to provide for the adequate protection of public health and safety and to promote the common defense and security.

For the reasons cited in Section III of this document, the NRC is denying PRM–72–8.

Dated at Rockville, Maryland, this 16th day of January 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–01026 Filed 1–22–20; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614

RIN 3052–AC92

Amortization Limits

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes to repeal the regulatory requirement that production credit associations (PCAs) amortize their loans in 15 years or less, while requiring all Farm Credit System (FCS or System) associations to address amortization through their credit underwriting standards and internal controls.

DATES: You may send us comments on or before March 23, 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, as amended, 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:* David P. Grahn, 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, including any supporting data provided, 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:

Lori Markowitz, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4487, TTY (703) 883–4056, *markowitzl@fca.gov* or

Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 884–4056, *katzr@fca.gov.*

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the proposed rule are to:

- Repeal regulatory provisions that impose amortization limits on PCA loans; and
- Require associations to address loan amortization in their credit underwriting standards and internal controls.

II. Background

Historically, the Farm Credit System (FCS or System) was comprised of different types of institutions that made loans for different purposes. The former Federal land banks, through their agent Federal land bank associations (FLBAs) made real estate loans for terms of 5 to 40 years that were secured by first liens on realty while PCAs made short- and intermediate-term operating loans for terms not exceeding 10 years, although aquatic loans could mature within 15 years.[1] Congress did not intend for FLBAs and PCAs to compete with each other because they were both members of the cooperative FCS.

The Agricultural Credit Act of 1987 (1987 Act)[2] significantly restructured the FCS through mandatory and voluntary mergers, and the transfer of direct lending authority from banks to associations. For example, the 1987 Act authorized Farm Credit Banks[3] to transfer their real estate lending authority in specific territories to their agent FLBAs, which then became Federal land credit associations (FLCAs). The 1987 Act also allowed PCAs to voluntarily merge with FLCAs or FLBAs to form agricultural credit associations (ACAs). As a result of mergers and corporate restructurings that have taken place over the past 32 years, there are currently 68 ACAs, each with a separate PCA and FLCA subsidiary, and 1 freestanding FLCA.

Since the 1987 Act became law, we have periodically issued regulations that implement the statutory authorities of System banks and associations to make, participate in, and buy and sell other interests in, loans to eligible borrowers. Pursuant to statute, these regulations also establish how the powers and obligations of the constituent banks or associations are consolidated, and to the extent necessary, reconciled in the successor institutions created by the 1987 Act.[4] As FCS institutions restructured and merged, and the agricultural economy evolved in subsequent years, FCA revised these regulations from time to time so the System could adjust to changing market conditions.

Our original regulations in 1990 authorized FLCAs to make long-term real estate loans for terms of not less than 5 years, nor more than 40 years, while ACA long-term real estate loans could have terms to maturity of between 10 and 40 years.[5] These regulations also authorized ACAs to make and guarantee short- and intermediate-term loans, and provide similar financial assistance for most eligible borrowers for not more than 10 years, although loans to aquatic producers and harvesters could mature within 15 years.[6] PCAs could make or guarantee loans, and provide similar financial assistance to most borrowers for terms of not more than 7 years unless policies approved by their funding bank allowed such loans to mature within 10 years.[7] However, PCAs could also make and guarantee loans to producers and harvesters of aquatic products for up to 15 years for major capital expenditures, such as vessels and shore facilities.[8] These differences in the authorities of ACAs and PCAs to lend to aquatic producers and harvesters, and to make operating loans for terms between 7 and 10 years still remain in effect in our regulations.

In 1997, FCA amended its regulations governing lending authorities, credit underwriting, and loan terms and conditions so associations could better meet their borrowers' credit needs. At the time, freestanding PCAs needed greater flexibility so they could offer farmers and ranchers easier credit terms to buy expensive equipment and other chattels. As amended, § 614.4040(a)(2), which remains in effect today, allows PCAs to make loans with maturities of 10 years or less, but amortize them over a period of up to 15 years. Under this regulation, PCA loans that amortize within 15 years must comply with

[1] Over the decades, Congress has repeatedly extended the maturity on PCA loans, so farmer-borrowers would have easier payment terms as capital equipment became increasingly expensive. Originally the maximum term to maturity for operating loans was three years. See Agricultural Credits Act of 1923, Public Law 503 section 202(c), 42 Stat. 1454, 1456, (March 4, 1923). The Farm Credit Act of 1956 authorized PCAs to make loans that matured in 5 years. See Public Law 809, section 104(b), 70 Stat. 659, 664, (July 26, 1956). In 1961, Congress expanded the maturity for PCAs loans to 7 years. See Public Law 87–343, section 1(b), 75 Stat. 758 (Oct. 3, 1961). An amendment in 1978 allowed PCA loans to aquatic producers and harvesters to mature in 15 years. See Public Law 95–443, 92 Stat. 1066 (Oct. 10, 1978). The Farm Credit Act Amendments of 1980 allowed PCAs to make 10-year loans to farmers and ranchers under policies approved by their funding banks See Public Law 96–592, section 204, 94 Stat. 3437, 3441, (Dec. 24, 1980).

[2] *See* Public Law 100–233, 101 Stat. 1568 (January 6, 1988).

[3] Section 410 of the 1987 Act created a Farm Credit Bank in each district by requiring the Federal land bank to merge with the Federal Intermediate Credit Bank, which funded or discounted short- and intermediate-term loans for PCAs and other financing institutions. Section 7.12 of the Act allows Farm Credit Banks to merge.

[4] The applicable provisions of the Act are: Section 7.2(b) ACBs; 7.6(c) for FLCAs; and 7.8(b) for ACAs.

[5] *See* 12 CFR 614.4030(a) (1991) for FLCA long-term real estate mortgage loans and 12 CFR 614.4050(a) (1991) for ACA long-term real estate mortgage loans.

[6] *See* 12 CFR 614.4050(b) (1991).

[7] *See* 12 CFR 614.4040(a) (1991).

[8] *See* 12 CFR 614.4040(b) (1991).

specific conditions, which are detailed below.

In 1997, FCA also made a substantive revision to the ACA lending authority regulation, § 614.4050, to recognize the statutory authority of ACAs to make long-term real estate loans that mature in not less than 5 years nor more than 40 years, rather than between 10 and 40 years, as the regulation previously specified. The preamble to the proposed rule issued in 1996 stated that the original version of § 614.4050 emphasized that ACAs had ''the option to make loans under their short- and intermediate-term lending authority without requiring a first lien on real estate if the term is 10 years or less.[9] By amending this regulation, FCA recognized that ACAs also had the option of making loans with maturities between 5 and 10 years under either their long-term, or short-and intermediate-term authorities, as appropriate.[10]

III. A New Lending Environment and Input From the System

Although the regulations governing loan maturity and amortization for title I and II loans have not been revised since 1997, the environment in which the System operates has changed significantly over the past 22 years. During this time, the System has restructured and consolidated into larger, but fewer banks and associations.

Because of these changes, the System has periodically asked FCA to review and revise these regulations. A widespread perception exists in the System that the current regulations have created a discrepancy between PCA and ACA lending authorities. A common criticism is that the regulations permit ACA parents to make 10-year operating loans to borrowers, without any restriction on amortization, while PCA subsidiaries cannot amortize the same loans for a period longer than 15 years.

The Farm Credit Council (FCC), on behalf of its members, submitted a letter in response to FCA's request for public comment on our most recent Statement on Regulatory Burden, which we issued in 2017.[11] The FCC stated that PCA and ACA loan authorities should be updated to reflect current System structure. According to the commenter, ''There is no statutory basis to maintain restrictions on PCA real estate lending, or that loans amortize within a period of 15 years . . ., or whether the customer already owns the land or is purchasing it.'' The FCC also commented that ''amortization and repayment should be a matter of appropriate credit administration, not regulation.''

IV. Proposed Rule

A. Overview

In response to the restructuring of the System, changes in the agricultural economy, and input we received from the FCS, we are proposing to revise §§ 614.4040, 614.4050, and 614.4200. Briefly, the proposed rule would repeal the provision in the PCA regulation, § 614.4040 that imposes restrictions on the amortization of PCA loans. FCA is also proposing conforming, non-substantive changes to the ACA regulation, § 614.4050. As discussed in greater details below, the proposed rule would amend § 614.4200, to address factors that FCA expects direct lenders to consider as they develop credit underwriting standards and amortization schedules for loans that amortize over a period that is longer than their term to maturity.

B. Proposed Changes to the Lending Authority Regulations

The proposed rule would repeal § 614.4040(a)(2) which restricts PCAs from amortizing any loan over a period that is longer than 15 years. More specifically, the proposed rule would rescind regulatory provisions that allow PCAs to amortize loans over periods longer than the terms to maturity under policies approved by their funding banks, subject to the following conditions: (1) Such loans are amortized over a period that does not exceed 15 years, (2) each such loan can be refinanced only if the PCA determines at the time of refinancing that the loan meets its loan policies and underwriting criteria, (3) No refinancing may extend repayment beyond 15 years from the date of the original loan, and (4) acquiring unimproved real estate is not the sole purpose of the loan. FCA also proposes to repeal § 614.4040(a)(3), which states that short- and intermediate-term PCA loans must have maturities that are appropriate for the purpose and underlying collateral of the loan, and that comply with the requirements of §§ 614.4150 and 614.4200. As discussed below, the proposed rule would amend § 614.4200 to require all FCS direct lenders to address loans that amortize over a period that is longer than their terms to maturity in their credit underwriting standards and internal controls.

Existing § 614.4040(a)(1) implements section 1.10(b) of the Act, which sets forth the terms to maturity for short- and intermediate-term PCA loans. For this reason, FCA is not proposing any substantive changes to these regulatory provisions. However, we are making conforming amendments to § 614.4040(a), such as renumbering its paragraphs, now that we are planning to repeal §§ 614.4040(a)(2) and (3).

FCA is not proposing any substantive changes to the ACA lending authority regulation, § 614.4050. Pursuant to section 7.8(b) of the Act, this regulation consolidates and, to the extent necessary, reconciles the lending powers that ACAs inherited from their constituent PCAs and FLBAs or FLCAs. Accordingly, this regulation grants ACAs maximum flexibility to exercise their short-, intermediate, -and long-term lending authorities to meet the credit needs of their borrowers. Thus, as noted above, ACAs have the option of making loans between 5 and 10 years either under their PCA or their FLBA/FLCA authority. Also, ACAs are subject to less stringent regulatory requirements than PCAs regarding aquatic loans, and loans that mature between 7 and 10 years.

However, FCA is proposing to restructure § 615.4050 so it follows the same format as the regulations governing the lending authorities of FLCAs and PCAs. The proposed rule would combine existing §§ 614.4050(a) and (b) into a single provision. As a result, proposed § 614.4050(a) would cover the ACAs' authority to make both long-term real estate loans, and short-, and intermediate-term loans. Existing § 614.4050(c) and (d), which address loan participations and other interests in loans, would be redesignated as § 614.4050(b) and (c), respectively. Thus, the regulations for FLCAs, PCAs, and ACAs would all have the same structure and format.

C. FCA's Position on Loan Amortization

The Act establishes the terms to maturity on loans made by direct lenders operating under titles I or II. However, the statute does not prohibit an association from amortizing a loan over a longer time.[12] Indeed, an amortization schedule that exceeds the term of the loan is often used to provide borrowers with easier credit repayment terms for the acquisition of various

[9] *See* 61 FR 16403, 16408 (Apr. 15, 1996).

[10] *Id.*

[11] *See* 82 FR 22762, May 18, 2017. Since 1993, FCA has issued Statements on Regulatory Burden approximately every five years, and asks the public to identify regulations that may duplicate other requirements, are ineffective, are not based on law, or impose burdens that are greater than the benefits received.

[12] Neither the overall structure and text of the Act, nor its legislative history, indicates that Congress intended to require System loans to amortize in the same period of time as their terms to maturity.

assets, especially equipment and other capital expenditures.

Amortizing a loan over a term that is longer than the term to maturity would result in a balloon payment. That balloon payment can either be repaid at the end of the loan term or refinanced into a new loan. This decision to refinance a balloon loan at the due date of the loan is based on many factors, including the borrower's current financial position. However, the lender will not know at the time of origination whether the loan will be refinanced at maturity. FCA views loan amortization as a credit underwriting issue, not a legal authority issue. While FCA recognizes that some loans need to be amortized for a period that is longer than the terms to maturity, the amortization period should not extend beyond the useful life of the asset being financed.

Our proposed rule would require System direct lenders [13] that amortize loans over timeframes that are longer than their terms to maturity to specifically address loan amortization in their credit underwriting standards.[14] More specifically, this proposal would add a new paragraph at the end of § 614.4200 to require such FCS institutions to establish loan amortization schedules for balloon loans that are: (1) Consistent with their loan underwriting standards that they adopt pursuant to § 614.4150, and (2) appropriate to the type and purpose of the borrower's loan, the expected useful life of the asset being financed, and the repayment capacity of the borrower.

This regulation identifies the issues that FCA expects FCS direct lenders to address in their credit underwriting standards if the amortization period is longer than the term of such loans. We emphasize that the proposed rule would not prescribe credit underwriting standards. Instead, it provides System institutions wide latitude to develop credit underwriting parameters that meet their borrowers' needs for different types of loan products. This regulatory framework also enables each System direct lender association to tailor its loan underwriting standards to its own structure and operations.

In developing credit underwriting standards for balloon loans, we expect every association to base its decisions on safety and soundness factors, and it must be able to defend its decisions if examiners question its choices. One of the purposes of this provision is to preclude short- or intermediate-term loans from being continually refinanced at maturity.

V. 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 affiliated 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 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

■ 2. Section 614.4040 is amended by revising paragraph (a) to read as follows:

§ 614.4040 Production credit associations.

(a) *Short- and intermediate-term loans.* Production credit associations are authorized to make or guarantee short- and intermediate-term loans and provide other financial assistance for a term of:

(1) Not more than 7 years;

(2) More than 7 years, but not more than 10 years, as set forth in policies approved by the funding bank; or

(3) Not more than 15 years to producers and harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the operations of producers or harvesters of aquatic products.

* * * * *

■ 3. Section 614.4050 is amended by:

■ a. Removing the introductory text;

■ b. Revising paragraph (a);

■ c. Removing paragraph (b); and

■ d. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively.

The revision reads as follows:

§ 614.4050 Agricultural credit associations.

(a) *Terms to maturity on loans.* Agricultural credit associations are authorized to make or guarantee, subject to requirements of § 614.4200:

(1) *Long-term real estate mortgage loans* with maturities of not less than 5 nor more than 40 years, and continuing commitments to make such loans;

(2) *Short- and intermediate-term loans* and provide other similar financial assistance for a term of not more than:

(i) 10 years; or

(ii) 15 years to aquatic producers and harvesters for their aquatic operations.

* * * * *

■ 4. Section 614.4200 is amended by adding paragraph (c) to read as follows:

§ 614.4200 General requirements.

* * * * *

(c) *Loan amortization.* If a direct lender amortizes a loan over a period of time that is longer than the term to maturity under §§ 614.4000(a), 614.4010(a), 614.4030(a), 614.4040(a), or 614.4050(a)(1) or (2), it must establish a loan amortization schedule that is:

(1) Consistent with its loan underwriting standards adopted pursuant to § 614.4150; and

(2) Appropriate to the type and purpose of the loan, expected useful life of the asset being financed, and the repayment capacity of the borrower.

Dated: January 14, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–00785 Filed 1–22–20; 8:45 am]

BILLING CODE P

[13] Currently, all direct lenders operating under title I and II are associations. All Farm Credit banks operating under title I of the Act have transferred authority to their associations to make real estate mortgage loans directly to eligible borrowers under title I of the Act. Section 1.13 of the Act grants these banks residual authority to make real estate mortgage loans directly to borrowers in a geographic area where there are no active associations. For this reason, proposed § 614.4150(c) specifically refers to the direct lending authorities of Farm Credit Banks and the agricultural credit bank.

[14] FCA emphasizes that System banks and associations that do not offer their customers balloon loans that amortize over a longer timeframe than the term to maturity would not be required to comply with proposed § 614.4200(c).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–1093; Product Identifier AD–2019–00144–E]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all CFM International S.A. (CFM) LEAP–1B21, –1B23, –1B25, –1B27, –1B28, –1B28B1, –1B28B2, –1B28B2C, –1B28B3, –1B28BBJ1, and –1B28BBJ2 model turbofan engines. This proposed AD was prompted by reports of two new unsafe conditions and the need to supersede corrective actions for two previously addressed unsafe conditions. The FAA proposes to supersede AD 2018–25–09 and AD 2019–12–01, which apply to the affected LEAP–1B model turbofan engines. Since the FAA issued the ADs, the FAA received information and analysis indicating that supersedure of these ADs is warranted.

DATES: The FAA must receive comments on this proposed AD by February 12, 2020.

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

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

For service information identified in this NPRM, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1093.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–1093; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–1093; Product Identifier AD–2019–00144–E'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA understands that CFM has communicated with affected operators regarding the proposed corrective actions for these unsafe conditions. As a result, affected operators are already aware of the proposed corrective actions and in some cases, have already begun implementation. Therefore, the FAA has determined that a 20-day comment period is appropriate given the particular circumstances related to the proposed corrections of these unsafe conditions on the CFM LEAP–1B model turbofan engines.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA has received reports of two new unsafe conditions affecting CFM LEAP–1B model turbofan engines: (1) Increased fuel flow through certain fuel nozzles due to fuel nozzle coking, potentially causing distress to the static structures of the high-pressure turbine (HPT) and in-flight shutdown (IFSD) of one or more engines; and (2) the potential for undetected subsurface anomalies formed during the manufacturing process that could result in uncontained failure of the HPT stage 2 disk. To address the newly identified unsafe conditions, the FAA is proposing this AD.

Further, the FAA received additional information related to the unsafe conditions addressed by AD 2018–25–09 and AD 2019–12–01 regarding: (1) Icing in the pressure sensor lines, potentially causing inaccurate pressure sensor readings and loss of thrust control; and (2) inadequate oil flow to the radial drive shaft (RDS) bearing, which can cause failure of the bearing and IFSD of one or more engines.

Thus, this AD would also supersede the two previously issued ADs addressing icing in the pressure sensor lines and inadequate oil flow to the RDS bearing.

Unsafe Conditions—Fuel Nozzle Coking and Subsurface Material Anomalies

The FAA has received reports of unsafe conditions on the CFM LEAP–1B model turbofan engine related to fuel nozzle coking and to subsurface anomalies that can be present in the HPT stage 2 disk. The FAA has not previously issued an AD on these unsafe conditions on the CFM LEAP–1B model turbofan engine.

Fuel Nozzle Coking

Two LEAP–1B model turbofan engines have experienced fuel nozzle coking which led to distress of HPT static structures. On one of these engines, fuel nozzle coking and subsequent HPT static structure distress led to turbine center frame (TCF) burn-through, and an engine IFSD while the aircraft was engaged in a ferry flight. Fuel nozzle coking can lead to failure of the HPT static structures, TCF case burn-through, and in-flight shutdown of one or more engines, loss of thrust control, and damage to the airplane.

Subsurface Material Anomalies

During a broad investigation by CFM into melt-related material anomalies, a subsurface anomaly was found in a part manufactured from the same material as the LEAP–1B HPT stage 2 disk. This type of subsurface anomaly has the potential to cause failure of the LEAP–1B HPT stage 2 disk. CFM introduced enhanced inspections to prevent failure of the HPT stage 2 disk which can lead to uncontained engine failure, loss of thrust control, and damage to the airplane.

The FAA reviewed CFM's assessment of the unsafe conditions and the proposed corrective actions and agrees with its conclusions. Updating the Airworthiness Limitations Section (ALS) of the Engine Shop Manual and the continuous airworthiness maintenance program for the affected LEAP–1B model turbofan engines would be the most effective way to address these unsafe conditions pertaining to fuel nozzle coking and subsurface material anomalies. These ALS updates would require a one-time inspection of the HPT stage 2 disk for subsurface anomalies and engine condition monitoring or repetitive inspections of the HPT static structures for fuel nozzle coking.

ADs Being Superseded: AD 2018–25–09 and AD 2019–12–01

The FAA is proposing to supersede AD 2018–25–09 and AD 2019–12–01. The FAA issued AD 2018–25–09, Amendment 39–19520 (83 FR 63559, December 11, 2018), (''AD 2018–25–09''), for all CFM LEAP–1B21, –1B23, –1B25, –1B27, –1B28, –1B28B1, –1B28B2, –1B28B2C, –1B28B3, –1B28BBJ1, and –1B28BBJ2 turbofan engines. The FAA issued AD 2019–12–01, Amendment 39–19656 (84 FR 28202, June 18, 2019), (''AD 2019–12–01''), for certain CFM LEAP–1B21, –1B23, –1B25, –1B27, –1B28, –1B28B1, –1B28B2, –1B28B3,–1B28B2C, –1B28BBJ1, and –1B28BBJ2 model turbofan engines.

AD 2018–25–09—Icing in Pressure Sensor Lines

The FAA issued AD 2018–25–09 to prevent icing in the pressure sensor lines and inaccurate pressure sensor readings that could result in failure of one or more engines, loss of thrust control, and loss of the airplane. AD 2018–25–09 required removing certain electronic engine control (EEC) systems operation (OPS) and engine health monitoring (EHM) software and installing versions eligible for installation. AD 2018–25–09 resulted from six aborted takeoffs on the similarly-designed CFM LEAP–1A model turbofan engine after those engines did not advance to the desired takeoff fan speed due to icing in the pressure sensor line.

Since the FAA issued AD 2018–25–09, the FAA received reports of two temporary loss of thrust control events caused by icing in the pressure sensor lines. Both events occurred on affected CFM turbofan engines with the EEC OPS and EHM software installed per AD 2018–25–09. After further investigation, the operators found water and ice in the pressure sensor lines, which prevented the pressure sensor from accurately measuring the pressure. As a result, the previous CFM EEC OPS and EHM software update mandated by AD 2018–25–09 would be further modified by this AD to detect and accommodate a frozen pressure sensor and to prevent loss of thrust control from occurring.

AD 2019–12–01—RDS Bearing Failure

The FAA issued AD 2019–12–01 to prevent failure of the RDS bearing, which could result in failure of one or more engines, loss of thrust control, and loss of the airplane. AD 2019–12–01 required initial and repetitive inspections of the TGB scavenge screens and, depending on the results of the inspection, possible removal of the engine from service. AD 2019–12–01 resulted from multiple reports of IFSDs due to RDS bearing failure.

Since the FAA issued AD 2019–12–01, further investigation by CFM identified an additional contributing factor to the cause of the RDS failures. Insufficient oil supply to the radial shaft bearing and rivet fatigue of the cage assembly are the primary contributing factors to these bearing failures. The inspections that would be mandated by this proposed update to the ALS have a time-based limit and include in-service limits for the affected bearings. Even though the ALS changes would be applicable to all LEAP–1B engines, the requirements in the ALS for the RDS inspections would apply only to the engines affected by AD 2019–12–01.

Related Service Information Under 1 CFR Part 51

The FAA reviewed ALS data module, CFM LEAP–1B–05–21–03–01A–281B–C, Issue 002, dated January 9, 2020; and ALS data module, CFM LEAP–1B–05–29–00–01A–281B–C, Issue 001, dated January 9, 2020. CFM LEAP–1B–05–21–03–01A–281B–C describes procedures for an ultrasonic inspection of the HPT stage 2 disk. CFM LEAP–1B–05–29–00–01A–281B–C, describes procedures for inspection of the RDS bearing; monitoring and inspections of the fuel nozzle; and the required version of EEC system software. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the ALS of the applicable CFM LEAP–1B Engine Shop Manual and the operator's approved continuous airworthiness maintenance program.

Costs of Compliance

The FAA estimates that this proposed AD affects 162 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update ALS	4 work-hours × $85 per hour = $340	$0	$340	$55,080
TGB Screen Inspection	1 work-hour × $85 per hour = $85	0	85	13,770
HPT stage 2 Disk Inspection	6 work-hours × $85 per hour = $510	0	510	82,620
Fuel Nozzle Inspection	6 work-hours × $85 per hour = $510	0	510	82,620
Pressure Sub-system Software Upgrade	0.5 work-hours × $85 per hour = $42.50	0	42.50	6,885
RDS Borescope Inspection	2 work-hours × $85 per hour = $170	0	170	27,540

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
RDS Replacement	200 work-hours × $85 per hour = $17,000	$30,500	$47,500
HPT stage 2 Disk Replacement	1 work-hour × $85 per hour = $85	225,000	225,085
Replace Set of Fuel Nozzles	40 work-hours × $85 per hour = $3,400	120,000	123,400

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing airworthiness directive (AD) 2018–25–09, Amendment 39–19520 (83 FR 63559, December 11, 2018), and AD 2019–12–01, Amendment 39–19656 (84 FR 28202, June 18, 2019); and

■ b. Adding the following new AD:

CFM International S.A.: Docket No. FAA–2019–1093; Product Identifier AD–2019–00144–E.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 12, 2020.

(b) Affected ADs

This AD replaces AD 2018–25–09, Amendment 39–19520 (83 FR 63559, December 11, 2018), and AD 2019–12–01, Amendment 39–19656 (84 FR 28202, June 18, 2019).

(c) Applicability

This AD applies to all CFM International S.A. (CFM) LEAP–1B21, –1B23, –1B25, –1B27, –1B28, –1B28B1, –1B28B2, –1B28B3, –1B28B2C, –1B28BBJ1, and –1B28BBJ2 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code, 7200 (Turbine/Turboprop).

(e) Unsafe Condition

(1) This AD was prompted by multiple reports of engine in-flight shutdowns (IFSDs) and defects in the related applicable systems and one report of a melt-related defect of the high-pressure turbine (HPT) stage 2 disk material. The FAA is issuing this AD to prevent:

(i) Increased fuel flow through certain fuel nozzles leading to distress of the HPT static structures and IFSD of one or more engines;

(ii) undetected subsurface anomalies formed during the manufacturing process that could lead to uncontained HPT disk failure;

(iii) icing in the pressure sensor lines, inaccurate pressure sensor readings and loss of thrust control; and

(iv) inadequate oil flow to the radial drive shaft (RDS) bearing, failure of the bearing, and IFSD of one or more engines.

(2) These unsafe conditions, if not addressed, could result in IFSD or failure of one or more engines, loss of thrust control and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Within 15 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the applicable CFM LEAP–1B Engine Shop Manual and the operator's existing approved continuous airworthiness maintenance program by inserting the following changes:

(1) Paragraph 6.B.(2) of the CFM Engine Shop Manual (ESM) Data Module LEAP–1B–05–21–03–01A–281B–C, Issue 002, dated January 9, 2020; and

(2) paragraphs 6.B.(1), 6.B.(2), and 6.C.(1) of the CFM ESM Data Module LEAP–1B–05–29–00–01A–281B–C, Issue 001, dated January 9, 2020.

(h) No Alternative Procedures or Intervals

After the revisions required by paragraph (g) of this AD have been made, no alternative inspections, procedures, or intervals may be used unless approved as an alternative method of compliance in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov*.

(2) For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *aviation.fleetsupport@ge.com*. You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on January 15, 2020.

Robert J. Ganley,

Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2020–01158 Filed 1–21–20; 11:15 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0824; FRL–10004–49–Region 10]

Air Plan Approval; ID; 2015 Ozone NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA or the Act) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. On September 26, 2018, the State of Idaho made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

DATES: Written comments must be received on or before February 24, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0824 at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel at (206) 553–6121, or *vaupel.claudia@epa.gov.*

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

Table of Contents

I. Background
II. State Submission
III. EPA Evaluation
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. Background

On October 1, 2015, the EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called ''prongs'' within CAA section 110(a)(2)(D)(i): Section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or from interfering with maintenance of the NAAQS in another state (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).[3]

We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).[4] These actions only addressed interstate transport in the eastern United States[5] and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,[6] the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:[7] (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.[8] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.[9] On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[10] Although the 2017 memorandum also released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. And, on March 27, 2018, we issued a memorandum (March 2018 memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework).

The March 2018 memorandum included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.[11] The EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the framework.[12]

The March 2018 memorandum describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: First, following the EPA's historic ''3 × 3'' approach[13] to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (2008).

[4] *See* 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[5] For purposes of CSAPR and the CSAPR Update action, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

[6] Other regional rulemakings addressing ozone transport include the NO_X SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[7] The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. *See, e.g.,* 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

[8] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] 82 FR 1735 (January 6, 2017).

[10] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[11] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[12] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[13] *See* March 2018 memorandum, p. 4

monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured values [14] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.[15] The EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[16]

While the March 2018 memorandum presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

II. State Submission

On September 26, 2018, Idaho submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Idaho's submission included a review of the state's ozone monitoring data and an analysis of ozone precursor emissions contributions and trends (nitrogen oxides and volatile organic compounds). Idaho's submission also reviewed programs and regulations that reduce ozone precursor emissions in the state. Idaho relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Idaho. Based on Idaho's review of EPA's methodology, emissions reductions, and modeling assumptions, Idaho determined that EPA's future year projections were appropriate for purposes of evaluating Idaho's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Idaho concurred with the EPA's photochemical modeling results that indicate Idaho's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.19 ppb. Idaho compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because Idaho's impacts to neighboring states are projected to be less than 0.70 ppb, emissions from Idaho sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Idaho also evaluated potential ozone transport to the Fort Hall Reservation, located in southeast Idaho. The EPA approved the Shoshone-Bannock Tribes of the Fort Hall Reservation to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. The nearest ozone monitor to the Fort Hall Reservation is in Butte County, Idaho, in the Idaho Falls area (Site ID 160230101), approximately 85 km northeast of the Fort Hall Reservation. Idaho noted that the ozone concentrations at the Idaho Falls monitor have been below the 2015 ozone NAAQS. Idaho's submission also included findings from its 2017 photochemical modeling study of an 81-day episode during summer 2013, with unusually high ozone concentrations throughout Idaho, including the Fort Hall Reservation. Idaho concluded that Idaho emissions do not contribute significantly to nonattainment or interfere with maintenance on the Fort Hall Reservation.

III. EPA Evaluation

The EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state

[14] The EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B–1.

[15] As discussed in the March 2018 memorandum, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

[16] *See* August 2018 memorandum, p. 4.

contributions, as released in the March 2018 memorandum, to evaluate Idaho's good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the D.C. Circuit issued its decision in *Wisconsin* v. *EPA* addressing legal challenges to the CSAPR Update, in which the EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, the EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute—as well as the legal precedent—to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

The EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024 Moderate area attainment date for the 2015 ozone NAAQS. The EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in the EPA's modeling.[17] However, as explained below, the EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. CAA section 110(a)(2)(D)(i); *see also North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina,* and more recently in *Wisconsin,* the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina,* 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin,* 938 F.3d at 313–18.

While the EPA recognizes, as the court held in *North Carolina* and *Wisconsin,* that upwind emissions-reduction obligations therefore must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead the EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the Clean Air Act, states with areas designated nonattainment are generally required to submit, as part of their SIP, an ''attainment demonstration'' that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).[18] Such plans must also include, among other things, the adoption of all ''reasonably available'' control measures on existing sources, a demonstration of ''reasonable further progress'' toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.,* CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA—unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources in order to meet the planning requirements applicable to such areas. *See* CAA section 182(a) (''The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'')[19] Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. *See* CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that ''Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas'').

Existing regulations—either local, state, or federal—are typically a part of the reason why ''additional'' local controls are not needed to bring Marginal nonattainment areas into attainment. As described in the EPA's record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that the majority of areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.,* without being re-classified to a Moderate designation). 83 FR 10376 (March 9, 2018). As part of a historical lookback, the EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1-hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS. *See* Response to Comments, section A.2.4.[20] Based on these historical data, the EPA expects that many areas classified as Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as

[17] The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, *see* U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, *https://www3.epa.gov/airquality/greenbook/jbtc.html* (last updated September 30, 2019).

[18] Part D of title I of the Clean Air Act provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2–5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

[19] States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, the EPA acknowledges that states within ozone transport regions must implement certain emission control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

[20] Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS) and (b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment area. *See generally* CAA sections 172(c) and 182(b)–(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, the EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring the EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, the EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

The EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict the EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emission reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date. *See, e.g.,* CAA section 182(b)(1) & (2) (establishing ''reasonable further progress'' and ''reasonably available control technology'' requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin.* Rather, the court was considering whether the EPA, in implementing its obligation to promulgate federal implementation plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312–13. Although the court noted that petitioners had not ''forfeited'' an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018 Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding the EPA's obligations relative to the then-applicable 2018 Moderate area attainment date because such considerations were not applicable to the case before the court.[21] For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support the EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, the EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 × 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).[22] The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating Idaho's 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with

[21] The D.C. Circuit, in a short judgment, subsequently vacated and remanded the EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (December 21, 2018). *New York* v. *EPA,* No. 19–1019 (October 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as the EPA conceded, the Close-Out ''relied upon the same statutory interpretation of the Good Neighbor Provision'' rejected in *Wisconsin. Id.* slip op. at 3. In the Close-Out, the EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York,* as in *Wisconsin,* the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

[22] The number of receptors in the identified western states is 57, irrespective of whether the ''3 × 3'' or ''no water'' approach is used. Further, although the EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also concluding in this proposed action that Idaho will have an insignificant impact on any potential receptors identified in its analysis, Idaho need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

maintenance of the NAAQS in any other state. This is consistent with our prior action on Idaho's SIP with respect to the 2008 ozone NAAQS [23] and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Idaho's largest impact on any potential downwind nonattainment and maintenance receptor in any other Western state is 0.18 ppb and 0.19 ppb, respectively.[24] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[25] and as a result, demonstrate that emissions from Idaho are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. The projected impacts from Idaho to potential receptors in the East is even lower. Accordingly, we propose to conclude that emissions from Idaho will not contribute to any potential receptors, and thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

The EPA has also assessed Idaho's analysis of potential transport to the Fort Hall Reservation in southeast Idaho. As discussed previously, the EPA's modeling did not identify receptors in Idaho. Additionally, the ozone monitoring sites in Idaho are projected to remain below the current standard in 2023. The Idaho Falls area monitoring site (Site ID 160230101), which is nearest to the Fort Hall Reservation, had a 2014–2016 design value of 60 ppb and the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. The Boise area monitoring site with the highest 2023 projected ozone concentrations (Site ID 160010017) had a 2014–2016 design value of 67 ppb and the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.[26] We therefore propose to find that emissions from Idaho will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

IV. Proposed Action

As discussed in section II of this preamble, Idaho concluded that emissions from sources in the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The EPA's evaluation of Idaho's submission, discussed in section III of this preamble, confirms this finding. We are proposing to approve the Idaho submission as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. The EPA is requesting comments on the proposed approval.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 6, 2020.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–00888 Filed 1–22–20; 8:45 am]

BILLING CODE 6560–50–P

[23] 80 FR 78981 (December 18, 2015).

[24] The EPA's analysis indicates that Idaho will have a 0.18 ppb impact at the potential nonattainment receptor in Douglas, Colorado (Site ID 80350004), which has a 2023 projected average design value of 71.1 ppb, a 2023 projected maximum design value of 73.2 ppb, and had a 2014–2016 design value of 77 ppb. The EPA's analysis further indicates that Idaho will have a 0.19 ppb impact at a potential maintenance receptor in Arapahoe, Colorado (Site ID 80050002), which has which has a projected 2023 average design value of 69.3 ppb, and a 2023 projected maximum design value of 71.3 ppb. *See* the March 2018 memorandum, attachment C.

[25] Because none of Idaho's impacts equal or exceed 0.70 ppb, they necessarily also do not equal or exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[26] In attachment A of the 2017 memorandum, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A–10.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 200114–0016]

RIN 0648–BI91

2020 Annual Determination To Implement the Sea Turtle Observer Requirement

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

ACTION: Proposed rule, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this proposed Annual Determination (AD) for 2020, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take fisheries observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2020 AD (see Table 1) will remain on the AD for a five-year period from the effective date of the final rule and will be required to carry observers upon NMFS' request.

DATES: Comments must be received by February 24, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0082, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal:

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0082;*
2. Click the ''Comment Now!'' icon, complete the required fields;
3. Enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Sea Turtle Annual Determination, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Ellen Keane, Greater Atlantic Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 562–980–3209; Irene Kelly, Pacific Islands Region, 808–725–5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta;* Northwest Atlantic distinct population segment), green (*Chelonia mydas;* North Atlantic, South Atlantic, and East Pacific distinct population segments), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the Act or a regulation issued to implement the Act. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn more about sea turtle-fishery interactions in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August 3, 2007). This regulation specifies that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this regulation may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry the required observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop appropriate observer coverage and sampling protocol to investigate whether, how, when, where, and under what conditions incidental takes are occurring; to evaluate whether existing measures are minimizing or preventing takes; and to implement ESA take prohibitions and conserve turtles.

Sea Turtle Distribution

Atlantic Ocean and Gulf of Mexico

Sea turtle species found in waters of the Atlantic Ocean and Gulf of Mexico include green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles. The waters off the U.S. east coast and Gulf of Mexico provide important foraging, breeding, and migrating habitat for these species. Further, the southeastern United States, from North Carolina through the Florida Gulf coast, is a major sea turtle nesting area for loggerhead, leatherback, and green turtles, and, to a much lesser extent, Kemp's ridley and hawksbill turtles.

Four sea turtle species occur seasonally in New England and Mid-Atlantic continental shelf waters north of Cape Hatteras, North Carolina: green, Kemp's ridley, leatherback, and loggerhead. The occurrence of these species in these waters is largely temperature dependent. In general, some turtles move up the coast from southern wintering areas as water temperatures warm in the spring. The trend reverses in the fall as water temperatures decrease. By December, turtles that migrated northward return to southern waters for the winter. Hard-shelled species are most commonly found south of Cape Cod, Massachusetts. Leatherbacks regularly occur as far north in U.S. waters as the Gulf of Maine in the summer and fall.

Green turtles generally inhabit inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico.

In the Atlantic, hawksbills are most common in Puerto Rico and its associated islands and in the U.S. Virgin Islands. In the continental United States, the species is primarily recorded from south Texas and south Florida and infrequently from the remaining Gulf States and north of Florida. Kemp's ridleys occur throughout waters of the Gulf of Mexico and U.S. Atlantic coast from Florida to New England. The major nesting area for Kemp's ridleys is in Tamaulipas, Mexico, with limited nesting extending to the Texas coast.

Loggerheads occur throughout the Atlantic and Gulf of Mexico, ranging from inshore shallow water habitats to deeper oceanic waters. The largest nesting assemblage of loggerheads in the world is in the southeastern United States from Florida to North Carolina.

Adult leatherbacks are capable of tolerating a wide range of water temperatures and have been sighted along the entire continental coast of the United States as far north as the Gulf of Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico. The southeast coast of Florida represents a significant nesting area for leatherbacks in the western North Atlantic.

U.S. Pacific Ocean

Leatherback sea turtles are consistently present off the U.S. west coast, usually north of Point Conception, California. They migrate to central and northern California from their natal beaches in the Western Pacific to feed on jellyfish during summer and fall. Leatherback turtles usually appear in Monterey Bay and California coastal waters during August and September and move offshore in October and November. Other observed areas of summer leatherback concentration include northern California and the waters off Washington through northern Oregon, offshore from the Columbia River plume.

Green, loggerhead, and olive ridley sea turtles are rarely observed in the U.S. west coast EEZ, but records show that all species have stranded in California and the Pacific Northwest. Two small resident populations of green turtles have been identified in the southern California Bight, associated historically with the warm water outflows from power plants in San Diego Bay and the San Gabriel River in Long Beach, California.

In the eastern Pacific, loggerheads have been reported as far north as Alaska and as far south as Chile. Occasionally there are sightings reported from the coasts of Washington and Oregon, but most records are of juveniles off the coast of California. Based upon observer records and aerial observations, loggerheads travel into the southern California Bight during El Niño events (or warm water conditions similar to an El Niño). The majority of fishery interactions with loggerheads during El Niño conditions have occurred during the summer.

Olive ridleys have been recorded stranded all along the U.S. west coast. Olive ridleys are believed to use warm water currents along the west coast for foraging. The specific distribution of olive ridleys along the U.S. west coast is unknown at this time.

Sea turtles occur throughout the Pacific Islands Region including the State of Hawaii and the U.S. territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). Green and hawksbill turtles are most common in nearshore waters while leatherbacks, loggerheads, and olive ridleys occur in offshore pelagic waters.

Process for Developing the Annual Determination (AD)

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The determination is informed by the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports. Specifically, fisheries are identified for inclusion on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

The AA uses the most recent version of the annually published Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing the AD we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, the AD may include recreational fisheries likely to interact with sea turtles based on the best available information.

NMFS consulted with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, to consider. NMFS carefully considered all recommendations and information available for developing the proposed AD. The proposed AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected takes of sea turtles; rather it is intended as a mechanism to fill critical data gaps, where observer data is not currently sufficient for turtle data collection needs. NMFS will not include a fishery

on the proposed AD if that fishery does not meet the criteria for inclusion on the AD (50 CFR 222.402(a)).

For many fisheries, NMFS may already be addressing incidental take through another mechanism (*e.g.,* rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). The fisheries not included on the 2020 AD may still be observed by NOAA fisheries observers under different authorities (*e.g.,* MMPA, MSA) than the ESA, if applicable.

The final determination will publish in the **Federal Register** and individuals permitted for each fishery identified on the AD will receive a written notification. NMFS will also notify state agencies. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines a need for more than five years to obtain sufficient scientific data, NMFS will include the fishery in another proposed AD, prior to the end of the fifth year.

On the 2015 AD, NMFS identified 14 fisheries, 11 of which were previously listed and three of which were newly listed. The 14 fisheries were required to carry observers for a period of 5 years, through December 31, 2019. The 2018 AD identified two additional fisheries and required them to carry observers through December 31, 2022. The fisheries included on the current AD are available at *https://www.fisheries.noaa.gov/national/bycatch/sea-turtle-observer-requirement-annual-determination.*

Fisheries Proposed for Inclusion on the 2020 Annual Determination

NMFS is proposing to include four fisheries in the Atlantic Ocean/Gulf of Mexico on the 2020 AD. The four fisheries, described below and listed in Table 1, are the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl, Gulf of Mexico mixed species fish trawl, Chesapeake Bay inshore gillnet, and Long Island inshore gillnet. These four fisheries were listed previously on the 2015 AD for a five-year period ending December 31, 2019. Two other fisheries (Mid-Atlantic gillnet and Gulf of Mexico menhaden purse seine), which were listed in the 2018 AD for a five-year period ending December 31, 2022, will remain on the AD.

NMFS used the 2018 MMPA LOF (83 FR 5349; February 7, 2018) as the comprehensive list of commercial fisheries to evaluate for fisheries to include on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed in the AD are taken from the most recent MMPA LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.,* Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information. Under the various authorities, NOAA's Northeast and Southeast Fisheries Observer Programs currently observe all four fisheries proposed for inclusion on the 2020 AD. The AD authority will work within the current observer programs, and allow NMFS the flexibility to further consider sea turtle data collection needs when allocating observer resources.

Trawl Fisheries

Interactions with trawl fisheries are of particular concern for sea turtles because forced submergence (*i.e.,* drowning) in trawl nets or any type of restrictive gear can lead to lack of oxygen and subsequent death by drowning. Metabolic changes that can impair a sea turtle's ability to function can occur within minutes of forced submergence (Lutcavage *et al.,* 1997).

Turtle excluder devices (TEDs) are metal grids that fit into the cod end of the trawl net, with a top or bottom escape opening covered by a flap. The TED is intended to allow sea turtles to escape the net, while retaining the target catch, reducing incidences of sea turtle forced submergence. Currently, only otter trawl fisheries capable of catching shrimp and operating south of Cape Charles, Virginia, and in the Gulf of Mexico, as well as trawl fisheries targeting summer flounder south of Cape Charles, Virginia, in the summer flounder fishery-sea turtle protection area (50 CFR 222.102) are required to use TEDs.

Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

NMFS proposes including the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery on the 2020 AD. This fishery has an estimated 4950 vessels/persons and targets shrimp using various types of trawls. Skimmer trawls are used primarily in inshore/inland shallow waters (typically less than 20 ft. (6.1 m)) to target shrimp. The skimmer trawl has a rigid ''L''-shaped or triangular metal frame with the inboard portion of the frame attached to the vessel and the outboard portion attached to a skid that runs along the seabed.

Skimmer trawl use increased in response to TED requirements for shrimp bottom otter trawls. Skimmer trawls currently have no TED requirement but are subject to tow time limits of 55 minutes from April 1 to October 31 and 75 minutes from November 1 to March 31. Skimmer trawls are used in North Carolina, Florida (Gulf Coast), Alabama, Mississippi, and Louisiana. There are documented takes of sea turtles in skimmer trawls in North Carolina and the Gulf of Mexico. All Gulf of Mexico states, except Texas, include skimmer trawls as an allowable gear. In recent years, the skimmer trawl has become a major gear in the inshore shrimp fishery in the Northern Gulf and also has some use in inshore North Carolina. Louisiana hosts the vast majority of skimmer boats, with 3,651 licenses issued to skimmer trawlers in 2015. In 2015, Mississippi had approximately 150 active licensed skimmer trawlers and North Carolina had 75 licensed skimmer vessels in 2014 (NMFS 2016).

Skimmer trawl effort overlaps with sea turtle distribution, and, as noted above, sea turtle takes by skimmer trawls have been reported. Although skimmer trawls are subject to tow times, the magnitude of sea turtle takes in this fishery are not well understood. In response to high numbers of sea turtle strandings since 2010, fishery observer effort shifted from otter trawls to the inshore skimmer trawl fishery in the northern Gulf of Mexico during 2012 through 2015. A total of 2,699.23 hours were observed during that period. A total of 41 sea turtles were observed captured; we excluded 2 sea turtles, however, as their condition conclusively indicated they were previously dead before being observed in the skimmer trawl. NMFS has had limited observer coverage on skimmer trawl vessels in subsequent years.

Continued observer coverage to understand the scope and impact of sea turtle takes in this fishery is needed to implement the prohibitions of take, inform management decisions on what actions may be necessary to minimize and prevent sea turtle takes, and further sea turtle conservation and recovery.

The Southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl fishery is classified as Category II on the MMPA LOF, and mandatory observer coverage in Federal waters began in 2007 under the MSA. The fishery is currently

observed at approximately 1–2 percent of total fishing effort. The fishery was previously included in the 2010 AD and the 2015 AD, which allowed for observer coverage to be shifted to skimmer trawls to specifically investigate bycatch of sea turtles. NMFS proposes to again include this fishery on the AD pursuant to the criteria identified at 50 CFR 222.402(a)(1), because sea turtles are known to occur in the same areas where the fishery operates and takes have been previously documented in this fishery.

Gulf of Mexico Mixed Species Fish Trawl Fishery

NMFS proposes including the Gulf of Mexico mixed species trawl fishery on the 2020 AD. This fishery has an estimated 20 vessels/persons and targets fish using various types of trawl gear, including bottom otter trawl gear targeting sheepshead. The Gulf of Mexico mixed species trawl fishery operates in state waters and is classified as Category III on the MMPA LOF. NMFS has not previously required vessels operating in this fishery to carry an observer under MMPA authority. This fishery was included in the 2015 AD but was not observed due to lack of resources. NMFS proposes to include this fishery in the 2020 AD pursuant to the criteria identified at 50 CFR 222.402(a)(1) for including a fishery in the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in similar gear types, mainly the shrimp trawl fishery, and NMFS intends to monitor this fishery.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when gear is unattended. The main risk to sea turtles from capture in gillnet gear is forced submergence. Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g.,* 7 inch (in) stretched mesh or greater) have been documented as particularly effective at capturing sea turtles. However, sea turtles are prone to and have been commonly documented entangled in smaller mesh gillnets as well.

Chesapeake Bay Inshore Gillnet Fishery

NMFS proposes including the Chesapeake Bay inshore gillnet fishery on the 2020 AD. This fishery has an estimated 248 vessels/persons and targets menhaden and croaker using gillnet gear with mesh sizes ranging from 2.75–5 in (06.9–12.7 cm), depending on the target species. The fishery operates between the Chesapeake Bay Bridge-Tunnel and the mainland and is managed by the Atlantic States Marine Fisheries Commission under the Interstate Fishery Management Plans for Atlantic menhaden and Atlantic croaker. Gillnets in Chesapeake Bay also target striped bass and spot.

This fishery is classified as Category II on the MMPA LOF and was included in the 2010 AD and the 2015 AD. To date, observer coverage in gillnet fisheries has primarily focused on federally-managed fisheries. There has been limited observer coverage in this fishery since 2010, with between 6 and 124 trips observed annually. Most recently, there were 14 trips observed in 2014, 39 in 2015, 49 in 2016, 124 in 2017, and 71 in 2018. This sample size is small, in terms of timing and areas that overlap with sea turtles, and additional information is needed to better understand sea turtle interactions with this fishery. In addition, Virginia continues to have the highest level of strandings for hard-shelled sea turtles in the Greater Atlantic Region. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on interactions, NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Long Island Inshore Gillnet Fishery

NMFS proposes including the Long Island Sound inshore gillnet fishery on the 2020 AD. This fishery includes all gillnet fisheries operating west of a line from the north fork of the eastern end of Long Island, New York (Orient Point to Plum Island to Fishers Island) to Watch Hill, Rhode Island (59 FR 43703, August 25, 1994). The estimated vessels/persons operating in the fishery is unknown. Target species include bluefish, striped bass, weakfish, and summer flounder.

This fishery is classified as Category III on the MMPA LOF and was included in the 2010 AD and the 2015 AD. There has been limited observer coverage in this fishery since 2010. To date, observer coverage in gillnet fisheries has primarily focused on federally-managed fisheries. However, the NMFS Northeast Fisheries Observer Program has observed a very limited number of trips in this fishery. There were four trips observed in 2014, three in 2015, 11 in 2016, six in 2017, and seven in 2018. This sample size is small, in terms of timing and areas that overlap with sea turtles, and additional information is needed to better understand sea turtle interactions with this fishery. There is a need to better understand the gear fished in state waters and the extent to which this gear interacts with sea turtles. Given the risk of interaction and the limited data currently available on such interactions NMFS proposes to again include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD. This is because sea turtles are known to occur in the same areas where the fishery operates, takes have been previously documented in similar gear, the fishery operates during a period of high sea turtle strandings, and NMFS intends to monitor this fishery.

Implementation of Observer Coverage in a Fishery Listed on the 2020 AD

As part of the proposed 2020 AD, NMFS has included, to the extent practicable, information on the fisheries and gear types to observe, geographic and seasonal scope of coverage, and any other relevant information. NMFS intends to monitor the fisheries and anticipates that it will have the funds to support observer activities. The final rule implementing this proposed 2020 AD will include a 30-day delay in the date of effectiveness for implementing observer coverage, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective upon publication of the final rule.

The design of any observer program for fisheries identified through the AD process, including how observers will be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions, and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. Pursuant to 50 CFR 222.404, during the program design, NMFS will follow the standards below for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

(1) The requirement to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to

inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified in 50 CFR 600.725 and 600.746. Specifically, 50 CFR 600.746(c) requires vessels subject to observer coverage to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed is prohibited from fishing (50 CFR 600.746(f)), unless NMFS determines that an alternative platform (*e.g.,* a second vessel) may be used or that the vessel is not required to take an observer under 50 CFR 222.404(b). All fishermen on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 are consistent with existing NOAA observer policies and applicable federal regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), and the Observer Health and Safety regulations (50 CFR part 600).

Additional information on observer programs in commercial fisheries is located on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/topic/fishery-observers.*

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES PROPOSED FOR INCLUSION ON THE 2020 ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
Trawl Fisheries:	
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	2020–2024
Gulf of Mexico mixed species fish trawl	2020–2024
Gillnet Fisheries:	
Chesapeake Bay inshore gillnet	2020–2024
Long Island inshore gillnet	2020–2024

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than $11 million is considered a small entity for purposes of the Regulatory Flexibility Act (50 CFR 200.2). Under this $11 million standard, all entities subject to this action are considered small entities.

NMFS has estimated that approximately 5,218 vessels participating in the four proposed fisheries listed in Table 1 would be eligible to carry an observer if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer, based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage during times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot pre-determine the specific number of vessels that it will request to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting from this requirement vessels that are too small to accommodate an observer. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and was not prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) under OMB control number 0648–0593.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS preliminarily determined that publishing this proposed AD qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual, and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document specific to that action that is required under NEPA.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example,

requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This proposed rule would have no adverse impacts on sea turtles, and information collected from observer programs may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

Lutcavage, M. E. and P.L. Lutz. 1997. Diving Physiology. In: P.L. Lutz and J. Musick (eds.) The Biology of Sea Turtles. ERC Press, Boca Raton, FL. 432 pp.

Dated: January 15, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200115–0018]

RIN 0648–BI12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; Historical Captain Permits Conversions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures as described in an abbreviated framework action to the Fishery Management Plans (FMPs) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This proposed rule would modify the Federal regulations for historical captain permits in the reef fish and CMP fisheries in the Gulf of Mexico (Gulf) Exclusive Economic Zone (EEZ), to provide an opportunity for eligible historical captain permit holders to replace their permits with standard Federal charter vessel/headboat permits. It is expected that the rule would reduce the regulatory and economic burden on historical captain permit holders. In addition, NMFS proposes a correction to the regulations regarding commercial king mackerel permit requirements from an inadvertent error in the final rule for Amendment 20A to the FMP for the CMP Resources in the Gulf of Mexico and Atlantic Region.

DATES: Written comments must be received on or before February 22, 2020.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2019–0081'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0081,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Electronic copies of the Framework Amendment may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-replacement-historical-captain-permits-standard-federal-charter-headboat.* The abbreviated framework includes a Regulatory Flexibility Act (RFA) analysis and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage reef fish resources in the Gulf EEZ under the Reef Fish FMP. The CMP fishery in the Gulf of Mexico and Atlantic regions is managed jointly by the Gulf Council and South Atlantic Fishery Management Council (Councils).

The Gulf Council prepared the Reef Fish FMP and the Councils jointly prepared the CMP FMP. NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*).

Background

During the 1980s and 1990s, the number of charter and headboat (for-hire) vessels operating in the recreational Gulf reef fish and CMP fisheries increased rapidly, creating concern among the Gulf Council, NMFS, and other members of the industry about the viability of the industry and the sustainability of the fish stocks they were harvesting. The Gulf Council was also concerned about the rapid increase in the number of reef fish and CMP for-hire permits and trips, and the increased proportion of the catch harvested by the for-hire fleet.

In response to these concerns, the Gulf Council developed Amendment 14 to the CMP FMP and Amendment 20 to the Reef Fish FMP (CMP Amendment 14/Reef Fish Amendment 20) that, when implemented by NMFS, established a 3-year moratorium on the issuance of new charter vessel/headboat permits in the reef fish and CMP fisheries in the Gulf EEZ (67 FR 43558, June 28, 2002). The purpose of the moratorium was to cap the number of for-hire permitted vessels while the Gulf Council evaluated the need for further management actions to rebuild fishery resources. A fully transferable reef fish or CMP charter vessel/headboat permit, hereafter referred to as a standard permit, was issued to eligible for-hire operators, which included those individuals who (1) owned a vessel with a valid charter vessel/headboat permit, or (2) could demonstrate that, prior to March 29, 2001, they had a charter vessel or headboat under construction, with associated expenditures of at least $5,000.

The Gulf Council recognized that some captains participating in the for-hire reef fish and CMP fisheries operated other individuals' vessels and did not own their vessels, and therefore were not eligible for a standard permit. Under CMP Amendment 14/Reef Fish Amendment 20, these captains were eligible to apply for a permit with a historical captain endorsement, referred

to hereafter as a historical captain permit. Eligibility requirements for the historical captain permit included demonstrating a captain was licensed and operated a federally permitted for-hire vessel in the Gulf reef fish or CMP fisheries before March 29, 2001, and that at least 25 percent of their earned income came from for-hire fishing in at least one of the following years: 1997, 1998, 1999, or 2000.

Unlike a standard permit, a historical captain permit is attached to the individual instead of a specific vessel and has certain restrictions. A historical captain permit requires the captain to be on the vessel when operating a for-hire trip, and a historical captain permit cannot be transferred or sold.

Persons who submitted evidence of eligibility as a historical captain within 90 days of the implementation of the CMP Amendment 14/Reef Fish Amendment 20 were issued letters of eligibility, which could be used to obtain a historical captain permit. Initially a total of 141 historical captain permits for reef fish and CMP charter/headboat vessels were issued by the NMFS Southeast Fisheries Permits Office.

In 2006, NMFS implemented Reef Fish Amendment 25/CMP Amendment 17 (71 FR 28282, May 16, 2006), which established a limited access program for permitting for-hire vessels for the reef fish and CMP fisheries in the Gulf EEZ, effectively extending the permit moratorium indefinitely. The historical captain permit continued to be a category of permit following implementation of Reef Fish Amendment 25/CMP Amendment 17, and previously issued letters of eligibility remained valid, as did the historical captain permits, providing permit procedures for retention and renewal were followed.

In January 2018, the Gulf Council began development of an action to allow historical captain permit holders to convert existing reef fish and CMP historical captain permits to standard charter vessel/headboat permits, after hearing public testimony about the economic hardships caused by the restrictions imposed on historical captain permits. Converting a historical captain permit would allow the permit holder to lease the vessel to another captain or have another captain operate the vessel. Additionally, unlike a historical captain permit, a standard permit is fully transferrable in accordance with 50 CFR 622.20(b)(1)(i), which provides the opportunity to transfer the permit to a family member or any other eligible person, and provides greater flexibility in permit ownership to the holder. For example, a fully transferable standard permit allows the family of a permitted captain who has died to retain the permit, unlike a historical captain permit, which expires upon the captain's death. In contrast to the historical captain permit, being able to transfer the standard permit to another entity provides the permit holder an opportunity to sell or trade the permit.

At their October 2018 meeting, the Gulf Council determined that only the individuals who had a valid (non-expired) or renewable historical captain permit as of October 25, 2018, would be eligible to convert that permit to a standard permit. As of that date, 32 captains held a valid (non-expired) or renewable historical captain permit; all but one have both a reef fish and a CMP historical captain permit, and the remaining captain has a CMP historical captain permit only. This framework action by the Gulf Council is limited to those 32 individuals, because the Council's intent is to provide additional flexibility to fishermen who have relied on the historical captain permit for their livelihood.

Each permit provides a maximum number of passengers allowed on board a vessel operating under the permit. While listed on the permit as the ''Permit Maximum Passenger Capacity,'' this number is commonly referred to as the ''passenger capacity.'' The Gulf Council decided that a standard for-hire permit issued as a result of this framework action would have the same passenger capacity as the historical captain permit that it would replace. For instance, 27 of the 32 for-hire vessels operated with historical captain permits as of October 25, 2018, have a passenger capacity of 6 people. Therefore, when converted to standard permits, vessels operating under these permits would each retain the same 6-person passenger capacity on for-hire trips in the EEZ.

Some of the letters of eligibility sent to historical captains in 2003 have not been redeemed and are still valid. The Gulf Council determined that previously issued eligibility letters for historical captains will be invalid as of the effective date of any final rule to implement the framework action in this proposed rule. If an individual redeems an outstanding letter of eligibility for a historical captain permit before any effective date of the final rule, they could receive a historical captain permit, but they would not be eligible for conversion of that historical captain permit into standard for-hire permit at that time.

Management Measures Contained in This Proposed Rule

This proposed rule would extend the same rights and responsibilities of standard Gulf reef fish and CMP charter vessel/headboat permits to eligible individuals who choose to convert their historical captain permits to standard permits.

If an individual who holds an eligible (non-expired) or renewable historical captain permit as of October 25, 2018, and wishes to retain a historical captain permit, the individual would renew the permit as done in previous years. This would include filling out all sections of the permit application specifically related to the historical captain permit renewal process and providing the appropriate supporting documents and fees to the NMFS Southeast Fisheries Permits Office.

If an individual with an eligible historical captain permit wishes to convert the permit to a standard reef fish or CMP charter vessel/headboat permit, the individual would submit a permit application to the NMFS Southeast Fisheries Permits Office along with their current historical captain permit (original document, not a copy) and supporting documents and fees, including documentation for the vessel to which the standard for-hire permit would be attached. Unlike a historical captain permit, which is issued to an individual, a standard permit must be issued to a vessel with a valid U.S. Coast Guard (USCG) certificate of documentation (COD) or state registration certificate (50 CFR 622.4(a)). If the permit applicant is the owner of the vessel, NMFS Southeast Fisheries Permits Office staff would verify that the vessel for which the new for-hire permit would be issued is owned by the applicant and does not have an existing Gulf reef fish or CMP charter vessel/headboat permit associated with it, as vessels are not allowed to have multiple charter vessel/headboat permits of the same type associated with them.

If the vessel to which the permit would be attached is to be leased, a fully executed lease agreement of at least 7 months, between the vessel owner and permit holder, would need to be included with the application. Note that vessel owners and lessees cannot independently hold permits for the same vessel at the same time. NMFS Southeast Fisheries Permits Office staff would then verify the vessel does not have any other Federal permit(s) associated with it in another permit holder's name.

Once the NMFS Southeast Fisheries Permits Office verifies that the

information provided with the application allows for the conversion, the historical captain permit would be converted to a standard reef fish or CMP charter vessel/headboat permit. Due to the uniqueness of the historical captain permit number, the new permit would keep the existing permit number (*e.g.,* HRCG–9999 would convert to RCG–9999).

Any application to convert from a historical captain permit to a standard permit must be submitted to NMFS within 2 years of the effective date of a final rule to implement this framework amendment. Any application submitted more than 2 years after the effective date of a final rule would not be accepted by NMFS, and the individual would instead retain their historical captain permit.

Additional Proposed Changes to Codified Text Not in the Framework Action

In June 2014, NMFS published the final rule for Amendment 20A to the CMP FMP in the **Federal Register** (79 FR 34246, June 16, 2014). Amendment 20A removed the income qualification requirements for Spanish and king mackerel in the Gulf and Atlantic and restricted the sale of these species caught under the recreational bag limit. However, a regulation regarding the transfer requirements of limited access commercial vessel permits for king mackerel (50 CFR 622.371(b)), was inadvertently removed. As a result, current regulations unnecessarily restrict the transfer of Gulf commercial king mackerel permits to another vessel owned by the same entity. NMFS has only recently become aware of this error. Therefore, this proposed rule would correct this error by adding the following sentence to regulations at 50 CFR 622.371(b): ''A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.''

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the respective FMPs, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule, if implemented, would apply to all for-hire vessels that had a reef fish or CMP historical captain permit at the time that the Gulf Council considered this action in October 2018. As of October 25, 2018, there were 32 historical captains that had either a valid (non-expired) or renewable Gulf reef fish or CMP charter vessel/headboat historical captain permit. Of these 32 vessels, all but one had both a reef fish and a CMP historical captain permit; the remaining vessel had a CMP historical captain permit only. Although the application for a charter vessel/headboat permit collects information on the primary method of vessel operation, the permit itself does not identify the permitted vessel as either a charter vessel or a headboat, and vessels may operate in both capacities. The average charter vessel operating in the Gulf is estimated to receive approximately $86,000 (2017 dollars) in gross revenue and $25,000 in net income (gross revenue minus variable and fixed costs) annually. The average headboat is estimated to receive approximately $261,000 (2017 dollars) in gross revenue and $76,000 in net income annually.

Additionally, some of the letters of eligibility sent to historical captains in 2003, have not been redeemed by individuals but are still valid. As of May 17, 2019, there were an estimated 65 historical captains that could still redeem their letters of eligibility, and thus, up to 65 additional for-hire businesses that may be affected by this proposed rule.

The SBA has established size standards for all major industry sectors in the U.S. including for-hire businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.5 million for all its affiliated operations worldwide. All of the for-hire fishing businesses that would be directly regulated by this proposed rule are believed to be small entities based on the SBA size criteria. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would not establish any new reporting or record-keeping requirements. It would, however, require historical captain permit holders to comply with the permit regulations for standard charter vessel/headboat permits if their historical captain permits are converted to standard permits. The applicable permit regulations state that the standard permit must be issued to a vessel with a valid USCG COD or state registration certificate (50 CFR 622.4(a)). For any historical captain permit holder who elects to have their historical captain permit replaced with a standard permit and who does not currently own or lease a vessel, this would require either the purchase or lease of a vessel and payment of applicable registration and inspection fees.

This proposed rule would allow 32 historical captain permit holders the opportunity to replace their historical captain permits with standard permits. Because standard permits are transferrable and salable, and historical captain permits are not, this proposed rule would have positive economic effects in terms of increased asset value and business succession planning. Transfer values for a single standard permit ranged from $0.01 to $130,000 during 2007 through 2018. It is not possible to estimate a meaningful average market value for these permits with available data; however, it is expected that the value would increase relative to the passenger capacity of the permit. Additionally, once historical captain permits are replaced with standard permits, the respective historical captains would no longer need to be present on the vessel while the permit is in use. This would provide greater operational flexibility and potentially increase profits for affected small entities.

There are also some potential economic costs to small entities from this proposed rule. Because replacement of historical captain permits with standard permits would be optional, only those permit holders who choose to participate in the conversion would be affected. Standard permits must be issued to a vessel that is either owned or leased by the permit holder. Historical captains that already own or lease a suitable vessel would be able to attach their new standard permit to that

vessel and continue operating as normal, but with the added benefits described earlier. Some historical captains, however, may not currently own or lease a vessel. In order to replace their existing permits with standard permits, these historical captains would need to purchase or lease a suitable vessel and pay all applicable inspection and registration fees. To obtain an initial USCG COD costs $133 and an USCG COD renewal costs $26 (46 CFR 67.550). If a USCG certificate of inspection is required, the annual inspection fee is $300 for vessels less than 65 feet (19.812 meters) and $600 for vessels 65 feet (19.812 meters) and greater (46 CFR 2.10–101(a)). State boat registration and inspection fees in Gulf states are estimated to range from approximately $10 up to $400, depending on the length of the vessel and state of vessel registration. As a result of uncertainty about the business strategies of historical captain permit holders, variation in permit passenger capacities, and the wide range of vessel options, it is not possible to estimate the cost that would be incurred by historical captains to purchase or lease a vessel. The average purchase price for a headboat operating in the Gulf is estimated to be $388,627 (2017 dollars); the average purchase price for a charter vessel operating in the Gulf is estimated to be $104,248. If historical captains intend to only sell their new standard permits, they could use a much cheaper vessel to hold the permit prior to the sale. Estimates of for-hire vessel lease prices are not readily available; however, this may be a more affordable option than purchasing a vessel.

In addition to the potential cost to buy or lease a vessel, there would be an opportunity cost for some historical captains should they choose to replace their historical captain permits with standard permits. This opportunity cost pertains to the potential lost earnings that would result from no longer being able to use their historical captain permit to operate a vessel owned or leased by another individual or business. This opportunity cost cannot be quantified with available data. In order to extract value from the standard permit, historical captains would need to either sell their permit or attach it to a vessel that they own or lease. This vessel must also be capable and sufficient for servicing paying customers. Again, replacement of historical captain permits is voluntary and it is expected that historical captains would only replace their historical captain permits with standard permits if the benefits of doing so outweigh the costs. Finally, this proposed rule would render any remaining letters of eligibility for historical captain permits invalid upon implementation of these regulations. Individuals that submit outstanding letters of eligibility prior to the implementation date of this rule would be issued a historical captain permit, but it would remain a historical captain permit only and would not be eligible for conversion to a standard permit. It is assumed that historical captains who have not yet submitted their letters of eligibility do not intend to operate a for-hire fishing vessel with a historical captain permit and therefore would not be affected by this proposed rule. If, for whatever reason, there are some historical captains that were waiting to submit their letters, it is assumed they would apply for a historical captain permit prior to the implementation of this rule.

An item contained in this proposed rule that is not part of the proposed framework action is the addition of the following sentence to 50 CFR 622.371(b): ''A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.'' This provision was inadvertently removed in the final rule implementing Amendment 20A to the CMP FMP (79 FR 34246, June 16, 2014). However, NMFS has continued to allow the transfer of a commercial king mackerel permit to the owner of another vessel or to a new vessel owner since Amendment 20A was implemented. Therefore, this is an administrative change only and is not expected to have any direct economic effects on any small entities. As such, this component of the proposed rule is outside the scope of the RFA.

The information provided above supports a determination that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

Because no new reporting or record-keeping requirements are introduced by this proposed rule, the Paperwork Reduction Act does not apply to this proposed rule.

List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gulf, Historical Captain, Permits, Transfer.

Dated: January 15, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.20, revise paragraph (b)(1) introductory text and add paragraph (b)(1)(v) to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) *Limited access system for charter vessel/headboat permits for Gulf reef fish.* No applications for additional charter vessel/headboat permits for Gulf reef fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b)(1)(i) of this section, and are subject to the renewal requirements in paragraph (b)(1)(ii) of this section. An eligible charter vessel/headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit without a historical captain endorsement, per procedures at paragraph (b)(1)(v) of this section.

* * * * *

(v) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel headboat permit with a historical captain endorsement valid or renewable on October 25, 2018, may be converted to a charter vessel/headboat permit for Gulf reef fish without a historical captain endorsement. A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it replaces. To convert an eligible charter vessel/headboat permit with a historical captain endorsement, the permit holder must submit an permit application to the RA by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the permit holder will retain a charter vessel/headboat permit with the

historical captain endorsement that is subject to the restrictions described in paragraph (b)(1)(i)(B) of this section.

* * * * *

■ 3. In § 622.371, revise paragraph (b) to read as follows:

§ 622.371 Limited access system for commercial vessel permits for king mackerel.

* * * * *

(b) An owner of a permitted vessel may transfer the commercial vessel permit for king mackerel issued under this limited access system to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for king mackerel to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

* * * * *

■ 4. In § 622.373, revise paragraph (a) and add paragraph (f) to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

(a) No applications for additional charter vessel/headboat permits for Gulf coastal migratory pelagic fish will be accepted. Existing permits may be renewed, are subject to the restrictions on transfer in paragraph (b) of this section, and are subject to the renewal requirements in paragraph (c) of this section. An eligible charter vessel/headboat permit with a historical captain endorsement may be converted to a charter vessel/headboat permit without a historical captain endorsement, per procedures at paragraph (f) of this section.

* * * * *

(f) *Procedure for conversion of permit with historical captain endorsement.* A charter vessel headboat permit with a historical captain endorsement valid or renewable on October 25, 2018, may be converted to a charter vessel/headboat permit for Gulf coastal migratory pelagic fish without a historical captain endorsement as described in § 622.373(b)(1). A charter vessel/headboat permit with a historical captain endorsement that is converted to a charter vessel/headboat permit without a historical captain endorsement will retain the same vessel permit maximum passenger capacity as the permit it replaces. To convert an eligible charter vessel/headboat permit with a historical captain endorsement, the permit holder must submit an permit application to the RA by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE]. If no application to convert an eligible charter vessel/headboat permit with a historical captain endorsement is submitted by [DATE 25 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the permit holder will retain a charter vessel/headboat permit with the historical captain endorsement that is subject to the restrictions described in § 622.373(b)(2).

[FR Doc. 2020–00935 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–BJ27

Pacific Island Fisheries; Sea Turtle Limits in the Hawaii Shallow-Set Pelagic Longline Fishery

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

ACTION: Notice of availability of a fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Ecosystem Plan for the Pelagic Fisheries of the Western Pacific (FEP). Amendment 10 would facilitate management of Hawaii shallow-set longline fishery interactions with sea turtles to ensure a continued supply of fresh domestic swordfish to U.S. markets, consistent with sea turtle conservation. The proposed action would also ensure that the fishery operates in compliance with the Reasonable and Prudent Measures (RPM) and associated Terms and Conditions (T&C) of a recent NMFS biological opinion (BiOp).

DATES: NMFS must receive comments on the proposed amendments by March 23, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0098, by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0098,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Council prepared Amendment 10, including an environmental assessment (EA) and regulatory impact review (RIR). Amendment 10 and supporting documents are available at *https://www.regulations.gov,* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Joshua Lee, Sustainable Fisheries, NMFS PIR, 808–725–5177.

SUPPLEMENTARY INFORMATION: The Hawaii shallow-set pelagic longline fishery targets swordfish (*Xiphias gladius*) in the U.S. Exclusive Economic Zone and on the high seas. The Council and NMFS manage the fishery under the FEP and its implementing regulations, as authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The Council proposes to amend the FEP to revise the annual fleet interaction limit (''hard cap'') for leatherback turtles from 26 to 16. If the fleet reaches the limit, NMFS would close the fishery for the remainder of the calendar year. The Council proposes to remove the hard cap for North Pacific loggerhead turtles (currently 17).

Amendment 10 would also establish trip interaction limits of two leatherback turtles and five North Pacific loggerhead turtles. If a vessel reaches either limit on a shallow-set trip, NMFS would require the vessel to stop fishing and return to port. The first time a vessel reaches the limit for either species, it would be prohibited from shallow-set fishing for five days. If a vessel reaches an interaction limit a second time for either species in a calendar year, NMFS would prohibit that vessel from shallow-set fishing for the remainder of that calendar year. In the following year, that vessel would have an annual hard cap limit of two leatherback or five loggerhead turtles.

Amendment 10 would ensure consistency with the reasonable and prudent measures and terms and conditions of the 2019 BiOp that NMFS completed for this fishery, while maintaining fishing opportunities during peak swordfish season (October through March). This action is needed to provide managers and the fishery with the necessary tools to respond to and mitigate fluctuations in loggerhead and leatherback turtle interactions, to ensure a continued supply of fresh swordfish to U.S. markets consistent with the conservation needs of these sea turtles.

NMFS must receive comments on Amendment 10 by March 23, 2020 for consideration in the decision to approve, partially approve, or disapprove the amendment. NMFS soon expects to publish and request public comment on a proposed rule that would implement the measures recommended in Amendment 10.

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

Dated: January 15, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–00879 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 15
Thursday, January 23, 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.

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders on the Federally Recognized Tribes Extension Program—FRTEP

AGENCY: National Institute of Food and Agriculture.

ACTION: Correction.

SUMMARY: On December 23, 2019, the National Institute of Food and Agriculture (NIFA) published a notice to request written stakeholder input on the Federally Recognized Tribes Extension Program (FRTEP). The document contained an incorrect email address for the agency point of contact. This document provides a correct email address. Comments on the Federally Recognized Tribes Extension Program must still be received by the agency on or before February 15, 2020 to be assured of consideration.

DATES: Written comments on the Notice must be received by February 15, 2020.

ADDRESSES: You may submit comments, identified by NIFA–2020–0001, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Include NIFA–2020–0001 in the subject line of the message.

Instructions: All submissions received must include the Title, ''Federally Recognized Tribes Extension Program'' and NIFA–2020–0001. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Erin Riley 816–926–2131 (phone), *erin.riley@usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

On December 23, 2019 (84 FR 70493), the National Institute of Food and Agriculture published a notice to solicit stakeholder input. Under the For Further Information Contact section, an incorrect email address was inadvertently provided. The email address is *erin.riley@usda.gov.*

Done at Washington, DC, this 13th day of January 2020.

Steve Censky,

Deputy Secretary.

[FR Doc. 2020–01021 Filed 1–22–20; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 3:00 p.m. (CST) on Monday, February 3, 2020 via teleconference. The purpose of the meeting is project planning.

DATES: Monday, February 3, 2020, at 3:00 p.m. (CST)

ADDRESSES: To be held via teleconference: 1–800–367–2403, Conference ID: 3660986.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov,* 202–376–7533.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–800–367–2403; Conference ID: 3660986. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–800–367–2403; Conference ID: 3660986. Members of the public are invited to submit written comments; the comments must be received in the regional office by Tuesday, March 3, 2020. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012, faxed to (213) 894–3435, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Western Regional Office at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm5AAA* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Western Regional Office at the above phone number, email or mailing address.

Agenda: Monday, February 3, 2020 at 3:00 p.m. (CST)

- Roll-call
- Project Planning
- Other Business
- Open Comment
- Adjourn

Dated: January 16, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–01053 Filed 1–22–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Vermont Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Vermont Advisory Committee to the Commission will convene by conference call at 1:00 p.m. (EST) on Thursday, January 30, 2020. The purpose of the meeting is to discuss next steps regarding the release of its report on school discipline.

DATES: Thursday, January 30, 2020, at 1:00 p.m. EST

ADDRESSES: Public call-in information: Conference call-in number: 1–800–353–6461 and conference call 7996118.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–353–6461 and conference call 7996118. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–800–353–6461 and conference call 7996118.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmXAAQ,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda: Thursday, January 30, 2020 at 1:00 p.m. (EST)

- Rollcall
- Discussion on Release of Report on School Discipline and Next Steps
- Other Business
- Open Comment
- Adjourn

Dated: January 16, 2020

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–01054 Filed 1–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 12, 2020. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 19–012. Applicant: University of Minnesota, 116 Union Street SE, Minneapolis, MN 55455. Instrument: Photomultiplier tube. Manufacturer: Hainan Zhanchuange Photonics Technology, China. Intended Use: The instrument will be used to study the properties of neutrino oscillation. Neutrinos are very hard to detect and require several thousand tonnes of target material to have any chance of seeing the neutrino interactions. The CHIPS detector is a pilot project which aims to reduce the cost of neutrino experimentation by around a factor of fifty. This is done by reducing the structural engineering and installing the detector in a lake, where students can exploit the buoyancy of the used materials. Photomultipliers are highly sensitive light detectors able to detect light at the single photon level; these will be installed in a large 25 meter diameter cylindrical detector filled with water. This experiment is built employing several physics graduate students and provides work experience for many physics and engineering undergraduates. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 28, 2019.

Docket Number: 19–013. Applicant: University of Minnesota, 116 Union Street SE, Minneapolis, MN 55455. Instrument: Photomultiplier tube. Manufacturer: Hainan Zhanchuange Photonics Technology, China. Intended Use: The instrument will be used to study the properties of neutrino oscillation. Neutrinos are very hard to detect and require several thousand tonnes of target material to have any chance of seeing the neutrino interactions. The CHIPS detector is a pilot project for which aims to reduce the cost of neutrino experimentation by around a factor of fifty. This is done by reducing the structural engineering and installing the detector in a lake, where students can exploit the buoyancy of the used materials. Photomultipliers are highly sensitive light detectors able to detect light at the single photon level; these will be installed in a large 25 meter diameter cylindrical detector filled with water. This experiment is built employing several physics graduate students and provides work experience for many physics and engineering undergraduates. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 28, 2019.

Dated: January 15, 2020.

Gregory W. Campbell,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2020–01081 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA013]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Tuesday, February 11, 2020, from 2 p.m. to 5:30 p.m.; Wednesday, February 12, 2020, from 9 a.m. to 5 p.m.; and, Thursday, February 13, 2020, from 9 a.m. to 1 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at The Sanderling Resort, 1461 Duck Road, Duck, NC 27949; telephone: (855) 412–7866.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, February 11, 2020

2020 Implementation Plan

Review and approve 2020 Implementation Plan and discuss 2020 Council Meeting Topics.

Review and Approve New SSC Membership

Kitty Hawk Wind Project

Wednesday, February 12, 2020

NEFSC Survey and Data Collection Programs

Discussion on fish and redesigned clam surveys, ecosystem data programs, gear testing and gear innovation work (including an overview of the role of Northeast Trawl Advisory Panel), social and economic data collections, and cooperative research.

GARFO/NEFSC Joint Strategic Plan

Presentation on final NEFSC/GARFO Regional Strategic Plan for 2020–2023 and Annual Implementation Plan.

Update on Illex Working Group

Review and Approve Public Hearing Document for Mackerel, Squid, and Butterfish Goals and Objectives and Illex Permit Amendment

Review Fishery Management Action Team input, Review Advisory Panel input, review Committee recommendations, and select any preferred alternatives.

Thursday, February 13, 2020

Business Session

Committee Reports: SSC; Executive Director's Report; Organization Reports; and, Liaison Reports.

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01086 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA017]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Advisory Panel will hold a meeting.

DATES: The meeting will be held on Thursday, February 6, 2020, beginning at 1:30 p.m. and conclude by 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/msb-ap-2020/.* Telephone instructions are provided upon connecting, or the public can call direct: 800–832–0736, Rm: *7833942#.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to gather input on the public hearing document for an Amendment considering changes to the MSB fishery management plan's goals/objectives and changes to the *Illex* fishery permitting system (and associated management measures). Staff will also be requesting input regarding upcoming MSB management track stock assessments. An agenda and background documents will be posted at the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

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

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01089 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA018]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Committee will hold a meeting.

DATES: The meeting will be held on Friday, February 7, 2020, beginning at 10 a.m. and conclude by 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/msb-com-2020/*. Telephone instructions are provided upon connecting, or the public can call direct: 800–832–0736, Rm: *7833942#.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review the public hearing document for an Amendment considering changes to the MSB fishery management plan's goals/objectives and changes to the *Illex* fishery permitting system (and associated management measures). The Committee may make recommendations regarding preferred alternatives. An agenda and background documents will be posted at the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

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

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01090 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA016]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Outreach and Education Advisory Panel (OEAP) will hold a 2-day meeting in February to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held on February 25, 2020, from 10 a.m. to 4 p.m. and on February 26, 2020, from 10 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Doubletree by Hilton, 105 De Diego Avenue, San Juan, Puerto Rico 00914.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

February 25, 2020, 10 a.m.–4 p.m.

—Call to Order
—Adoption of Agenda
—OEAP Chairperson's Report
—Status of:
- ○ OEAP members meeting attendance
- ○ CFMC Report 168th Regular Meeting
- ○ USVI activities
- ○ Island-Based Fisheries Management Plans (IBFMPs)
- ○ Fishery Ecosystem Plan (FEP)
- • EBFM–TAP
- • Outreach & Education initiatives for fishers and consumers
  - ○ Responsible Seafood Consumption Campaign
  - ▪ Chefs videos and activities for consumers
  - ▪ Fact Sheets and posters on underutilized species
  - ○ Fishers workshops on the Marine Fisheries Ecosystem of Puerto Rico and the U.S. Virgin Islands

February 26, 2020, 10 a.m.–4 p.m.

- ○ 2021 Calendar
- ○ CFMC Facebook and YouTube communications with Stakeholders
- ○ PEPCO

—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on February 25, 2020 at 10 a.m. and will end on February 26, 2020 at 4 p.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated. In addition, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01088 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA014]

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 68 discard mortality pre-data-workshop webinar for Gulf of Mexico and Atlantic scamp.

SUMMARY: The SEDAR 68 assessment of Gulf of Mexico and Atlantic scamp will consist of a Data workshop, a series of assessment webinars, and a Review

workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 68 discard mortality pre-data workshop webinar will be held on February 10, 2020, from 11 a.m. to 1 p.m., Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the pre-data workshop webinar is as follows:

Participants will discuss what data may be available to inform discussions of discard mortality for use in the assessment of Gulf of Mexico and Atlantic scamp.

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 this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice 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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01087 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA012]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Southern Resident Killer Whale Workgroup (Workgroup) will host a webinar, which is open to the public.

DATES: The webinar meeting will be held on Thursday, February 6, 2020 from 1 p.m. until 4 p.m., Pacific Standard Time. The webinar time is an estimate; the meeting will adjourn when business for the day is completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the webinar by visiting this link *https://www.gotomeeting.com/webinar* (click ''Join a Webinar'' in top right corner of page), (2) enter the Webinar ID: 436–917–795, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–631–992–3221 (not a toll-free number), (2) enter the attendee phone audio access code 432–465–880, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 10, 8, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the webinar will be to discuss data needs, analysis, document development, work plans, and progress made on assigned tasks, including the risk analysis. The Workgroup may also discuss and prepare for future Workgroup meetings and future meetings with the Pacific Council and its advisory bodies.

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.

Dated: January 17, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–01085 Filed 1–22–20; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; System of Records

AGENCY: Corporation for National and Community Service.

ACTION: Notice of a new system of records; and rescindment of four system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Corporation for National and Community Service (CNCS), Department of the Chief of Program Operations proposes to add a new system of records entitled CNCS–04–CPO–MMF–Member Management Files (MMF). CNCS will use the system of records to select, place, manage, oversee, and support individuals who apply to become an AmeriCorps Service Member (Applicants) and those who are or have been an active AmeriCorps Service Member (Members). It will replace four existing system of records that will be rescinded by this notice.

DATES: You may submit comments until February 24, 2020. This System of Records Notice (SORN) will be effective February 24, 2020 unless CNCS receives any timely comments which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by system name and number, to CNCS via any of the following methods:

1. Electronically through *regulations.gov*. Once you access *regulations.gov*, locate the web page for this SORN by searching for *CNCS–04–CPO–MMF–Member Management Files (MMF)*. If you upload any files, please make sure they include your first name, last name, and the name of the proposed SORN.

2. By email at *privacy@cns.gov*.

3. *By mail:* Corporation for National and Community Service, Attn: Chief Privacy Officer, OIT, 250 E Street SW, Washington, DC 20525.

4. By hand delivery or courier to CNCS at the address for mail between 9:00 a.m. and 4:00 p.m. Eastern Standard Time, Monday through Friday, except for Federal holidays.

Please note that all submissions received may be posted without change to *regulations.gov,* including any personal information.

FOR FURTHER INFORMATION CONTACT: If you have general questions about the system of record, you may email them to *privacy@cns.gov* or mail them to the address in the **ADDRESSES** section above. Please include the system of record's name and number.

SUPPLEMENTARY INFORMATION: Additional information about AmeriCorps is available at *https://nationalservice.gov/programs/americorps*.

There are four CNCS SORNS that will be rescinded because their records will be incorporated into CNCS–04–CPO–MMF:

(1) Domestic Full-time Member Census Master File—Corporation–3;

(2) AmeriCorps Full-time Member Personnel Files—Corporation–4;

(3) AmeriCorps Member Individual Accounts—Corporation–8; and

(4) AmeriCorps*VISTA Volunteer Management System Files—Corporation–18.

Replacing the four SORNS with CNCS–04–CPO–MMF will result in one CNCS SORN that:

(1) Conforms to the template requirements prescribed in Office of Management and Budget Circular Number A–108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act;

(2) States that the records in the system are Unclassified;

(3) Includes updated addresses that reflect the system's new location;

(4) Permits the collection of records about all Members, Applicants, and everyone who provides a reference for an Applicant (References);

(5) Permits the collection of a broader range of records about the Members, Applicants, and References from a broader range of sources and use them for a broader range of purposes;

(6) Has routine uses that are specific to the system and meet current requirements. This includes two new routine uses to comply with Office of Management and Budget Memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information;

(7) Allows the records to be retrieved using additional personal identifiers;

(8) Discusses the current safeguards used to protect the records; and

(9) Has new record access, contesting record, and notification sections that invite individuals to follow a simpler and more defined process;

The four SORNs that will be rescinded, both individually and collectively, do not contain the information that A–108 requires or permit all the activities which are necessary to effectively operate AmeriCorps.

CNCS determined that this combined notice is the most efficient, logical, taxpayer-friendly, and user-friendly method of complying with the publication requirements of the Privacy Act. The subject records reflect a common purpose, common functions, and common user community. This notice of a new SORN; and rescindment of four SORNs, as required by 5 U.S.C. 552a, also fully complies with all Office of Management and Budget policies.

SYSTEM NAME AND NUMBER:

CNCS–04–CPO–MMF–Member Management Files (MMF).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Chief of Program Operations Immediate Office, Corporation for National and Community Service, 250 E Street SW, Suite 300, Washington, DC 20525.

SYSTEM MANAGER(S):

Chief of Program Operations, Chief of Program Operations Immediate Office, Corporation for National and Community Service, 250 E Street SW, Suite 300, Washington, DC 20525.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. Chapter 129—National and Community Service, 42 U.S.C. Chapter 66—Domestic Volunteer Services, and Executive Order 9397, as amended.

PURPOSE(S) OF THE SYSTEM:

The Corporation for National and Community Service (CNCS) uses the system to select, place, manage, oversee, and support individuals who apply to become an AmeriCorps Service Member (Applicants) and those who are or have been an active AmeriCorps Service Member (Members). For example:

- Determining eligibility of Applicants and selection of Members;
- Assessing Member performance and responding to Member needs (*e.g.,* requests for vacations and accommodations);
- Approving and managing service-related travel, trainings, and living arrangements;

• Calculating and processing living allowances, Segal AmeriCorps Education Awards (Education Awards), reimbursements, and other payments;

• Determining eligibility for health benefits, loan forbearance, and other benefits; and

• Tracking alumni contact information and their interest in alumni-related services. CNCS also uses the system to research and evaluate AmeriCorps' effectiveness and how to enhance the program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records about individuals who apply to become an AmeriCorps Service Member, individuals who are or have been an active AmeriCorps Service Member, and individuals from the public asked to provide a reference for those individuals (References).

CATEGORIES OF RECORDS IN THE SYSTEM:

This is the primary system that CNCS uses to maintain records about Applicants, Members, and their References. It may contain personal identifiers about each Applicant and Member including their name, email addresses, physical addresses, phone numbers, Social Security Number, demographic information (including race, ethnicity, and any disabilities), birth date and location, username and password, National Service Participation Identification number (NSPID), marital status, fingerprints, citizenship status, and government-provided identification documents.

It may contain information about each Applicant and Member's:

• Application to become a Member (*e.g.,* reason for applying, educational history, employment history, military history, prior community service activities, criminal history, medical history, skills, certifications, voter registration status);

• Relatives who served in AmeriCorps and the military;

• AmeriCorps service history and experience (*e.g.* descriptions of activities, performance reviews, disciplinary concerns, accidents and other health concerns related to service, special accommodations, living arrangements, leave requests, service-related travel and trainings);

• Benefits (*e.g.,* health benefits, childcare benefits, Education Awards, stipends, loan forbearance);

• Oath of office, plus other certifications and consents;

• Living allowances, reimbursements, and banking information;

• Emergency contacts and beneficiaries;

• Automobile and driving history (including insurance coverage and any accidents); and

• Post-service plans and interest in alumni activities.

It may also contain communications with and about each Applicant and Member.

The system may also contain each References' name, email, title, employer, address, phone number, relationship to the Applicant or Member, and assessment of the Applicant or Member.

RECORD SOURCE CATEGORIES:

The sources of records in the system may include, but are not limited to, Applicants, Members, References (including those selected by an Applicant or Member, parole officers, prior workplace supervisors), institutions that may receive an Education Award, organizations that request and receive Members (Project Sponsors), CNCS employees and contractors, other CNCS systems, the Social Security Administration (SSA), Department of Justice (DOJ) criminal history databases, Congresspersons and their staff, and members of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained in the system may be disclosed to authorized entities, as is determined to be relevant and necessary, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the SSA to confirm an Applicant or Member's citizenship status.

2. To the DOJ to obtain an Applicant or Member's criminal history information.

3. To Project Sponsors to recruit, select, place, manage, oversee, and support Members.

4. To a Member's emergency contacts and beneficiaries if that Member experiences an emergency or death.

5. To the Department of the Treasury to pay living allowances, reimbursements, and Education Awards.

6. If a Member asks to send all or part of their Education Award to an institution, CNCS may disclose information from the system to confirm and coordinate the Member's request.

7. All records about FEMA Corps Members may be shared with the Federal Emergency Management Agency to operate FEMA Corps and manage those Members.

8. To other Members for alumni-related activities when the Member gives permission.

9. To the Office of the President, a Member of Congress, or their personnel in response to a request made on behalf of, and at the request of, the individual who is the subject of the record. These advocates will receive the same records that individuals would have received if they filed their own request.

10. To any component of the Department of Justice for the purpose of representing CNCS or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

11. In an appropriate proceeding before a court, judicial, administrative, or adjudicative body, or official, when CNCS or another agency representing CNCS determines the records are relevant and necessary to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

12. To a Federal or State agency, judicial, administrative, or adjudicative body, another party, or their representative to a legal matter, or witness when (a) the Federal Government is a party or potential party to a judicial, administrative, or adjudicative proceeding and (b) the record is both necessary and relevant or potentially relevant to that proceeding.

13. To prospective claimants and their attorneys to negotiate a settlement of an actual or prospective claim against CNCS or its current or former employees, in advance of the initiation of a formal legal proceeding.

14. To an arbiter, mediator, or another individual authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of, or party to, the record.

15. To any agency, entity, or individual when necessary to acquire information relevant to an investigation.

16. To an appropriate Federal, State, local, tribal, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of civil or criminal law or regulatory violations.

17. To a former CNCS employee for the purpose of responding to an official inquiry by a Federal, State, local, territorial, or tribal entity or professional licensing authority, for the purpose of facilitating communications with a

former employee that may be necessary for personnel-related or other official purposes where the CNCS requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

18. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals.

19. To the Merit Systems Protection Board and the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems; review of Office of Personnel Management (OPM) or component rules and regulations; investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a CNCS investigation.

20. To OPM for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

21. To appropriate agencies, entities, and persons when:

a. CNCS suspects or has confirmed that there has been a breach of the system of records;

b. CNCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, CNCS (including its information systems, programs, and operations), the Federal Government, or national security; and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with CNCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

22. To another Federal agency or Federal entity, when CNCS determines that information from the system of records is reasonably necessary to assist the recipient agency or entity in:

a. Responding to a suspected or confirmed breach or

b. Preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

23. To the National Archives and Records Administration (NARA) as needed to assist CNCS with records management, conduct inspections of CNCS's records management practices, and carry out other activities required by 44 U.S.C. 2904 and 2906.

24. To NARA's Office of Government Information Services so that it may review agency compliance with the Freedom of Information Act of 1967, as amended, (FOIA) provide mediation services to resolve FOIA disputes, and identify policies and procedures for improving FOIA compliance, and to the extent necessary to fulfill its responsibilities as required by 5 U.S.C. 552(h)(2)(A–B) and (3).

25. To respond to a FOIA request per the processes established in 45 CFR part 2507 or a Privacy Act request per the requirements in 45 CFR part 2508.

26. To a Federal agency in connection with hiring or retaining an employee, vetting an Applicant, Member, or employee in response to the issuance of a security clearance, conducting a background check for suitability or security investigation of an individual, classifying jobs, the letting of a contract, or the issuance of a license, contract, grant, or other benefit by the requesting agency, and to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

27. To agency contractors, grantees, Project Sponsors, interns, and other authorized individuals engaged to assist the agency in the performance of a project, contract, service, grant, cooperative agreement, or other activity when it requires access to the records to accomplish an agency function, task, or assignment. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to CNCS employees.

28. To the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

29. To an agency or organization to audit or oversee CNCS's or a vendor's operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

30. To any official or designee charged with the responsibility to conduct qualitative assessments at a designated statistical agency and other well established and trusted public or private research organizations, academic institutions, or agencies for an evaluation, study, research, or other analytical or statistical purpose.

31. To a contractor, grantee, or other recipient of Federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record permits the recipient to effect corrective action in the Federal Government's best interests.

32. To a contractor, grantee, or other recipient of Federal funds indebted to the Federal Government through its receipt of Federal funds if release of the record would allow the debtor to collect from a third party.

33. To consumer reporting agencies (as defined in the Fair Credit Reporting Act, 14 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)), the U.S. Department of the Treasury, other Federal agencies maintaining debt servicing centers, and private collection contractors to collect a debt owed to the Federal Government as provided in regulations promulgated by CNCS.

34. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of CNCS, or when disclosure is necessary to demonstrate the accountability of CNCS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are stored in locked rooms, file cabinets, and desks. Electronic records and backups are stored on secure servers and encrypted media to include computers and network drives.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the system may be retrieved by any of the personal identifiers listed or described in **CATEGORIES OF RECORDS IN THE SYSTEM**.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records in the system will be retained until their retention and disposal schedule is approved by NARA, then retained and disposed according to the applicable schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked rooms, file cabinets, and desks when not in use. Electronic records are maintained in accordance with National Institute of Standards and Technology Special Publication 800–53 Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations or the updated equivalent. All records are encrypted at rest and in transit, and servers are protected by locks, guards, personnel screening, and visitor registers. Electronic and physical access to both electronic and paper records is restricted to authorized personnel who require the information to complete their assigned tasks and have been trained how to properly handle and safeguard the records.

RECORD ACCESS PROCEDURES:

In accordance with 45 CFR part 2508—Implementation of the Privacy Act, individuals wishing to access their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer by sending (1) an email to *FOIA@cns.gov* or (2) a letter to the System Manager. Individuals may also go in-person to the address in the System Location section of this notice and ask to speak to the FOIA Officer/Privacy Act Officer within the Office of General Counsel. Individuals who make a request must include enough identifying information (*i.e.,* full name, current address, date, and signature) to locate their records, indicate that they want to access their records, and be prepared to confirm their identity as required by 45 CFR part 2508.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their own records as stored within the system of records may contact the FOIA Officer/Privacy Act Officer in writing via the contact information in the **RECORD ACCESS PROCEDURES** section. Individuals who make a request must include enough identifying information to locate their records, an explanation of why they think their records are incomplete or inaccurate, and be prepared to confirm their identity as required by 45 CFR part 2508.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves should contact the FOIA Officer/Privacy Act Officer in writing via the contact information in the **RECORD ACCESS PROCEDURES** section. Individuals who make a request must include enough identifying information to locate their records, indicate that they want to be notified whether their records are included in the system, and be prepared to confirm their identity as required by 45 CFR part 2508.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

NOTICE OF RESCINDMENT

These four systems of records notices will be rescinded on February 24, 2020, and replaced by CNCS–04–CPO–MMF–Member Management Files (MMF), unless CNCS receives any timely comments which would result in a contrary determination.

SYSTEM NAME AND NUMBER:

Domestic Full-time Member Census Master File—Corporation–3.

HISTORY:

64 FR 10879, 10882, March 5, 1999; 65 FR 46890, 46894, August 1, 2000; 67 FR 4395, 4399, January 30, 2002.

SYSTEM NAME AND NUMBER:

AmeriCorps Full-time Member Personnel Files—Corporation–4.

HISTORY:

64 FR 10879, 10883, March 5, 1999; 65 FR 46890, 46894, August 1, 2000; 67 FR 4395, 4400, January 30, 2002.

SYSTEM NAME AND NUMBER:

AmeriCorps Member Individual Accounts—Corporation–8.

HISTORY:

64 FR 10879, 10886, March 5, 1999; 65 FR 46890, 46897, August 1, 2000; 67 FR 4395, 4403, January 30, 2002.

SYSTEM NAME AND NUMBER:

AmeriCorps*VISTA Volunteer Management System Files—Corporation–18.

HISTORY:

64 FR 10879, 10893, March 5, 1999; 65 FR 46890, 46905, August 1, 2000; 67 FR 4395, 4410, January 30, 2002.

Dated: January 16, 2020.

Ndiogou Cisse,

Senior Agency Official for Privacy and Chief Information Officer.

[FR Doc. 2020–01080 Filed 1–22–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Grants to Charter Management Organizations for Replication and Expansion of High-Quality Charter Schools Program

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 24, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0012. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Byrd, 202–453–7001.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Grants to Charter Management Organizations for Replication and Expansion of High-Quality Charter Schools Program.

OMB Control Number: 1855–0032.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 2,000.

Abstract: The Charter Management Organizations (CMO) program provides grants to charter management organizations to enable them to replicate or expand one or more high-quality charter schools, as defined in the Notice Inviting Applications. Grant funds may be used to expand the enrollment of one or more existing high-quality charter schools, or to replicate one or more new charter schools that are based on an existing, high-quality charter school model.

The CMO grant program is intended to support high-quality charter schools that are operated by high-performing CMOs seeking to broaden and increase their impact on student achievement. Since FY 2010, the Department has awarded new CMO grants each year (except in FY 2013), which has resulted in a portfolio of high-quality CMOs using Federal funds to replicate and expand their successful charter school models to serve greater numbers of students, particularly educationally disadvantaged students.

Dated: January 17, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01093 Filed 1–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0016]

Agency Information Collection Activities; Comment Request; Loan Rehabilitation: Reasonable and Affordable Payments

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 23, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0016. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Loan Rehabilitation: Reasonable and Affordable Payments.

OMB Control Number: 1845–0120.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 139,000.

Total Estimated Number of Annual Burden Hours: 139,000.

Abstract: Borrowers who have defaulted on their Direct Loan or FFEL Program loans may remove those loans from default through a process called rehabilitation. Loan rehabilitation requires the borrower to make 9 payments within 10 months. The payment amount is set according to one of two formulas. The second of the two formulas uses the information that is collected in this form. The form makes it easier for borrowers to complete through simplified language, and easier for loan holders through a uniform, common format.

Dated: January 17, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–01092 Filed 1–22–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During November 2019

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

	FE Docket Nos.
SPOTX ENERGY, LLC	19–104–LNG
SPOTX ENERGY, LLC	19–105–LNG
SPOTLIGHT ENERGY, LLC	19–121–NG
EQT ENERGY, LLC	19–122–NG
SOUTHERN CALIFORNIA GAS COMPANY.	19–126–NG
VALLEY CROSSING PIPELINE, LLC.	19–137–NG
SARANAC POWER PARTNERS L.P.	19–123–NG
MERCURIA COMMODITIES CANADA CORPORATION.	19–127–NG
VERMONT GAS SYSTEMS, INC.	19–128–NG
SPRAGUE OPERATING RESOURCES, LLC.	19–132–NG; 18–184–NG
CNOOC MARKETING U.S.A. INC.	19–07–NG
ROCHESTER GAS AND ELECTRIC CORPORATION.	19–130–NG
AUX SABLE CANADA LP	19–129–NG
CONOCOPHILLIPS CANADA MARKETING & TRADING ULC.	19–136–NG

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2019, it issued orders granting authority to import and export natural gas, to export liquefied natural gas (LNG), and to vacate prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on January 16, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

APPENDIX

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4461	11/08/19	19–104–LNG	SpotX Energy, LLC	Order 4461 granting long-term authority to export LNG to Free Trade Agreement Nations, and long-term authority for Small-scale exports of LNG.
4462	11/08/19	19–105–LNG	SpotX Energy, LLC	Order 4462 granting blanket authority to export LNG to Free Trade Agreement Nations, and blanket authority for Small-scale exports of LNG.
4456	11/12/19	19–121–NG	Spotlight Energy, LLC	Order 4456 granting blanket authority to import/export natural gas from/to Canada.
4457	11/12/19	19–122–NG	EQT Energy, LLC	Order 4457 granting blanket authority to import/export natural gas from/to Canada.
4458	11/12/19	19–126–NG	Southern California Gas Company.	Order 4458 granting blanket authority to import/export natural gas from/to Canada.
4459	11/12/19	19–137–NG	Valley Crossing Pipeline, LLC.	Order 4459 granting blanket authority to import/export natural gas from/to Mexico.
4463	11/12/19	19–123–NG	Saranac Power Partners L.P	Order 4463 granting blanket authority to import natural gas from Canada.
4464	11/12/19	19–127–NG	Mercuria Commodities Canada Corporation.	Order 4464 granting blanket authority to import/export natural gas from/to Canada.
4465	11/12/19	19–128–NG	Vermont Gas Systems, Inc	Order 4465 granting blanket authority to import natural gas from Canada.
4466; 4324–A	11/12/19	19–132–NG; 18–184–NG.	Sprague Operating Resources, LLC.	Order 4466 granting blanket authority to import natural gas from Canada, and vacating prior authorization (Order 4324–A).
4343–A	11/12/19	19–07–NG	CNOOC Marketing U.S.A. Inc.	Order 4343–A vacating blanket authority to import/export natural gas from/to Canada/Mexico.
4468	11/20/19	19–130–NG	Rochester Gas and Electric Corporation.	Order 4468 granting blanket authority to import/export natural gas from/to Canada.
4467	11/21/19	19–129–NG	Aux Sable Canada LP	Order 4467 granting blanket authority to import natural gas from Canada.
4469	11/21/19	19–136–NG	ConocoPhillips Canada Marketing & Trading ULC.	Order 4469 granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2020–01070 Filed 1–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG]

Change in Control; Venture Global Calcasieu Pass, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Notification Regarding Equity Ownership Change in Accordance with Procedures for Change in Control (Notice) filed September 6, 2019, by Venture Global Calcasieu Pass, LLC (Calcasieu Pass) in the above-referenced dockets. The Notice describes a change in control of

Stonepeak Partners LP (Stonepeak), as well as an internal reorganization implemented in connection with the debt and equity financing of the Calcasieu Pass liquefied natural gas (LNG) export project (Project). The Notice was filed under section 3 of the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, February 7, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Amy Sweeney or Benjamin Nussdorf, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–2627 or (202) 586–7893; *amy.sweeney@hq.doe.gov* or *benjamin.nussdorf@hq.doe.gov;* Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6D–033, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–9793 or (202) 586–6978; *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

As noted in the **SUMMARY** section, Calcasieu Pass filed a Notice in the above-referenced dockets.[1] In the Notice, Calcasieu Pass states Calcasieu Pass now is a wholly-owned subsidiary of Calcasieu Pass Pledgor, LLC, which is in turn a wholly-owned subsidiary of Calcasieu Pass Holdings, LLC. Stonepeak has made equity investments totaling $1.3 billion, in Calcasieu Pass Holdings, LLC and Calcasieu Pass Funding, LLC, effective August 19, 2019.

Calcasieu Pass Holdings, LLC has two members: One member, Calcasieu Pass Funding, LLC, owns all the common units of the company. The other member, Stonepeak Bayou Holdings LP, a Delaware limited partnership affiliated with Stonepeak, owns all the preferred units of the company. The preferred units will convert into common units upon the commercial operation date of the Project and will constitute a minority of the total common units of the company at that time (but more than ten percent).

Calcasieu Pass Holdings, LLC is managed and directed by a board of three managers: Two designated by Calcasieu Pass Funding, LLC and one designated by Stonepeak Bayou Holdings, LP. Under certain extraordinary circumstances such as events of default and material breaches or termination of key Project contracts, Stonepeak Bayou Holdings LP would obtain the right to appoint a majority of the board of managers of Calcasieu Pass Holdings, LLC for a limited period of time lasting until thirty days after such circumstances are no longer continuing, at which time Calcasieu Pass Funding, LLC will once again have the right to appoint a majority of the board of managers. In addition, the manager designated by Stonepeak Bayou Holdings LP generally has the right to direct Calcasieu Pass Holdings, LLC and its subsidiaries with respect to certain uncured material breaches or defaults by Venture Global LNG, the ultimate parent company of Calcasieu Pass, or its affiliates under contracts to which Venture Global LNG and its affiliates are party that have an adverse impact on the Project.

Calcasieu Pass Funding, LLC, in turn, also has two members. All of its common units are owned by Venture Global Calcasieu Pass Holding, LLC, which is a direct, wholly-owned subsidiary of Venture Global LNG. All of the company's preferred units, which are redeemable over time, are owned by Stonepeak Bayou Holdings II LP, another Delaware limited partnership affiliated with Stonepeak. All of the company's business and affairs, however, are generally managed by the holder of its common units.

Additional details can be found in Calcasieu Pass' Notice, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2019/09/f66/Calcasieu_Pass_CIC_Notice_9619.pdf* (Sept. 6, 2019).

DOE/FE Evaluation

DOE/FE will review Calcasieu Pass' Notice in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Revised Procedures).[2] Consistent with the CIC Revised Procedures, this notice addresses only the authorizations granted to Calcasieu Pass to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries in DOE/FE Order No. 4346 (FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG, respectively). If no interested person protests the change in control and DOE takes no action on its own motion, the change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** in order to move to intervene, protest, and answer Calcasieu Pass' Notice. Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in Calcasieu Pass' Notice, and only with respect to Calcasieu Pass' non-FTA authorization in DOE/FE Order No. 4346.[3] All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov,* with the individual FE Docket Number(s) in the title line, or Venture Global Calcasieu Pass Change in Control in the title line to include all applicable dockets in this notice; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket

[1] Venture Global Calcasieu Pass, LLC, FE Docket Nos. 13–69–LNG, 14–88–LNG, and 15–25–LNG, Notice of Change in Control (Sept. 6, 2019) [hereinafter Calcasieu Pass Notice].

[2] 79 FR 65541 (Nov. 5, 2014).

[3] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

Number(s) in the title line, or Venture Global Calcasieu Pass Change in Control in the title line to include all applicable dockets in this notice. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

Calcasieu Pass' Notice and any filed protests, motions to intervene, notices of intervention, and comments are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Notice and any filed protests, motions to intervene, notices of intervention, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on January 16, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–01069 Filed 1–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–275–C]

Application To Export Electric Energy; NorthPoint Energy Solutions Inc.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: NorthPoint Energy Solutions Inc. (Applicant or NorthPoint) has applied to renew its authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 24, 2020.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 21, 2009, DOE issued Order EA–275–B, which authorized NorthPoint to transmit electric energy from the United States to Canada as a power marketer for a ten-year term using existing international transmission facilities appropriate for open access. The authorization expires on April 7, 2020. On December 20, 2019, NorthPoint filed an application (Application or App.) with DOE for renewal of the export authorization contained in Order No. EA–275–B for an additional ten-year term.

NorthPoint states in its Application that it ''does not own, operate, or control any electric generation, transmission, or distribution facilities in the United States, nor is it affiliated with any owner of electric generation, transmission, or distribution facilities in the United States.'' App. at 4. NorthPoint states that it ''is a wholly owned subsidiary of SaskPower, a Provincial Crown corporation of the Government of Saskatchewan, Canada'' and that ''SaskPower is engaged in the generation of power from predominantly thermal sources and the transmission, distribution, and sale of such power to wholesale and retail customers within Saskatchewan.'' *Id.* At 2. NorthPoint further states that ''[a]ny power purchased by NorthPoint for export to Canada will be surplus to the needs of the entities selling power to NorthPoint.'' *Id.* at 4. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Two (2) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning NorthPoint's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–275–C. Additional copies are to be provided directly to Matthew T. Rick, John & Hengerer LLP, 1629 K Street NW, Suite 402, Washington, DC 20006, and to General Council, SaskPower—Corporate & Regulatory Affairs, 2025 Victoria Avenue, Regina, Saskatchewan, Canada S4P 0S1.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE determines that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Matthew Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on January 15, 2020.

Christopher Lawrence,

Management and Program Analyst, Transmission Permitting and Technical Assistance, Office of Electricity.

[FR Doc. 2020–01076 Filed 1–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Amended Record of Decision for the Installation and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio Site

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The Department of Energy (DOE)/National Nuclear Security

Administration (NNSA) is announcing this amendment to the July 2004 Record of Decision (ROD) for the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio, Site* (FEIS) (DOE/EIS–0360). In this amended ROD, DOE/NNSA is announcing its decision to implement its preferred alternative for the construction and operation of a depleted uranium hexafluoride (DUF_6) conversion facility at the Portsmouth, Ohio, a DOE Office of Environmental Management (EM) site. This amended ROD addresses DOE/NNSA's intent to construct and operate a fourth process line within the conversion facility, as previously analyzed in the aforementioned FEIS.

FOR FURTHER INFORMATION CONTACT: For further information on the addition of the fourth processing line, please contact Ms. Casey Deering, Director, Office of Secondary Stage Production Modernization, Office of Defense Programs, National Nuclear Security Administration, telephone (202) 586–6075; or by email to *casey.deering@nnsa.doe.gov.*

For information on NNSA's NEPA process, please contact Mr. John Weckerle, NEPA Compliance Officer, National Nuclear Security Administration, Office of General Counsel, Telephone (505) 845–6026; or by email to *john.weckerle@nnsa.doe.gov.* This Amended Record of Decision is available on the internet at *http://energy.gov/nepa.*

SUPPLEMENTARY INFORMATION:

Background

In June 2004, DOE issued the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio, Site (FEIS) (DOE/EIS–0360).* In the 2004 FEIS, DOE analyzed the potential environmental impacts from the construction, operation, maintenance, and decontamination and decommissioning (D&D) of the proposed depleted uranium hexafluoride (DUF_6) conversion facility at three alternative locations within the Portsmouth site. DOE reviewed transportation of cylinders (DUF_6, normal and enriched UF_6, and empty) stored at the East Tennessee Technology Park (ETTP) near Oak Ridge, Tennessee, to Portsmouth; construction of a new cylinder storage yard at Portsmouth (if required) for the ETTP cylinders; transportation of depleted uranium conversion products and waste materials to a disposal facility; transportation and sale of the aqueous hydrogen fluoride (HF) produced as a conversion co-product; and neutralization of aqueous HF to calcium fluoride (CaF_2) and its sale or disposal in the event that the aqueous HF product is not sold. An option of shipping the ETTP cylinders to the Paducah, Kentucky, site was also considered, as was an option of expanding operations by increasing throughput (through efficiency improvements or by adding a fourth conversion line) or by extending the period of operation. The EIS analyzed the No Action Alternative and three alternative locations within the plant, all of which utilized the same proposed equipment and processes. Location A, the preferred Alternative, was located in the west-central portion of the site; Location B was located in the southwestern portion of the site, and Location C was located in the southeastern portion of the site. A similar EIS was issued concurrently for construction and operation of a DUF_6 conversion facility at DOE EM's Paducah site (DOE/EIS–0359). In the July 27, 2004, ROD (69 FR 44649), DOE chose Alternative Location A and announced its decision to install three of the four processing lines analyzed in the EIS at Portsmouth.

DOE/NNSA now announces its decision to add the fourth processing line analyzed in the 2004 EIS. The process alteration to add the fourth process line is in response to the government's need to meet high purity depleted uranium (HPDU) demand to execute DOE/NNSA mission requirements. Neither commercial nor Y–12 capabilities exist to convert DUF_6 to DUF_4 to support depleted uranium metal production. This line will use utility equipment and materials identical to those currently in operation. The process will be altered slightly to produce DUF_4 that will be provided to a commercial vendor for additional processing.

The United States has produced DUF_6 since the early 1950s as part of the process of enriching natural uranium for both civilian and military applications. The EM sites at Portsmouth and Paducah are currently charged with converting approximately 70,000 DUF_6 cylinders into an impure oxide (UO_x) for disposition as waste or for reuse. The Portsmouth site currently has three process lines in place for this conversion with space designed into the process building to accept a fourth line. This space is the proposed location to accept the additional equipment items and provide the DUF_6 conversion to DUF_4.

The Portsmouth DUF_6 Conversion Facility was commissioned to process the DUF_6 stored in cylinders into a more stable chemical form (UO_x). Current DUF_6 cylinder inventory at Portsmouth is ~19,000 cylinders with ~18 years of processing needed to complete DUF_6 to UO_x conversion. Portsmouth has three operable process lines to accomplish this mission; each line is capable of processing approximately one standard 48″ cylinder per 24-hour workday. The Portsmouth DUF_6 Conversion Facility and its infrastructure were designed and constructed to support four process lines, however only three lines were installed. The physical configuration of the building has already been satisfactorily evaluated in the FEIS to support a fourth process line with respect to seismic design criteria and natural phenomenon hazards. There is adequate space to support an additional process line with respect to the following equipment, utilities and support systems: Electrical power, sanitary water, process water, cooling water, hydrogen, nitrogen, potassium hydroxide, hydrofluoric acid handling, cylinder movement, material handling, instrument air, fire suppression, heating, ventilation, and air conditioning (HVAC), decontamination, emission controls, waste handling, and environmental monitoring. This utility equipment is identical to equipment currently in operation at the facility. The Portsmouth DUF_6 Conversion Facility meets the DOE criteria for a Hazard Category 3 Nuclear Facility.

Currently the facility reacts the DUF_6 with H_2 (hydrogen) and H_2O (steam) to produce the UO_x. This reaction generates hydrogen fluoride (HF) as a production/conversion co-product in molar proportion to the reaction. Potassium Hydroxide (KOH) is used in an off gas scrubber to neutralize the HF vapor which is not collected for resale. As decided in the ROD, the aqueous HF produced during conversion will be sold for use, as appropriate. If necessary, CaF_2 (Calcium Fluoride) will be produced and dispositioned.

Amended Decision

DOE/NNSA is amending DOE's previous decision (69 FR 44649). DOE/NNSA will install the fourth conversion line and will slightly alter the process when reacting the DUF_6. Typically, as stated above, the DUF_6 is reacted with H_2 and H_2O (steam) to produce the UO_x. The altered process will still react DUF_6 with H_2 but will omit the H_2O (steam) from the initial part of the conversion process. The N_2 will still be used as an inert motive force gas and the off gas will still be scrubbed with KOH. At the

end of the process, H_2O (steam) will then be used, but only to dilute the generated HF to the desired concentration (molarity). The HF will still be stored in tanks to be sold for use, or converted to CaF_2, as described above. The resulting product, DUF_4, will be provided to a commercial vendor for additional processing. This operation avoids having to provide for subsequent disposition of the UO_x and provides a strategic commodity that can be used in NNSA programs.

Basis for Decision

Implementing this decision supports DOE's continuing need to convert its inventory of DUF_6 to a more stable chemical form for use or disposal, as defined in the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio, Site (FEIS) (DOE/EIS–0360).* In this instance, the use will be the production of DUF_4 that can be provided to a commercial vendor for later conversion into metallic depleted uranium for government use. The current proposal does not represent a substantive change to operations, activities, and associated impacts assessed in DOE/EIS–0360. Any applicable updates related to the International Building Code and life safety codes will be incorporated into the NNSA Conversion Project new equipment design. The proposed conversion to DUF_4 would reduce the UO_x quantity that would need to be dispositioned at a commercial facility (sold, re-used, or disposed of as waste), as a quantity of DUF_6 would be converted to DUF_4 and HF instead of oxide. Processes and equipment used for this purpose would be similar or identical to those associated with current conversion activities. The total amount of DU planned for transport would remain unchanged from quantities evaluated in the 2004 EIS; however, the form of a small percentage of the transported material would change. Radiological impacts from handling/transportation between the two material forms are comparable. In the event of a container or equipment breach, a release of DUF_4 would result in reduced hazards in comparison to that of depleted uranium oxide because DUF_4 would be slightly less prone to becoming airborne.

In addition, the planned transportation destinations for oxide involve greater distances than the proposed destination options for DUF_4. Finally, less HF will be generated during the conversion to DUF_4 as compared to the conversion to oxide material.

Signed in Washington, DC, this 23rd day of December 2019, for the United States Department of Energy.

Lisa E. Gordon-Hagerty,

Under Secretary for Nuclear Security, National Nuclear Security Administration.

[FR Doc. 2020–01074 Filed 1–22–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–32–000.
Applicants: Commonwealth Edison Company.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Commonwealth Edison Company.
Filed Date: 1/14/20.
Accession Number: 20200114–5227.
Comments Due: 5 p.m. ET 2/4/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–65–000.
Applicants: La Chalupa, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of La Chalupa, LLC.
Filed Date: 1/16/20.
Accession Number: 20200116–5048.
Comments Due: 5 p.m. ET 2/6/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1801–004; ER10–1805–005; ER10–2370–003.
Applicants: The Connecticut Light and Power Company, NSTAR Electric Company, Public Service Company of New Hampshire.
Description: Updated Market Power Analysis for Northeast Region of the Eversource Companies.
Filed Date: 12/23/19.
Accession Number: 20191223–5280.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER10–2502–007; ER10–2472–006; ER10–2473–006; ER11–2724–007; ER11–4436–005; ER18–2518–002; ER19–645–001.
Applicants: Black Hills Colorado Electric, LLC, Black Hills Colorado IPP, LLC, Black Hills Colorado Wind, LLC, Black Hills Electric Generation, LLC, Black Hills Power, Inc., Black Hills Wyoming, LLC, Cheyenne Light Fuel & Power Company.
Description: Amendment to June 27, 2019 Updated Market Power Analysis of the Black Hills MBR Sellers for the Northwest Region.
Filed Date: 1/14/20.
Accession Number: 20200114–5224.
Comments Due: 5 p.m. ET 2/4/20.

Docket Numbers: ER20–419–002.
Applicants: ITC Midwest LLC.
Description: Tariff Amendment: Amendment to CIAC Agreement Filing to be effective 1/19/2020.
Filed Date: 1/15/20.
Accession Number: 20200115–5117.
Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–553–001.
Applicants: Sierra Pacific Power Company.
Description: Tariff Amendment: Service Agreement No. 16–00054; Battle Mountain LGIA Amendment to be effective 12/11/2019.
Filed Date: 1/16/20.
Accession Number: 20200116–5057.
Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–806–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2020–01–15_SA 3404 OTP–NSP FSA (J436 J437) Hankinson-Ellendale to be effective 3/16/2020.
Filed Date: 1/15/20.
Accession Number: 20200115–5111.
Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–807–000.
Applicants: Ruff Solar LLC.
Description: Baseline eTariff Filing: Ruff Solar, LLC MBR Application to be effective 4/1/2020.
Filed Date: 1/15/20.
Accession Number: 20200115–5122.
Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–808–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5548; Queue No. AC1–076 AE2–134 to be effective 12/16/2019.
Filed Date: 1/15/20.
Accession Number: 20200115–5124.
Comments Due: 5 p.m. ET 2/5/20.

Docket Numbers: ER20–809–000.
Applicants: Nevada Gold Energy LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/1/2020.
Filed Date: 1/16/20.
Accession Number: 20200116–5000.
Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–810–000.
Applicants: Southwestern Public Service Company.
Description: Tariff Cancellation: Golden Spread Electric Cooperative,

Inc.—FERC Electric Rate Schd No. 135—NOC to be effective 5/1/2019.

Filed Date: 1/16/20.

Accession Number: 20200116–5004.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–811–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Filing of Revised Agreements with Village of Stratford to be effective 3/17/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5014.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–812–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 371—TOUA to be effective 1/1/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5028.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–813–000.

Applicants: Mercuria Energy America, Inc.

Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/17/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5052.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–814–000.

Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC, Consumers Energy Company.

Description: § 205(d) Rate Filing: 2020–01–16_SA 1756 METC-Consumers Energy 13th Rev GIA (G479B) to be effective 1/1/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5061.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–815–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Exelon NITSA (OR DA) SA 943 Rev 1 to be effective 1/1/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5062.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–816–000.

Applicants: Southern California Edison Company.

Description: Tariff Cancellation: Cancel GIA and Service Agreement Lendlease California City Solar LLC to be effective 3/17/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5065.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–817–000.

Applicants: NextEra Energy Transmission MidAtlantic, LLC.

Description: § 205(d) Rate Filing: NextEra Energy Transmission MidAtlantic Indiana, Inc. Notice of Succession to be effective 12/18/2019.

Filed Date: 1/16/20.

Accession Number: 20200116–5076.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–818–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Q4 2019 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 12/31/2019.

Filed Date: 1/16/20.

Accession Number: 20200116–5077.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–819–000.

Applicants: Blythe Solar III, LLC.

Description: Baseline eTariff Filing: Blythe Solar III, LLC Application for MBR Authority to be effective 3/17/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5078.

Comments Due: 5 p.m. ET 2/6/20.

Docket Numbers: ER20–820–000.

Applicants: Blythe Solar IV, LLC.

Description: Baseline eTariff Filing: Blythe Solar IV, LLC Application for MBR Authority to be effective 3/17/2020.

Filed Date: 1/16/20.

Accession Number: 20200116–5079.

Comments Due: 5 p.m. ET 2/6/20.

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: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01104 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–33–000]

Dominion Energy Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on January 6, 2020, Dominion Energy Transmission, Inc. (DETI), 120 Tredegar Street, Richmond, Virginia 23219, filed in the above referenced docket a prior notice request pursuant to sections 157.205 and 157.208(b) of the Commission's regulations under the Natural Gas Act and its blanket certificate issued in Docket No. CP82–537–000 for authorization to replace certain pipeline facilities located in the Oakford Storage Complex in Westmoreland County, Pennsylvania. DETI and Endbridge Inc. jointly own the Oakford Storage Complex as tenants in common with equal undivided one-half interests. DETI is the operator of the Oakford Storage Complex and as the operator is making this filing on behalf of both parties. The certificated physical parameters, including total inventory, reservoir pressure, reservoir and buffer boundaries, and certificated capacity (including injection and withdrawal capacity) of the Oakford Storage Complex will remain unchanged. DETI estimates the cost of the project to be approximately $19 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Kenan W. Carioti, Regulatory & Certificates Analyst III, Dominion Energy Transmission, Inc., 707 East Main Street, Richmond, VA 23219, by telephone at (804) 771–4018, or by email at *Kenan.W.Carioti@DominionEnergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01100 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–807–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Ruff Solar LLC

This is a supplemental notice in the above-referenced Ruff Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 5, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01102 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Number: PR20–10–001.
Applicants: UGI Utilities, Inc.
Description: Tariff filing per 284.123(b), (e) + (g): Revisions to Statement of Operating Conditions per FERC Review to be effective 11/18/2019.
Filed Date: 1/15/20.
Accession Number: 202001155034.
Comments Due: 5 p.m. ET 2/5/20.
284.123(g) Protests Due: 5 p.m. ET 2/5/20.

Docket Number: PR20–21–000.
Applicants: Southcross Alabama Pipeline LLC.
Description: Tariff filing per 284.123(b)(2) + (g): Third Coast Alabama, LLC Section 311 Filing to be effective 12/16/2019.
Filed Date: 1/15/20.
Accession Number: 202001155044.
Comments Due: 5 p.m. ET 2/5/20.
284.123(g) Protests Due: 5 p.m. ET 3/16/20.

Docket Number: PR20–22–000.
Applicants: Southcross Mississippi Pipeline, L.P.
Description: Tariff filing per 284.123(b)(2) + (g): Third Coast Mississippi LLC Section 311 and Name Change Filing to be effective 12/16/2019.
Filed Date: 1/15/20.
Accession Number: 202001155045.
Comments Due: 5 p.m. ET 2/5/20.
284.123(g) Protests Due: 5 p.m. ET 3/16/20.

Docket Numbers: RP19–1353–005.
Applicants: Northern Natural Gas Company.
Description: Compliance filing 20200115 Base Case Non-Rate Technical

Conference Compliance Filing to be effective 1/1/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5120.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–270–001.

Applicants: ANR Pipeline Company.

Description: Compliance filing Prepayments Compliance to be effective 12/27/2019.

Filed Date: 1/15/20.

Accession Number: 20200115–5003.

Comments Due: 5 p.m. ET 1/27/20.

Docket Numbers: RP20–438–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Superseding Neg Rate Agmt (Calyx 51780) to be effective 1/1/2020.

Filed Date: 1/15/20.

Accession Number: 20200115–5036.

Comments Due: 5 p.m. ET 1/27/20.

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 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: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01105 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–15–000]

Puget Sound Energy, Inc.; Notice of Schedule for Environmental Review of the Jackson Prarie Storage Project

On November 15, 2019, Puget Sound Energy, Inc. (Puget Sound) filed an application in Docket No. CP20–15–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate natural gas facilities in Lewis County, Washington. The proposed project is known as the Jackson Prairie Storage Project (Project) and would allow Puget Sound to more efficiently manage its current operations within the Jackson Prairie Storage Facility and would not impact service to its customers.

On December 2, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project. Any substantive comments received on this Project will be addressed in the EA.

Schedule for Environmental Review

Issuance of EA—March 13, 2020

90-day Federal Authorization Decision Deadline—June 11, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Puget Sound proposes to recomplete its Well SU–50 downhole from Zone 2 to Zone 1 at its Jackson Prairie Storage Facility in Lewis County, Washington. No other Project facilities are proposed. Puget Sound states the Project would increase operational efficiency and provide a backup gas recycle well when maintenance is required on its Well SU–63. Puget Sound states the proposed modification would take 24 months to complete from the start of construction.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–15), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01103 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance; at the Southwest Power Pool, Inc. Regional State Committee, Members' Committee, and Board of Directors' Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional State Committee (RSC), Members' Committee, and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

The meetings will be held at the El Dorado Hotel, 309 West San Francisco Street, Santa Fe, NM 87501. The phone number is (505) 995–4562. All meetings are Mountain Time.

SPP RSC: January 27, 2020 (1:00 p.m.–4:30 p.m.)

SPP Members/Board of Directors: January 28, 2020 (8:00 a.m.–2:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. AD16–16, *Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*

Docket No. AD18–8, *Reform of Affected System Coordination in the Generator Interconnection Process*

Docket No. EL16–91, *Southwest Power Pool, Inc.*

Docket No. EL17–21, *Kansas Electric Co.* v. *Southwest Power Pool, Inc.*

Docket No. EL17–89, *American Electric Power Service Corporation* v. *Midcontinent Independent System Operator, Inc., et al.*

Docket No. EL18–9, *Xcel Energy Services, Inc.* v. *Southwest Power Pool, Inc.*

Docket No. EL18–19, *Southwest Power Pool, Inc.*
Docket No. EL18–26, *EDF Renewable Energy, Inc.* v. *Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc., and PJM Interconnection, L.L.C.*
Docket No. EL18–35, *Southwest Power Pool, Inc.*
Docket No. EL18–58, *Oklahoma Municipal Power Authority* v. *Oklahoma Gas and Electric Co.*
Docket No. EL18–194, *Nebraska Public Power District* v. *Tri-State Generation and Transmission Association, Inc. and Southwest Power Pool, Inc.*
Docket No. EL19–11, *American Wind Energy Association and the Wind Coalition* v. *Southwest Power Pool, Inc.*
Docket No. EL19–60, *City of Prescott, Arkansas* v. *Southwestern Electric Power Company and Midcontinent Independent System Operator, Inc.*
Docket No. EL19–62, *City Utilities of Springfield, Missouri* v. *Southwest Power Pool, Inc.*
Docket No. EL19–75, *EDF Renewables, Inc., et al.* v. *Southwest Power Pool, Inc.*
Docket No. EL19–77, *Oklahoma Gas and Electric Co.* v. *Southwest Power Pool, Inc.*
Docket No. EL19–80, *Kansas Corporation Commission*
Docket No. EL19–83, *City of Lubbock* v. *Public Service Company of Colorado, et al.*
Docket No. EL19–92, *Southwest Power Pool, Inc.*
Docket No. EL19–93, *Western Farmers Electric Cooperative* v. *Southwest Power Pool, Inc.*
Docket No. EL19–96, *Cimarron Windpower II, LLC* v. *Southwest Power Pool, Inc.*
Docket No. EL19–101, *Southwest Power Pool, Inc.*
Docket No. ER09–548, *Kansas Corporation Commission*
Docket No. ER15–2028, *Southwest Power Pool, Inc.*
Docket No. ER15–2115, *Southwest Power Pool, Inc.*
Docket No. ER15–2594, *GridLiance High Plains LLC*
Docket No. ER16–505, *GridLiance High Plains LLC*
Docket No. ER16–1341, *Southwest Power Pool, Inc.*
Docket No. ER17–953, *GridLiance High Plains LLC*
Docket No. ER18–99, *Southwest Power Pool, Inc.*
Docket No. ER18–194, *Southwest Power Pool, Inc.*
Docket No. ER18–195, *Southwest Power Pool, Inc.*
Docket No. ER18–939, *Southwest Power Pool, Inc.*
Docket No. ER18–1267, *GridLiance High Plains LLC*
Docket No. ER18–1702, *Southwest Power Pool, Inc.*
Docket No. ER18–2358, *Southwest Power Pool, Inc.*
Docket No. ER18–2404, *Southwest Power Pool, Inc.*
Docket No. ER19–456, *Southwest Power Pool, Inc.*
Docket No. ER19–460, *Southwest Power Pool, Inc.*
Docket No. ER19–477, *Southwest Power Pool, Inc.*
Docket No. ER19–1357, *GridLiance High Plains LLC*
Docket No. ER19–1396, *American Electric Power Service Corporation*
Docket No. ER19–1579, *Southwest Power Pool, Inc.*
Docket No. ER19–1672, *Southwest Power Pool, Inc.*
Docket No. ER19–1954, *Southwest Power Pool, Inc.*
Docket No. ER19–1980, *Southwest Power Pool, Inc.*
Docket No. ER19–2273, *Southwest Power Pool, Inc.*
Docket No. ER19–2669, *Southwest Power Pool, Inc.*
Docket No. ER19–2747, *Southwest Power Pool, Inc.*
Docket No. ER19–2748, *Southwest Power Pool, Inc.*
Docket No. ER19–2773, *Southwest Power Pool, Inc.*
Docket No. ER19–2813, *Southwest Power Pool, Inc.*
Docket No. ER19–2845, *Southwest Power Pool, Inc.*
Docket No. ER20–108, *Southwest Power Pool, Inc.*
Docket No. ER20–292, *Southwest Power Pool, Inc.*
Docket No. ER20–418, *Southwest Power Pool, Inc.*
Docket No. ER20–434, *Southwest Power Pool, Inc.*
Docket No. ER20–453, *Southwest Power Pool, Inc.*
Docket No. ER20–506, *Southwest Power Pool, Inc.*
Docket No. ER20–541, *Southwest Power Pool, Inc.*
Docket No. ER20–542, *Southwest Power Pool, Inc.*
Docket No. ER20–554, *Southwest Power Pool, Inc.*
Docket No. ER20–560, *Southwest Power Pool, Inc.*
Docket No. ER20–571, *Southwest Power Pool, Inc.*
Docket No. ER20–572, *Southwest Power Pool, Inc.*
Docket No. ER20–610, *Southwest Power Pool, Inc.*
Docket No. ER20–644, *Southwest Power Pool, Inc.*
Docket No. ER20–656, *Southwest Power Pool, Inc.*
Docket No. ER20–657, *Southwest Power Pool, Inc.*
Docket No. ER20–712, *Southwest Power Pool, Inc.*
Docket No. ER20–713, *Southwest Power Pool, Inc.*
Docket No. RM17–8, *Reform of Generator Interconnection Procedures and Agreements*

This meeting is open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01106 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–024]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2165–024.

c. *Date Filed:* October 23, 2019, supplemented on December 19, 2019.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Hydroelectric Project.

f. *Location:* The Black Warrior River and Sipsey Fork in Cullman, Walker, Winston, and Tuscaloosa counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Justin Bearden, Alabama Power Company, 600 North 18th Street, Shoreline Management, Birmingham, Alabama 35203, (205) 257–6769.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 18, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit

brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2165–024. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power Company proposes to permit Mallard Point Marina to install a new boat docking pier to accommodate 40 watercraft. A marina has existed at this location for decades but the marina layout has changed over time. The marina was previously approved to construct a 150-foot pier to accommodate 40 watercraft, but now instead proposes to construct a 239-foot pier at the same location. The marina would be located across from a sandbar (exposed especially during the winter drawdown) identified by the Alabama Marine Patrol and would require Alabama Power Company to make an exception from its Non-Commercial Guidelines due to the length of the pier.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–01101 Filed 1–22–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2020–0020; FRL–10004–65–OGC]

Proposed Information Collection Request; Comment Request; Renewal of Existing Information Collection Request for Confidential Business Information Substantiation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Renewal of Existing Information Collection Request for Confidential Business Information Substantiation'' (EPA ICR No. 1665.14, OMB Control No. 2020–003) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OGC–2020–0020, online using *www.regulations.gov* (our preferred method), by email to *hq.foia@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher T. Creech, National FOIA Office, (2310A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–4286; email address: *creech.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public

docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility in completing CBI determinations; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The U.S. Environmental Protection Agency (EPA) established the requirements set forth in 40 CFR, part 2, subpart B, ''Confidentiality of Business Information.'' The requirements govern business confidentiality claims. The requirements include the handling by the Agency of business information which is or may be entitled to confidential treatment, requiring business submitters to substantiate CBI claims, determining whether such information is entitled to confidential treatment for reasons of business confidentiality, and responding to Freedom of Information Act (FOIA) requests pursuant to 5 U.S.C. 552 for information claimed as CBI.

Form Numbers: None.

Respondents/affected entities: Respondents include any business submitting information to EPA that it claims as CBI. EPA receives such information from both the manufacturing (SIC codes 20–39) and non-manufacturing sectors (no SIC codes identified).

Respondent's obligation to respond: Voluntary and mandatory.

Estimated number of respondents: 198 (total).

Frequency of response: 1 response per respondent annually.

Total estimated burden: 752.4 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $169,290 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The revised requests for substantiation will decrease the estimated burden hours for each response, although it increases the total estimated respondent burden compared with the ICR currently approved by OMB. The decrease is 2 hours for each business response; the increase is based on an expected higher response rate under the new form, producing an increase from 488 hours to 752.4 hours total. These changes are due to the removal of a question that required a company to describe, with specificity, the ''substantial competitive harm'' that would occur as a direct result of disclosing the information. EPA modified its substantiation questions as a result of the U.S. Supreme Court's decision in *Food Marketing Institute* v. *Argus Leader Media (Argus)*, 139 S. Ct. 2356 (2019), which evaluated the definition of ''confidential'' as used in Exemption 4 of the Freedom of Information Act (FOIA). 5 U.S.C. 552(b)(4). In the Argus decision, the Court held that at least where ''[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.'' Argus, 139 S. Ct. at 2366. EPA has reduced burdens to business submitters by removing the requirement to explain with specificity whatever ''substantial competitive harm'' a submitter claims would ensue from release of each CBI claim. The evaluation of ''substantial competitive harm'' had required businesses to analyze and describe the potential impacts of release. EPA has replaced that question with modified questions that require a factual description of the submitter's handling and treatment of the CBI-claimed information, as well as a description of any assurances provided by EPA at the time of submission. This replacement will reduce the burden on companies since evaluation and analysis of ''substantial competitive harm'' is no longer required. Further, EPA reframed preexisting questions to solicit ''yes'' or ''no'' responses, which further reduces burdens on submitters. These modifications will result in greater clarity to business submitters and improved responses as the Agency completes its confidentiality determinations. The Agency anticipates that this lower burden on each response will increase the response rate from 21% in the prior analysis to 66% in the present analysis. EPA has already experienced an increase in response rate as a result of the Supreme Court's decision and expects this change to continue under the new form. EPA also made other adjustments in its analysis including adjustments in the hourly costs for both the Agency and responding companies as well as removing a category of burden that was not relevant to EPA's information request.

Dated: January 15, 2020.

Timothy R. Epp,

Associate General Counsel.

[FR Doc. 2020–01109 Filed 1–22–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10:00 a.m., Thursday, February 13, 2020.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *M-Class Mining, LLC,* Docket No. LAKE 2018–0188–R. (Issues include whether the Judge erred in ruling that a section 103(k) safety order was validly issued and was not an abuse of discretion.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1 (866) 236–7472.

Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: January 21, 2020.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2020–01168 Filed 1–21–20; 4:15 pm]

BILLING CODE 6735–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–QQE–2020–01; Docket No. 2020–0002; Sequence No. 1]

Publication of Website Standards

AGENCY: Technology Transformation Services (TTS), Federal Acquisition Service (FAS), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The 21st Century Integrated Digital Experience Act requires any public website of an executive agency to comply with GSA's website standards. GSA publishes the standards at *https://designsystem.digital.gov/website-standards.* To notify agencies of revisions to the website standards, GSA will periodically update the U.S. Web Design System website and publish notices in the **Federal Register**.

DATES: The website standards were first published on January 22, 2020. They were last revised on January 22, 2020.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Jacob Parcell, Director, Innovation Portfolio, Technology Transformation Services, at 202–208–7139, or by email at *uswds@support.digitalgov.gov.*

Please cite Notice of website Standards.

Dated: January 16, 2020.

Anil Cheriyan,

Deputy Commissioner, Federal Acquisition Service and Director, Technology Transformation Services.

[FR Doc. 2020–01068 Filed 1–22–20; 8:45 am]

BILLING CODE 4733–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19AYV]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Public Health Laboratory Testing for Emerging Antibiotic Resistance and Fungal Threats to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 5th, 2019 to obtain comments from the public and affected agencies. CDC received one comment from the public. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Public Health Laboratory Testing for Emerging Antibiotic Resistance and Fungal Threats—Existing Collection in Use without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This state and local laboratory testing capacity study is being implemented by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in response to the Executive Order 13676 of September 18, 2014, the National Strategy of September 2014 and to implement sub-objective 2.1.1 of the National Action Plan of March 2015 for Combating Antibiotic Resistant Bacteria. Data collected throughout this network is also authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241).

The Antibiotic Resistance Laboratory Network (AR Lab Network) is made up of jurisdictional public health laboratories (*i.e.* all fifty states, four large cities, and Puerto Rico). These public health laboratories will be equipped to detect and characterize isolates of carbapenem-resistant Enterobacteriaceae (CRE), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), and carbapenem-resistant *Acinetobacter baumannii* (CRAB), as well as carbapenemase-positive organisms (CPOs) from colonization screening swabs. These resistant bacteria are becoming more and more prevalent, particularly in healthcare settings, and are typically identified in clinical laboratories, but characterization is often limited. The laboratory testing will allow for additional testing and characterization, including use of gold-standard methods. Isolate characterization includes organism identification, antimicrobial susceptibility testing (AST) to confirm carbapenem resistance and determine susceptibility to new drugs of therapeutic and epidemiological importance, a phenotypic method to detect carbapenemase enzyme production, and molecular testing to identify the resistance mechanism(s). Screening swabs will undergo molecular testing to identify whether carbapenemase-producing organisms are present.

Results from this laboratory testing will be used to (1) identify targets for infection control, (2) detect new types of resistance, (3) characterize geographical distribution of resistance, (4) determine whether resistance mechanisms are spreading among organisms, people, and facilities, and (5) provide data that informs state and local public health surveillance and prevention activities and priorities. Additionally, some jurisdictions will participate in reference identification of *Candida* spp. to aid in these pursuits using matrix-assisted laser desorption ionization/

time-of-flight (MALDI–TOF) mass spectrometry or deoxyribonucleic acid (DNA) based sequencing.

CDC's AR Lab Network supports nationwide lab capacity to rapidly detect antibiotic resistance and inform local public health responses to prevent spread and protect people. It closes the gap between local capabilities and the data needed to combat antibiotic resistance by providing comprehensive lab capacity and infrastructure for detecting antibiotic-resistant pathogens (germs), cutting-edge technology, like DNA sequencing, and rapid sharing of actionable data to drive infection control responses and help treat infections. This infrastructure allows the public health community to rapidly detect emerging antibiotic-resistant threats in healthcare and the community, mount a comprehensive local response, and better understand these deadly threats to quickly contain them.

Funded state and local public health laboratories will provide the following information to the Program Office at CDC—Division of Healthcare Quality Promotion (DHQP):

1. Annually, participating laboratories will submit a summary report describing testing methods and volume. These reports will be submitted by email to *ARLN_DHQP@cdc.gov.* These measures are to be used by the Program Office (DHQP) to determine the ability of each laboratory to confirm and characterize targeted AR organisms and their overall capacity to support state healthcare-associated infection (HAI)/AR prevention programs.

2. Annually, participating laboratories will provide Evaluation and Performance Measurement Report to CDC via email to *HAIAR@cdc.gov.* Data will be used to indicate progress made toward program objectives and challenges encountered.

3. Participating laboratories will report all testing results to CDC, at least monthly, by CSV or Health Level 7 (HL7) using an online web-portal transmission. This information will be used to (1) provide data for state and local infection prevention programs, (2) identify new types of antibiotic resistant organisms, (3) identify new resistance mechanisms in targeted organisms, (4) describe the spread of targeted resistance mechanisms, and (5) identify geographical distribution of antibiotic resistance or other epidemiological trends. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC and submitting facilities and clinical laboratories. For messaging to CDC, these protocols will be based in Association of Public Health Laboratories (APHL) Informatics Messaging Services (AIMS) platform. The AIMS platform is a secure environment that provides shared services to assist public health laboratories in the transport, validation and routing of electronic data. AIMS is transitioning to the use of HL7 messaging for data to be transmitted in real-time, allowing more frequent reporting or results while simultaneously lessening burden on public health laboratories.

4. Detection of targeted resistant organisms and resistance mechanisms that pose an immediate threat to patient safety and require rapid infection control, facility assessments, and/or additional diagnostics, an immediate communication to the local healthcare-associated infection program in the jurisdictional public health department and CDC is needed. The ''AR Lab Network Alerts'' encompass targeted AR threats that include new and rare plasmid-mediated (''jumping'') carbapenemase genes, isolates resistant to all drugs tested, and detection of human reservoirs for transmission. These alerts must be sent within one working day of detection. Participating laboratories will utilize REDCap to communicate these findings. The elements of these messages will include the unique public health laboratory specimen ID and a summary of its testing results to date.

Sites participating in *Candida* identification testing will also provide the following to the Mycotics Program Office at CDC—Division of Foodborne, Waterborne, and Environmental Diseases (DFWED):

1. Annually, participating laboratories will provide an Evaluation and Performance Measurement Report to CDC via email to *ARLN@cdc.gov.* Data will be used to indicate progress made toward program objectives and challenges encountered.

2. Participating laboratories will report all testing results to CDC, requested at least monthly, by REDCap or Health Level 7 (HL7) using an online web-portal transmission. This information will be used to (1) identify and track antifungal resistance and emerging fungal pathogens, and (2) aid public health departments and healthcare facilities in rapidly responding to fungal public health threats and outbreaks. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC, submitting facilities and clinical laboratories. For messaging to CDC, these messaging protocols will be based in REDCap or the AIMS platform. The REDCap and AIMS platforms are secure environments that provide shared services to assist public health laboratories in the transport, validation and routing of electronic data. AIMS is transitioning to the use of HL7 messaging for data to be transmitted in real-time, allowing more frequent reporting of results while simultaneously lessening burden on public health laboratories.

3. For those resistant organisms that pose an immediate threat to patient safety and require rapid infection control, facility assessments, and/or additional diagnostics, an immediate communication to the local healthcare-associated infection program in the jurisdictional public health department and CDC is needed. The ''AR Lab Network Alerts'' encompass targeted AR threats that include *C. auris,* which is rapidly emerging in healthcare settings. These alerts must be sent within one working day of detection. Participating laboratories will utilize REDCap and/or email to *ARLN_alert@cdc.gov* to communicate these findings. The elements of these messages will include the unique public health laboratory specimen ID and a summary of specimen testing results to date.

The estimated annualized burden hours were determined as follows. There are 55 public health laboratories within this framework. A ''respondent'' refers to a single participating testing public health laboratory. A ''response'' is defined as the data collection/processing associated with an individual specimen from an individual patient.

The average burden per response for the Annual Summary of testing methods was evaluated to be approximately six minutes.

The average burden per response for the Annual Evaluation and Performance Measurement Report was evaluated to be 4 hours per report.

Based on previous laboratory experience in analyzing carbapenem-resistant isolates and specimens, the estimated time for each participating public health laboratory for Monthly Testing Results Report is four hours per response. Because of the need to add more data collection points as new drugs are developed, new susceptibility testing methods are made available, new resistance mechanisms emerge, and new pathogens are prioritized as threats, the Monthly Data Report includes some placeholder elements in expectation of evolving needs. For *Candida* identification, elements to include are fairly minimal (specimen ID, submitting laboratory ID, etc.) and the estimated time for each participating laboratory for

the *Candida* Monthly Data Report is two hours.

The use of ARLN Alerts encompass targeted AR threats that include new and rare plasmid-mediated (''jumping'') carbapenemase genes, isolates that are non-susceptible to all drugs tested, and detection of novel resistance mechanisms. These alerts must be sent within one working day of detection. The elements of these messages include the unique public health laboratory specimen ID and a summary of specimen testing results generated to date. With the conversion to HL7 messaging of these data will be transmitted in real-time, thus eliminating the need to send alerts. Until that time, REDCap will be utilized to communicate alerts. CDC estimates that public health laboratories send an average of 34 ARLN Alerts per lab each year, with an estimated burden per response of 0.1 hours. The estimated burden of response for *Candida* identification is also 0.1 hours, though far fewer alerts are reported yearly (estimated to be approximately 700 total per year including all 55 jurisdictions, averaging to 13 per each jurisdiction).

The total estimated annualized burden across all AR Lab Network labs and activities for DHQP is 4555 hours. Public Health laboratories receive federal funds through CDC's Epidemiology and Laboratory Capacity for Infectious Diseases (ELC) mechanism to participate in this project.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Health Laboratories	Annual Report of Testing Methods	55	1	6/60
Public Health Laboratories	Annual Evaluation and Performance Measurement Report	55	1	4
Public Health Laboratories	Monthly Testing Results Reports	55	12	4
Public Health Laboratories	ARLN Alerts	55	34	6/60
Public Health Laboratories	Annual Evaluation and Performance Measurement Report (*Candida* identification)	55	1	2
Public Health Laboratories	Monthly Testing Results Reports—*Candida* identification	55	12	2
Public Health Laboratories	AR Lab Network Alerts—*Candida auris*	55	13	6/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01046 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BQB]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Public Health Accreditation Board (PHAB): Assessment of Processes and Outcomes to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 25, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Public Health Accreditation Board (PHAB): Assessment of Processes and Outcomes—New—Center for State, Tribal, Local and Territorial Support (CSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to protect America from health, safety and security threats, both foreign and in the U.S. CDC strives to fulfill this mission, in part, by supporting state, tribal, local, and territorial (STLT) health departments. One mechanism for supporting STLT health departments is through CDC's support of a national, voluntary accreditation program.

CDC supports the Public Health Accreditation Board (PHAB), a non-profit organization that serves as the independent accrediting body. PHAB, with considerable input from national, state, tribal, and local public health professionals, developed a consensus set of standards to assess the capacity of state, tribal, local, and territorial health departments. The first health departments were accredited by PHAB in early 2013; as of August 2019, a total of 268 health departments (36 state, three Tribal and 229 local) as well as one statewide integrated local public health department system have been

accredited. Accreditation is granted for a five-year period and the first several health departments have successfully completed the reaccreditation process. Formal efforts to assess the outcomes of the accreditation program began in late 2012 and continue to date. Priorities focus on gathering feedback for program improvement and documenting program outcomes to demonstrate impact and inform decision making about future program direction. Starting in 2012 and running through December 2019, the Robert Wood Johnson Foundation (RWJF) and the social science organization NORC at the University of Chicago, led evaluation efforts. CDC will assume support of the evaluation starting in 2020 and as a result, OMB approval for data collection is being sought.

The purpose of this ICR is to support the collection of information from participating health departments through a series of five surveys. The surveys seek to collect longitudinal data on each health department throughout their accreditation process.

The respondent universe will include STLT health department directors or designees. All surveys will be administered electronically; a link to the survey website will be provided in the email invitation. The surveys will be administered on a quarterly basis and sent to all health departments that reach each milestone in the accreditation process (application, recently accredited, accredited for one year, approaching reaccreditation, and reaccreditation). Each health department will be invited to participate in each survey once (for a total of 5 surveys max per health department). The total annualized estimated burden is 100 hours. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
STLT HD Directors or Designee	Survey 1: Applicants	60	1	20/60
STLT HD Directors or Designee	Survey 2: Recently Accredited HDs	60	1	20/60
STLT HD Directors or Designee	Survey 3: HDs Accredited One Year	60	1	20/60
STLT HD Directors or Designee	Survey 4: HDs Approaching Reaccreditation	60	1	20/60
STLT HD Directors or Designee	Survey 5: Reaccredited HDs	60	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01047 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1097]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Monitoring and Reporting System for the National Tobacco Control Program to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 23, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Monitoring and Reporting System for the National Tobacco Control Program (0920–1097)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works with states, territories, tribal organizations, and the District of Columbia (collectively referred to as ''state-based'' programs) to develop, implement, manage, and evaluate tobacco prevention and control programs. Support and guidance for these programs have been provided through cooperative agreement funding and technical assistance administered by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Partnerships and collaboration with other federal agencies, nongovernmental organizations, local communities, public and private sector organizations, and major voluntary associations have been critical to the success of these efforts. NCCDPHP cooperative agreements DP15–1509 (National State-Based Tobacco Control Programs) and DP14–1410PPHF14 (Public Health Approaches for Ensuring Quitline Capacity) continue to support efforts

since 1999 to build state health department infrastructure and capacity to implement comprehensive tobacco prevention and control programs. Through these cooperative agreements, health departments in all 50 states, the District of Columbia, Puerto Rico and Guam are funded to implement evidence-based environmental, policy, and systems strategies and activities designed to reduce tobacco use, secondhand smoke exposure, tobacco related disparities and associated disease, disability, and death. CDC plans to request OMB approval to collect information from the 53 state-based programs funded under both DP15–1509 and DP14–1410PPHF14. Awardees will report information about their work plan objectives, activities, infrastructure, and performance measures. Each awardee will submit an Annual Work Plan Progress Report using an Excel-based Work Plan Tool. The estimated burden per response on each of the abovementioned tools is six hours for each. Each awardee will submit an Annual Performance Measure report using an Excel-based Performance Measures tool. The estimated burden per response on each of the abovementioned tools is five hours for each. Each awardee will submit an Annual Progress Report (APR) using an Excel-based APR tool. The estimated burden per response on each of the abovementioned tools is 18 hours for each. Each awardee will submit an Annual Component Model of Infrastructure (CMI) using an Excel-based CMI tool. The estimated burden per response on each of the abovementioned tools is three hours for each. In addition, each awardee will submit an Annual Budget Progress Report using an Excel-based Budget Tool. The estimated burden per response is five hours for each Annual Budget Progress Report. The same instruments will be used for all information collection and reporting throughout the OMB approval period. Awardees will upload their information to *www.grantssolutions.gov* on an annual basis to satisfy routine cooperative agreement reporting requirements.

CDC will use the information collected to monitor each awardee's progress and to identify facilitators and challenges to program implementation and achievement of outcomes. Monitoring allows CDC to determine whether an awardee is meeting performance and budget goals and to make adjustments in the type and level of technical assistance provided to them, as needed, to support attainment of their performance measures. Monitoring and evaluation activities also allow CDC to provide oversight of the use of federal funds, and to identify and disseminate information about successful prevention and control strategies implemented by awardees. These functions are central to NCCDPHP's broad mission of reducing the burden of chronic diseases. Finally, the information collection will allow CDC to monitor the increased emphasis on partnerships and programmatic collaboration, and is expected to reduce duplication of effort, enhance program impact and maximize the use of federal funds.

OMB approval is requested for three years. Participation in the information collection is required as a condition of funding. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Tobacco Control Managers	Annual Work Plan Progress Report	53	1	6
	Annual Budget Progress Report	53	1	5
	Annual Performance Measures Progress Report.	53	1	5
	Annual CMI Progress Report	53	1	3
	Annual APR Report	53	1	18

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01048 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0621; Docket No. CDC–2019–0117]

Proposed Data Collections Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on the information collection project entitled National Youth Tobacco Surveys (NYTS) 2021–2023 which aims to collect data on tobacco use among middle- and high school students.

DATES: CDC must receive written comments on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0117 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments. Mail: Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office,

Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

National Youth Tobacco Survey (NYTS) 2021–2023 (OMB Control No. 0920–0621, Exp. 4/30/2021)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use is the leading cause of preventable disease and death in the United States, and nearly all tobacco use begins during youth and young adulthood. A limited number of health risk behaviors, including tobacco use, account for the overwhelming majority of immediate and long-term sources of morbidity and mortality. Because many health risk behaviors are established during adolescence, there is a critical need for public health programs directed towards youth, and for information to support these programs.

Since 2004, the Centers for Disease Control and Prevention (CDC) has periodically collected information about tobacco use among adolescents (National Youth Tobacco Survey (NYTS) 2004, 2006, 2009, 2011, 2012, 2013–2019, OMB Control No. 0920–0621, Exp. 04/30/2021). This surveillance activity builds on previous surveys funded by the American Legacy Foundation in 1999, 2000, and 2002.

At present, the NYTS is the most comprehensive source of nationally representative tobacco data among students in grades 9–12, moreover, the NYTS is the only source of such data for students in grades 6–8. The NYTS has provided national estimates of tobacco use behaviors, information about exposure to pro- and anti-tobacco influences, and information about racial and ethnic disparities in tobacco-related topics. Information collected through the NYTS is used to identify trends over time, to inform the development of tobacco cessation programs for youth, and to evaluate the effectiveness of existing interventions and programs.

CDC plans to request OMB approval to conduct additional cycles of the NYTS in 2021, 2022, and 2023. The survey will be conducted among nationally representative samples of students attending public and private schools in grades 6–12, and will be administered to students as a digitally-based survey programmed onto tablets. Information supporting the NYTS also will be collected from state-, district-, and school-level administrators and teachers. During the 2021–2023 timeframe, changes will be incorporated that reflect CDC's ongoing collaboration with FDA and the need to measure progress toward meeting strategic goals established by the Family Smoking Prevention and Tobacco Control Act. Information collection will occur annually and may include a number of new questions, as well as increased representation of minority youth.

The survey will examine the following topics: Use of e-cigarettes, cigarettes, cigars, smokeless tobacco, hookahs, roll-your own-cigarettes, pipes, snus, dissolvable tobacco, bidis, heated tobacco products, and nicotine pouches; knowledge and attitudes; media and advertising; access to tobacco products and enforcement of restrictions on access; secondhand smoke and e-cigarette aerosol exposure; provision of school- and community-based interventions, and cessation.

Results of the NYTS will continue to be used to inform and evaluate the National Comprehensive Tobacco Control Program; provide data to inform the Department of Health and Human Service's Tobacco Control Strategic Action Plan, and provide national benchmark data for state-level Youth Tobacco Surveys. Information collected through the NYTS also is expected to provide multiple measures and data for monitoring progress on seven tobacco-related objectives for Healthy People 2030.

OMB approval will be requested for three years. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
State Administrators	State-level Recruitment Script for the NYTS.	33	1	30/60	17
District Administrators	District-level Recruitment Script for the NYTS.	253	1	30/60	127
School Administrators	School-level Recruitment Script for the NYTS.	281	1	30/60	141
Teachers	Data Collection Checklist	1,177	1	15/60	295
Students	National Youth Tobacco Survey	24,000	1	45/60	18,000
	Cognitive Testing	40	1	120/60	80

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
	Survey Pre-tests	30	1	45/60	23
	Testing Activities	300	1	10/60	50
Total					18,733

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01042 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1030; Docket No. CDC–2020–0003]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Developmental Studies to Improve the National Health Care Surveys. The purpose of this generic information collection request is to conduct developmental studies on survey design and data collection activities that are part of the National Health Care Surveys (NHCS).

DATES: CDC must receive written comments on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0003 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Developmental Studies to Improve the National Health Care Surveys (OMB Control No. 0920–1030, Exp. 04/30/2020)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes the Secretary of Health and Human Services (DHHS), acting through the Division of Health Care Statistics (DHCS) within NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The DHCS conducts the National Health Care Surveys, a family of nationally representative surveys of encounters and health care providers in inpatient, ambulatory, and long-term care settings. This information collection request (ICR) is for the extension of a generic clearance to conduct developmental studies to improve this family of surveys. This three-year clearance period will include studies to evaluate and improve upon existing survey design and operations, as well as to examine the feasibility of, and address challenges that may arise with, future expansions of the National Health Care Surveys.

Specifically, this request covers developmental research with the following aims: (1) To explore ways to refine and improve upon existing survey designs and procedures; and (2) to explore and evaluate proposed survey designs and alternative approaches to data collection. The goal of these

research studies is to further enhance DHCS existing and future data collection protocols to increase research capacity and improve health care data quality for the purpose of monitoring public health and well-being at the national, state and local levels, thereby informing the health policy decision-making process. The information collected through this generic ICR will not be used to make generalizable statements about the population of interest or to inform public policy; however, methodological findings may be reported.

This generic ICR would include studies conducted in person, via the telephone or internet, and by postal or electronic mail. Methods covered would include qualitative (*e.g.,* usability testing, focus groups, ethnographic studies, and respondent debriefing questionnaires) and/or quantitative (*e.g.,* pilot tests, pre-tests and split sample experiments) research methodologies. Examples of studies to improve existing survey designs and procedures may include evaluation of incentive approaches to improve recruitment and increase participation rates; testing of new survey items to obtain additional data on providers, patients, and their encounters while minimizing misinterpretation and human error in data collection; testing data collection in panel surveys; triangulating and validating survey responses from multiple data sources; assessment of the feasibility of data retrieval; and development of protocols that will locate, identify, and collect accurate survey data in the least labor-intensive and burdensome manner at the sampled practice site.

To explore and evaluate proposed survey designs and alternative approaches to collecting data, especially with the nationwide adoption of electronic health records, studies may expand the evaluation of data extraction of electronic health records and submission via continuity of care documentation to small/mid-size/large medical providers and hospital networks, managed care health plans, prison-hospitals, and other inpatient, ambulatory, and long-term care settings that are currently either in-scope or out-of-scope of the National Health Care Surveys. Research on feasibility, data quality and respondent burden also may be carried out in the context of developing new surveys of health care providers and establishments that are currently out-of-scope of the National Health Care Surveys. Specific motivations for conducting developmental studies include: (1) Within the National Ambulatory Medical Care Survey (NAMCS), new clinical groups may be expanded to include dentists, psychologists, podiatrists, chiropractors, optometrists), mid-level providers (*e.g.,* physician assistants, advanced practice nurses, nurse practitioners, certified nurse midwives) and allied-health professionals (*e.g.,* certified nursing aides, medical assistants, radiology technicians, laboratory technicians, pharmacists, dieticians/nutritionists). Current sampling frames such as those from the American Medical Association may be obtained and studied, as well as frames that are not currently in use by NAMCS, such as state and organizational listings of other licensed providers. (2) Within the National Study of Long-Term Care Providers, additional new frames may be sought and evaluated and data items from home care agencies, long-term care hospitals, and facilities exclusively serving individuals with intellectual/developmental disability may be tested. Similarly, data may be obtained from lists compiled by states and other organizations. Data about the facilities as well as residents and their visits will be investigated. (3) In the inpatient and outpatient care settings, the National Hospital Care Survey (NHCS) and the National Hospital Ambulatory Medical Care Survey (NHAMCS) may investigate the addition of facility and patient information especially as it relates to insurance and electronic medical records.

Projects under development or in the planning stages include two projects related to opioid use: One that will investigate adding questions to NAMCS on physician understanding of guidelines for opioid use and one that will test the validation of an algorithm for identifying opioid-involved hospital visits. Another study will develop a Hospital-Based Victim Services Frame.

The National Health Care Surveys collect critical, accurate data that are used to produce reliable national estimates—and in recent years (when budget allows), state-level estimates—of clinical services and of the providers who delivered those services in inpatient, ambulatory, and long-term care settings. The data from these surveys are used by providers, policy makers and researchers to address important topics of interest, including the quality and disparities of care among populations, epidemiology of medical conditions, diffusion of technologies, effects of policies and practice guidelines, and changes in health care over time. Research studies need to be conducted to improve existing and proposed survey design and procedures of the National Health Care Surveys, as well as to evaluate alternative data collection approaches particularly due to the expansion of electronic health record use, and to develop new sample frames of currently out-of-scope providers and settings of care. There is no cost to respondents other than their time to participate. Average burdens are designed to cover 15–40 min interviews as well as 90-minute focus groups, longer on-site visits, and situations where organizations may be preparing electronic data files. The total estimated annualized burden hours are 7,085.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Health Care Providers and Business entities.	Interviews, surveys, focus groups, experiments (in person, phone, internet, postal/electronic mail).	6,667	1	1	6,667
Health Care Providers, State/local government agencies, and business entities.	Interviews, surveys, focus groups, experiments (in person, phone, internet, postal/electronic mail).	418	1	2.5	418
Total					7,085

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01052 Filed 1–22–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20EN; Docket No. CDC–2019–0116]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Identifying Information Needs and Communication Channels for Reaching At-Risk Populations During Emergencies''. This information collections aims to understand the preferences, needs, and challenges of persons with limited English proficiency (LEP) in accessing and understanding health protection information during an infectious disease emergency as well as persons who will likely help them navigate and understand health information during an outbreak: Family, physicians, staff at community-based organizations, and staff at local public health agencies.

DATES: CDC must receive written comments on or before March 23, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0116 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Identifying Information Needs and Communication Channels for Reaching At-Risk Populations During Emergencies—New—Center for Preparedness and Response (CPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Nearly one tenth of the United States population over age five, or more than 25.9 million people, have limited English proficiency (LEP). Persons with LEP are disproportionately vulnerable to negative health outcomes, particularly in infectious disease emergencies. Communicating with such persons quickly and effectively in an emergency is essential, as it can encourage them to take protective personal actions like hand-washing or vaccination. These actions can protect persons with LEP and their friends and family members while reducing the spread and scale of the outbreak.

Despite widespread recognition of risks for persons with LEP in outbreaks and the importance of effective emergency risk communication, current guidelines are insufficient. Further, the empirical evidence to develop such guidelines is extremely limited. There is little understanding of persons with LEP's communication needs in emergencies, particularly from their own perspective and in their own voice. There is little data about preferences for and trust in information sources, communication channels, or formats—particularly social media—nor data fully describing barriers in accessing information. There is also little discussion of how the sociocultural context or social determinants play a role. Without evidence-based guidelines that address such central issues, it can be extremely challenging to create a communication or behavior change strategy, drive related programming, or develop messages and materials. This is especially true in the high-pressure moments of infectious disease emergencies, where time is limited, the science is evolving, and organizations have competing priorities.

This research effort will provide CDC with information about the preferences, needs, and challenges of persons with LEP in accessing and understanding health protection information during an infectious disease emergency. The findings will be used to develop evidence-based emergency risk communication recommendations for CDC and state, local and territorial public health agencies. The results will be used to help ensure LEP-focused communications are effective, prevent delays, reduce inequities in health outcomes, and help contain infectious disease outbreaks that affect LEP communities and the broader public. The proposed study utilizes a rigorous

mixed methods design. It incorporates views of persons with LEP through a survey (via mail, online, telephone, or in-person, depending on respondent preference) and qualitative, in-depth interviews (IDIs) (via telephone). It also incorporates the views of persons who will likely help persons with LEP navigate and understand health protection information during an infectious disease emergency: Family, physicians, and staff at community-based organizations and local public health agencies. IDIs will be conducted with each group (via telephone).

CDC is requesting a two-year approval for this information collection. The total annualized burden hour estimate is 369 burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Persons with LEP	Persons with LEP—Survey	637	1	20/60	212
Persons with LEP	Persons with LEP—IDIs	44	1	1	44
Family members	Family members—IDIs	44	1	1	44
Physicians	Physicians—IDIs	33	1	1	33
CBO staff	CBO staff—IDIs	18	1	1	18
LPHA staff	LPHA staff—IDIs	18	1	1	18
Total					369

Jeffery M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01050 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–1156]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Performance Monitoring of ''Working with Publicly Funded Health Centers to Reduce Teen Pregnancy among Youth from Vulnerable Populations'' (OMB# 0920–1156, Exp. 01/31/2020) to the Office of Management and Budget (OMB) for review and approval. A revision is requested to reduce burden hours and extend data collection through the end of the funding period (09/30/2020). CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 5, 2019 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Performance Monitoring of ''Working with Publicly Funded Health Centers to Reduce Teen Pregnancy among Youth from Vulnerable Populations''—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Although the 2017 U.S. rate of 18.8 births per 1,000 female teens aged 15–19 years represents a continued decline, the United States has one of the highest teen birth rates of all Western industrialized countries. Access to reproductive health services and the most effective types of contraception has been shown to reduce the likelihood that teens become pregnant. Nevertheless, recent research and lessons learned through a previous teen pregnancy prevention project implemented through CDC in partnership with the Office of Adolescent Health (2010–2015; OMB No. 0920–0952, Exp. 12/31/2015) demonstrate that many health centers serving teens do not engage in youth-friendly best practices that may enhance access to care and to the most effective types of contraception. Furthermore, youth at highest risk of experiencing a teen pregnancy are often not connected to the reproductive health care that they need, even when they are part of a population that is known to be at high risk for a teen pregnancy. Significant racial, ethnic and geographic disparities in teen birth rates persist and continue to be a focus of public health efforts.

To address these challenges, CDC has provided funding to three organizations to strengthen partnerships and processes that improve reproductive health services for teens. These awardees are working with 25 publicly

funded health centers to support implementation of evidence-based recommendations for health centers and providers to improve adolescent access to reproductive health services. In addition, awardees have worked with approximately 30 youth-serving organizations (YSO) to provide staff training and develop systematic approaches to identifying youth who are at risk for a teen pregnancy and referring those youth to reproductive health care services. Finally, awardees have developed communication campaigns that increase awareness of the partner health centers' services for teens. Activities are expected to result in changes to health center and YSO partners' policies, to staff practices, and to youth health care seeking and teen pregnancy prevention behaviors.

The best practices to improve adolescent access to reproductive health services included in this program are supported by evidence in the literature and recommended by major medical associations. Each of the components of the current project has been implemented as part of past teen pregnancy prevention efforts. Consistent with CDC's mission of using evidence to improve public health programs, conducting an evaluation of combined best practices, in concert with community-clinical linkage of youth to services to increase their access to reproductive health care, can provide further information to inform future teen pregnancy prevention efforts.

CDC has been collecting the information needed to assess these efforts under ''Performance Monitoring of 'Working with Publicly Funded Health Centers to Reduce Teen Pregnancy among Youth from Vulnerable Populations' '' (OMB No. 0920–1156, Exp. 1/31/2020). CDC is using the information to determine the types of training and technical assistance that may be needed, to monitor whether awardees meet objectives related to health center and YSO partners' policies and staff practices, to support a data-driven quality improvement process for adolescent sexual and reproductive health care services and referrals, and to assess whether the project model was effective in increasing the utilization of services by youth.

A revision of the currently approved information collection is being requested in order to continue data collection until the end of the project. Remaining information collection activities will include awardees, health center partner organizations, and providers at the health center partners; information collection during the extension period will not include YSOs or youths being served by health centers, as significant changes are not expected to be found for YSOs in the final year and that the youth survey will not need to be conducted beyond late 2019. Participation in the organizational assessment activities is required for awardees and partner organizations. Participation in a survey of health center providers is voluntary. The total estimated burden hours for the extension period are 485 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Private Sector	Health Center Organizational Assessment	21	1	2
	Quarterly Health Center Performance Reporting Tool.	21	2	4
	Annual Health Center Performance Measure Reporting Tool.	21	1	6
	Health Center Provider Survey	84	1	20/60
	Awardee Training and Technical Assistance Tool.	3	8	2
	Awardee Performance Measure Reporting Tool.	3	1	1
State and Local Government	Health Center Organizational Assessment	4	1	2
	Quarterly Health Center Performance Measure Reporting Tool.	4	2	4
	Annual Health Center Performance Measure Reporting Tool.	4	1	6
	Health Center Provider Survey	16	1	20/60

Jeffery M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–01049 Filed 1–22–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Family Level Assessment and State of Home Visiting (FLASH–V) Outreach and Recruitment Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation is requesting public comment on new data collection activities to gather information about how Maternal, Infant, and Early Childhood Home Visiting (MIECHV) local implementing agencies (LIAs) recruit families for program participation and work with their community referral partners to recruit families. The project is designed to examine challenges programs experience reaching caseload capacity and how challenges might be overcome.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF Office of Planning, Research, and Evaluation is proposing a new information collection to learn more about how MIECHV-funded LIAs recruit families for home visiting services. Data collection will take place in two phases: (1) Eligibility assessment and preliminary data collection and (2) primary data collection. The first phase, for MIECHV-funded LIAs, includes completion of an eligibility assessment form, providing information about community referral partners, and submitting program outreach and recruitment materials. The second phase includes participation, for LIAs and identified community referral partners, in a 75-minute semi-structured interview. For a subset of LIAs, it also includes submitting management information system (MIS) data. This descriptive work will capture how LIAs and their community referral partners identify families, refer families to home visiting services, and enroll and serve families. The activities and products from this project will help ACF and the Health Resources and Services Administration to identify actionable bottlenecks in the recruitment and enrollment process to allow for the development and testing of strategies to improve the delivery of MIECHV-funded services.

Respondents: MIECHV-funded LIA administrators, program managers, and frontline staff; LIAs participating in the Home Visiting Applied Research Collaborative's (HARC) Practice-Based Research Network; and LIA community referral partners.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
LIA Eligibility Assessment Form	161	1	.25	40
LIA Eligibility Assessment Form for MIS Data	15	1	.25	4
Request for LIA Recommendations from HARC State Networks	25	1	.25	6
Request to LIAs for Community Referral Partner Contact Information	35	1	.25	9
Interview Protocol Local Implementing Agency	40	1	1.25	50
Interview Protocol Community Referral Partner	150	1	1.25	188
MIS Data Submission	16	1	8	128

Estimated Total Annual Burden Hours: 425 hours.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Social Security Act Title V § 511 [42 U.S.C. 711]. As extended by the Bipartisan Budget Act of 2018 (Pub. L. 115–123) through FY22.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–01018 Filed 1–22–20; 8:45 am]

BILLING CODE 4182–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0008]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the Blood Products Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Blood Products Advisory Committee (BPAC) for the Center for Biologics Evaluation and Research notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the BPAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for future vacancies effective October 1, 2020, with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by February 24, 2020 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by February 24, 2020.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nominations should be sent via email to Christina Vert (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives must be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.* Information about becoming a member of an FDA advisory committee can also

be obtained by visiting FDA's website at: *http://www.fda.gov/AdvisoryCommittees/default.htm*.

FOR FURTHER INFORMATION CONTACT: Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6268, Silver Spring, MD 20993–0002, 240–402–8054, Fax: 301–595–1309, email: *Christina.Vert@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative(s) to the following advisory committee:

I. Blood Products Advisory Committee

BPAC reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood, products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases, and, as required, any other product for which FDA has regulatory responsibility, and advises the Commissioner of Food and Drugs (the Commissioner) of its findings regarding screening and testing (to determine eligibility) of donors and labeling of the products, on clinical and laboratory studies involving such products, on the affirmation or revocation of biological products licenses, and on the quality and relevance of FDA's research program which provides the scientific support for regulating these agents. BPAC will function at times as a medical device panel under the Federal Food, Drug, and Cosmetic Act Medical Device Amendments of 1976. As such, BPAC recommends classification of devices subject to its review into regulatory categories; recommends the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; advises on formulation of product development protocols and reviews premarket approval applications for those devices to recommend changes in classification as appropriate; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter via email stating that interest to FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a notification to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate, and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01057 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidance for Levonorgestrel; Intrauterine Device; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a revised draft guidance for industry, entitled ''Draft Guidance for Levonorgestrel.'' The revised draft guidance, when finalized, will provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for a levonorgestrel intrauterine device.

DATES: Submit either electronic or written comments on the draft guidance by March 23, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments 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–2007–D–0369 for ''Product-Specific Guidance for Levonorgestrel; Intrauterine Device.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' will be publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff office between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Wendy Good, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and to provide a meaningful opportunity for the public to consider and comment on the guidances. This notice announces the availability of a revised draft guidance on a generic levonorgestrel intrauterine device.

FDA initially approved new drug application 21225 for MIRENA (levonorgestrel intrauterine device) in December 2000. In April 2014, FDA issued a draft product-specific guidance for industry on a generic levonorgestrel intrauterine device. FDA subsequently withdrew that draft guidance in October 2014 because the recommended in vitro studies lacked adequate specificity. We are now issuing a revised draft guidance for industry on a generic levonorgestrel intrauterine device (''Draft Guidance on Levonorgestrel'') with recommendations for a combination of two studies, in vitro testing and an in vivo/ex vivo study, to demonstrate BE.

In December 2015, Bayer HealthCare LLC, manufacturer of the reference listed drug MIRENA, submitted a citizen petition requesting that FDA withhold approval of any ANDA for a generic version of MIRENA unless certain conditions were satisfied, including conditions related to demonstrating BE ((Docket No. FDA–2015–P–4600), available at *https://www.regulations.gov*). FDA is reviewing the issues raised in that petition. However, FDA will consider any comments received on the guidance entitled, ''Draft Guidance on Levonorgestrel,'' before responding to the citizen petition.

The revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidance, when finalized, will represent the current thinking of FDA on the design of BE studies to support ANDAs for a levonorgestrel intrauterine device. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01072 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0618]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Products

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 requirements for reporting and recordkeeping, general and specific requirements, and the availability of sample electronic products for manufacturers and distributors of electronic products.

DATES: Submit either electronic or written comments on the collection of information by March 23, 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 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 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–2013–N–0618 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Products.'' 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.

Electronic Products—21 CFR Parts 1000 Through 1050

OMB Control Number 0910–0025—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360ii through 360ss), FDA has the responsibility to protect the public from unnecessary exposure of radiation from electronic products. The regulations issued under these authorities are listed in Title 21 of the Code of Federal Regulations, chapter

I, subchapter J, parts 1000 through 1050 (21 CFR parts 1000 through 1050).

Section 532 of the FD&C Act directs the Secretary of Health and Human Services (the Secretary), to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the FD&C Act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products. Section 534(g) of the FD&C Act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the FD&C Act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliance with performance standards. Section 537(b) of the FD&C Act contains the authority to require manufacturers of electronic products to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

The regulations under parts 1002 through 1010 specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall. FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050.

FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the FD&C Act or were developed to aid the Agency in performing its obligations under the FD&C Act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection:

- Form FDA 2579 ''Report of Assembly of a Diagnostic X-Ray System''
- Form FDA 2767 ''Notice of Availability of Sample Electronic Product''
- Form FDA 2877 ''Declaration for Imported Electronic Products Subject to Radiation Control Standards''
- Form FDA 3649 ''Accidental Radiation Occurrence (ARO)''
- Form FDA 3626 ''A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and Their Major Components''
- Form FDA 3627 ''Diagnostic X-Ray CT Products Radiation Safety Report''
- Form FDA 3628 ''General Annual Report (Includes Medical, Analytical, and Industrial X-Ray Products Annual Report)''
- Form FDA 3629 ''Abbreviated Report''
- Form FDA 3630 ''Guide for Preparing Product Reports on Sunlamps and Sunlamp Products''
- Form FDA 3631 ''Guide for Preparing Annual Reports on Radiation Safety Testing of Sunlamp Products''
- Form FDA 3632 ''Guide for Preparing Product Reports on Lasers and Products Containing Lasers''
- Form FDA 3633 ''General Variance Request''
- Form FDA 3634 ''Television Products Annual Report''
- Form FDA 3635 ''Laser Light Show Notification''
- Form FDA 3636 ''Guide for Preparing Annual Reports on Radiation Safety Testing of Laser and Laser Light Show Products''
- Form FDA 3637 ''Laser Original Equipment Manufacturer (OEM) Report''
- Form FDA 3638 ''Guide for Filing Annual Reports for X-Ray Components and Systems''
- Form FDA 3639 ''Guidance for the Submission of Cabinet X-Ray System Reports Pursuant to 21 CFR 1020.40''
- Form FDA 3640 ''Reporting Guide for Laser Light Shows and Displays''
- Form FDA 3147 ''Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device''
- Form FDA 3641 ''Cabinet X-Ray Annual Report''
- Form FDA 3642 ''General Correspondence''
- Form FDA 3643 ''Microwave Oven Products Annual Report''
- Form FDA 3644 ''Guide for Preparing Product Reports for Ultrasonic Therapy Products''
- Form FDA 3645 ''Guide for Preparing Annual Reports for Ultrasonic Therapy Products''
- Form FDA 3646 ''Mercury Vapor Lamp Products Radiation Safety Report''
- Form FDA 3647 ''Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps''
- Form FDA 3659 ''Reporting and Compliance Guide for Television Products''
- Form FDA 3660 ''Guidance for Preparing Reports on Radiation Safety of Microwave Ovens''
- Form FDA 3661 ''A Guide for the Submission of an Abbreviated Report on X-Ray Tables, Cradles, Film Changers, or Cassette Holders Intended for Diagnostic Use''
- Form FDA 3662 ''A Guide for the Submission of an Abbreviated Radiation Safety Report on Cephalometric Devices Intended for Diagnostic Use''
- Form FDA 3663 ''Abbreviated Reports on Radiation Safety for Microwave Products (Other than Microwave Ovens)''
- Form FDA 3801 ''Guide for Preparing Initial Reports and Model Change Reports on Medical Ultraviolet Lamps and Products Containing Such Lamps''

The respondents to this information collection are electronic product and x-ray manufacturers, importers, and assemblers. The burden estimates were derived by consultation with FDA and industry personnel, and are based on data collected from industry, including product report submissions. An evaluation of the type and scope of information requested was also used to derive some time estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Product reports—1002.10(a) through (k).	3626—Diagnostic x-ray, 3627—CT x-ray, 3639—Cabinet x-ray, 3632—Laser, 3640—Laser light show, 3630—Sunlamp, 3646—Mercury vapor lamp, 3644—Ultrasonic therapy, 3659—TV, 3660—Microwave oven, 3801—UV lamps.	1,400	2.2	3,080	24	73,920
Product safety or testing changes—1002.11(a) and (b).	.....	480	2.5	1,200	0.5	600
Abbreviated reports—1002.12	3629—General abbreviated report, 3661—X-ray tables, etc., 3662—Cephalometric device, 3663—Microwave products (non-oven).	60	1.8	108	5	540
Annual reports—1002.13(a) and (b) ...	3628—General, 3634—TV, 3638—Diagnostic x-ray, 3641—Cabinet x-ray, 3643—Microwave oven, 3636—Laser, 3631—Sunlamp, 3647—Mercury vapor lamp, 3645—Ultrasonic therapy.	1,660	1.3	2,158	18	38,844
Quarterly updates for new models—1002.13(c).	.....	120	1.4	168	0.5	84
Accidental radiation occurrence reports—1002.20.	3649—ARO	30	6.7	201	2	402
Exemption requests—1002.50(a) and 1002.51.	3642—General correspondence	4	1.3	5	1	5
Product and sample information—1005.10.	2767—Sample product	5	1	5	0.1	1
Identification information and compliance status—1005.25.	2877—Imports declaration	12,620	2.5	31,550	0.2	6,310
Alternate means of certification—1010.2(d).	.....	1	2	2	5	10
Variance—1010.4(b)	3633—General variance request, 3147—Laser show variance request, 3635—Laser show notification.	350	1.1	385	1.2	462
Exemption from performance standards—1010.5(c) and (d).	.....	1	1	1	22	22
Alternate test procedures—1010.13	.....	1	1	1	10	10
Report of assembly of diagnostic x-ray components—1020.30(d), and (d)(1) and (2).	2579—Assembler report	1,230	34	41,820	0.30	12,546
Microwave oven exemption from warning labels—1030.10(c)(6)(iv).	.....	1	1	1	1	1
Laser products registration—1040.10(a)(3)(i).	3637—Original equipment manufacturer (OEM) report.	70	2.9	203	3	609
Total	.....	.....	.....	.....	.....	134,366

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
Manufacturers records—1002.30 and 1002.31(a)	1,650	1,650	2,722,500	0.12	326,700
Dealer/distributor records—1002.40 and 1002.41	3,110	50	155,500	0.05	7,775
Information on diagnostic x-ray systems—1020.30(g)	50	1	50	0.5	25
Laser products distribution records—1040.10(a)(3)(ii)	70	1	70	1	70
Total	.....	.....	.....	.....	334,570

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
Technical and safety information for users—1002.3	1	1	1	12	12
Dealer/distributor records—1002.40 and 1002.41	30	3	90	1	90

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
Television receiver critical component warning—1020.10(c)(4)	1	1	1	1	1
Cold cathode tubes—1020.20(c)(4)	1	1	1	1	1
Information on diagnostic x-ray systems—1020.30(g)	6	1	6	55	330
Statement of maximum line current of x-ray systems—1020.30(g)(2)	6	1	6	10	60
Diagnostic x-ray system safety and technical information—1020.30(h)(1) through (4)	6	1	6	200	1,200
Fluoroscopic x-ray system safety and technical information—1020.30(h)(5) and (6) and 1020.32(a)(1), (g), and (j)(4)	5	1	5	25	125
CT equipment—1020.33(c), (d), (g)(4), and (j)	5	1	5	150	750
Cabinet x-ray systems information—1020.40(c)(9)(i) and (ii)	6	1	6	40	240
Microwave oven radiation safety instructions—1030.10(c)(4)	1	1	1	20	20
Microwave oven safety information and instructions—1030.10(c)(5)(i) through (iv)	1	1	1	20	20
Microwave oven warning labels—1030.10(c)(6)(iii)	1	1	1	1	1
Laser products information—1040.10(h)(1)(i) through (vi)	3	1	3	20	60
Laser product service information—1040.10(h)(2)(i) and (ii)	3	1	3	20	60
Medical laser product instructions—1040.11(a)(2)	2	1	2	10	20
Sunlamp products instructions—1040.20	1	1	1	10	10
Mercury vapor lamp labeling—1040.30(c)(1)(ii)	1	1	1	1	1
Mercury vapor lamp permanently affixed labels—1040.30(c)(2)	1	1	1	1	1
Ultrasonic therapy products—1050.10(d)(1) through (d), (f)(1), and (f)(2)(iii)	1	1	1	56	56
Total					3,058

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.

Based on a review of the information collection, we have made no adjustments to our burden estimate.

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01073 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0145]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated With Animal Drug and Animal Generic Drug User Fees

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 FDA's animal drug and animal generic drug user fee programs.

DATES: Submit either electronic or written comments on the collection of information by March 23, 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 23, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 23, 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–2020–N–0145 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated with Animal Drug and Animal Generic Drug User Fees.'' 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.

Reporting Associated With Animal Drug and Animal Generic Drug User Fees—21 U.S.C. 379j–12 and 379j–21

OMB Control Numbers 0910–0540—Extension

This information collection supports FDA's animal drug and animal generic drug user fee programs. The Animal Drug User Fee Act of 2003 (ADUFA) (Pub. L. 108–130) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding section 740 of the FD&C Act (21 U.S.C. 379j–12), which requires that FDA assess and collect user fees with respect to new animal drug applications for certain applications, products, establishments, and sponsors. It also requires the Agency to grant a waiver from, or a reduction of, those fees in certain circumstances. The Animal Generic Drug User Fee Act of 2008 (AGDUFA) (Pub. L. 110–316) added section 741 of the FD&C Act (21 U.S.C. 379j–21), which establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). On August 14, 2018, H.R. 5554, the Animal Drug and Animal Generic Drug User Fee Amendments of 2018, was signed into law to reauthorize the ADUFA and AGDUFA programs administered by FDA.

Sponsors of new animal drug applications prepare and submit user fee cover sheets. The Animal Drug User Fee cover sheet (Form FDA 3546) is designed to collect the minimum necessary information to determine whether a fee is required for the review of an application or supplement or whether an application fee waiver was granted, to determine the amount of the fee required, and to ensure that each animal drug user fee payment is appropriately linked to the animal drug application for which payment is made. The form, when completed electronically, results in the generation of a unique payment identification number used by FDA to track the payment. The information collected is used by FDA's Center for Veterinary Medicine (CVM) to initiate the administrative screening of new animal drug applications and supplements. The information collection associated with the Animal Drug User Fee cover sheet currently is approved under OMB control number 0910–0539.

Sponsors of abbreviated new animal drug applications also prepare and

submit user fee cover sheets. The Animal Generic Drug User Fee cover sheet (Form FDA 3728) similarly is designed to collect the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to ensure that each animal generic drug user fee payment is appropriately linked to the abbreviated new animal drug application for which payment is made. The form, when completed electronically, results in the generation of a unique payment identification number used by FDA to track the payment. The information collected is used by CVM to initiate the administrative screening of abbreviated new animal drug applications. The information collection associated with the Animal Generic Drug User Fee cover sheet currently is approved under OMB control number 0910–0632.

FDA has also developed a guidance for industry (GFI) #170 entitled ''Animal Drug User Fees and Fee Waivers and Reductions.'' This document provides guidance on the types of fees FDA is authorized to collect under section 740 of the FD&C Act, and how to request waivers and reductions from these fees. Further, this guidance also describes what information FDA recommends be submitted in support of a request for a fee waiver or reduction; how to submit such a request; and FDA's process for reviewing requests. FDA uses the information submitted by respondents to determine whether to grant the requested fee waiver or reduction. The information collection associated with GFI #170 currently is approved under OMB control number 0910–0540.

The information collection provisions approved under OMB control numbers 0910–0539, 0910–0540, and 0910–0632 are similar in that they support FDA's animal drug and animal generic drug user fee programs. Thus, with this notice, FDA proposes to consolidate these collections of information into one OMB control number for government efficiency and to allow the public to look to one OMB control number for all reporting associated with FDA's animal drug and animal generic drug user fee programs. Because we are proposing to combine all reporting associated with FDA's animal drug user fees into one collection, we are consolidating the burden under OMB control number 0910–0540 and discontinuing OMB control numbers 0910–0539 and 0910–0632.

Description of Respondents: Respondents to this collection of information are new animal drug applicants and abbreviated new animal drug applicants. In addition, requests for waivers or reductions of user fees may be submitted by a person responsible for paying or potentially responsible for paying any of the animal drug user fees assessed, including application fees, product fees, establishment fees, or sponsor fees.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act Section; Activity	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
User fee cover sheets, by type:						
740(a)(1); Animal Drug User Fee cover sheet.	FDA 3546	21	1	21	1	21
741; Animal Generic Drug User Fee cover sheet.	FDA 3728	20	2	40	0.08 (5 minutes).	3
Waiver and other requests, by type:						
740(d)(1)(A); significant barrier to innovation.	N/A	55	1	55	2	110
740(d)(1)(B); fees exceed cost	N/A	8	3.75	30	0.5 (30 minutes).	15
740(d)(1)(C); free-choice feeds	N/A	5	1	5	2	10
740(d)(1)(D); minor use or minor species.	N/A	69	1	69	2	138
740(d)(1)(E); small business	N/A	1	1	1	2	2
Request for reconsideration of a decision.	N/A	1	1	1	2	2
Request for review (user fee appeal officer).	N/A	1	1	1	2	2
Total						303

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

For the purpose of this consolidation, we rely on our previous estimates of the number of user fee cover sheet and waiver and other request submissions. We estimate 21 respondents will each submit 1 Animal Drug User Fee cover sheet (Form FDA 3546) for a total of 21 responses. We estimate 20 respondents will each submit 2 Animal Generic Drug User Fee cover sheets (Form FDA 3728) for a total of 40 responses. Our estimate of the number of waiver and other request submissions is detailed in table 1. These estimates are consistent with our previous estimates except for the row labeled, Request for review (user fee appeal officer), for which we have increased the estimated number of respondents from zero to one and the average burden per response from 0 to 2 hours to correct the error in our previous submission. We base our estimates of the average burden per response on our experience with the submission of similar cover sheets and waiver and other requests.

The information collection reflects an increase in burden by an additional 26 hours and 62 responses due to the consolidation of the information collections covered by OMB control numbers 0910–0539, ''Animal Drug User Fee Cover Sheet,'' and 0910–0632, ''Animal Generic Drug User Fee Cover Sheet'' and the correction of the error in our previous submission.

Dated: January 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01082 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5961]

Clinical Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions and In Vitro Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of two final guidances for industry entitled ''Clinical Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions'' and ''In Vitro Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions.'' These guidances finalize the draft guidances entitled ''Clinical Drug Interaction Studies—Study Design, Data Analysis, and Clinical Implications'' and ''In Vitro Metabolism- and Transporter-Mediated Drug-Drug Interaction Studies'' published in October 2017. The final guidances are intended to assist drug developers in the planning and evaluation of drug-drug interaction (DDI) potential during drug development and describe a systematic, risk-based approach to the assessment of DDIs.

DATES: The announcement of the guidance is published in the **Federal Register** on January 23, 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–2017–D–5961 for ''Clinical Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions'' and ''In Vitro Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lauren Milligan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3159, Silver Spring, MD 20903–0002, 301–796–5008, or *OCP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of two final guidances for industry entitled ''Clinical Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions'' and ''In Vitro Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions.'' The concomitant use of more than one medication in a patient is common. Unanticipated, unrecognized, or mismanaged DDIs are an important cause of morbidity and mortality associated with prescription drug use and have occasionally been the basis for withdrawal of approved drugs from the market. In some instances, understanding how to safely manage a DDI can allow approval of a drug that

would otherwise have an unacceptable level of risk.

Clinically relevant DDIs between an investigational drug and other drugs should therefore: (1) Be defined during drug development as part of an adequate assessment of the drug's overall benefit/risk profile; (2) be known at the time of the drug's approval; and (3) be communicated in labeling. These two final guidances are intended to assist drug developers in the planning and evaluation of DDI potential during drug development. The in vitro DDI guidance focuses on in vitro experimental approaches for evaluating metabolizing enzyme- and transporter-based drug interaction potential and how to extrapolate in vitro data to decide on the need for clinical DDI studies. The clinical DDI guidance focuses on clinical studies that evaluate DDIs that alter a drug's pharmacokinetics by modulating the effects of drug metabolizing enzymes and/or transporters and advises sponsors on the timing and design of the clinical studies, interpretation of the results, and options for DDI management in patients.

Revisions to the draft guidances include clarification on the scope of the guidances, additional considerations for prospective drug interaction studies, and when DDI studies are needed for drugs identified as transporter substrates from in vitro studies. Together, the two final guidances describe a systematic, risk-based approach to evaluation and communication of DDIs.

These guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the current thinking of FDA on the topics they address. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

These guidances refer 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 314.50(d) have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

Dated: January 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01064 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–1525]

Determination That CARDENE (Nicardipine Hydrochloride) Injection, 25 Milligrams/10 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that CARDENE (nicardipine hydrochloride) injection, 25 milligrams (mg)/10 milliliters (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for nicardipine hydrochloride injection, 25 mg/10 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Daniel Gottlieb, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6210, Silver Spring, MD 20993–0002, 301–796–6650, *daniel.gottlieb@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, is the subject of NDA 019734, held by Chiesi USA, Inc., and initially approved on January 30, 1992. CARDENE is indicated for short-term treatment of hypertension when oral therapy is not feasible or not desirable.

In a letter dated February 13, 2018, Chiesi USA, Inc. notified FDA that CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Baxter Healthcare Corporation submitted a citizen petition on May 6, 2019 (Docket No. FDA–2019–P–1525), under 21 CFR 10.30, requesting that the Agency determine whether CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would

indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CARDENE (nicardipine hydrochloride) injection, 25 mg/10 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: January 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01062 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1393]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Patent Term Restoration; Due Diligence Petitions; Filing, Format, and Content of Petitions

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 24, 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 0910–0233. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Patent Term Restoration; Due Diligence Petitions; Filing, Format, and Content of Petitions 21 CFR Part 60

OMB Control Number 0910–0233—Extension

This information collection supports Agency regulations. FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 (21 U.S.C. 355(j)) and the Generic Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness review before marketing is permitted. If the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent.

In enacting the Drug Price Competition and Patent Term Restoration Act of 1984 and the Generic Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (USPTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years and is calculated by USPTO based on a statutory formula. When a patent holder submits an application for patent term extension to USPTO, USPTO requests information from FDA, including the length of the regulatory review period for the patented product. If USPTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with ''due diligence.''

The statute (21 CFR 60.36) defines due diligence as ''that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.'' As provided in § 60.30(c), a due diligence petition ''shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.'' Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petition not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

During the calendar years 2016 through 2018, 16 requests for revision of the regulatory review period were submitted under § 60.24(a). In addition, a total of three due diligence petitions were submitted under § 60.30. There have been no requests for hearings under § 60.40; however, for purposes of this information collection approval, we estimate that we may receive one submission annually.

In the **Federal Register** of August 21, 2019 (84 FR 43606), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 60—Patent term restoration	Number of respondents	Number of responses per respondent	Total responses (2016–2018)	Average burden per response	Total hours (2016–2018)	Average annual burden hours
60.24; revision of regulatory review period determinations	12	1.333	16	100	1,600	533.33
60.30; due diligence petitions	1	1	3	50	150	50
60.40; due diligence hearings	1	1	1	10	10	3.3
Total						586.63

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects a small increase (+7 responses) associated with submissions received under § 60.24 in previous years.

Dated: January 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01084 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that VYONDYS 53 (golodirsen), manufactured by Sarepta Therapeutics, Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Althea Cuff, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4061, Fax: 301–796–9856, email: *althea.cuff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that VYONDYS 53 (golodirsen), manufactured by Sarepta Therapeutics, Inc., meets the criteria for a priority review voucher. VYONDYS 53 (golodirsen) is indicated for the treatment of Duchenne muscular dystrophy (DMD) in patients who have a confirmed mutation of the DMD gene that is amenable to exon 53 skipping.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about VYONDYS (golodirsen), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: January 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–01059 Filed 1–22–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: Sickle Cell Disease Treatment Demonstration Regional Collaborative Program, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than March 23, 2020.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Sickle Cell Disease Treatment Demonstration Regional Collaborative Program.

OMB No.: 0906–xxxx–New.

Abstract: The Sickle Cell Disease Treatment Demonstration Regional Collaborative Program (SCDTDRCP) was reauthorized and amended in 2018 by the Sickle Cell Disease and Other Heritable Blood Disorders Research, Surveillance, Prevention, and Treatment Act (Pub. L. 115–327), 42 U.S.C. 300b–5. The purpose of the proposed data collection is to monitor the progress of the SCDTDRCP in improving health outcomes in individuals living with sickle cell disease.

The goals of the program are to improve health outcomes in individuals with sickle cell disease; reduce morbidity and mortality caused by

sickle cell disease; reduce the number of individuals with sickle cell receiving care only in emergency departments; and improve the quality of coordinated and comprehensive services to individuals with sickle cell and their families. The program funds five grantees to establish regional networks to provide leadership and support for regional and statewide activities in sickle cell disease. The grantees develop and establish systemic mechanisms to improve the treatment of sickle cell disease, by: (1) Increasing the number of providers treating individuals with sickle cell disease using the National Heart, Lung and Blood Institute (NHLBI) Evidence-Based Management of Sickle Cell Disease Expert Panel Report; (2) using tele-mentoring, telemedicine and other provider support strategies to increase the number of providers administering evidence-based sickle cell care; and (3) developing and implementing strategies to improve access to quality care with emphasis on individual and family engagement/partnership, adolescent transitions to adult life, and care in a medical home. The SCDTDRCP is designed to improve access to services for individuals with sickle cell disease, improve and expand patient and provider education, and improve and expand the continuity and coordination of service delivery for individuals with sickle cell disease and sickle cell trait. Per the statutory requirement, the data collected will be used to evaluate the program and will be published in a report to Congress.

Need and Proposed Use of the Information: The purpose of the proposed data collection is to monitor the progress of the SCDTDRCP in improving care and health outcomes for individuals living with sickle cell disease/trait and monitor grantee progress in meeting the goals of the program. Each regional grantee will conduct one quality improvement initiative for hydroxyurea utilization among individuals with sickle cell disease. Grantees must conduct an additional quality improvement initiative on one of these topics: (1) Pneumococcal vaccinations, (2) Transcranial Doppler Ultrasound (TCD) screening, or (3) transition planning. Grantees are encouraged to conduct additional clinical outcome quality improvement (QI) initiatives according to their ability. The regional grantees will also survey providers annually to assess provider comfort with treating individuals with sickle cell disease, awareness of the guidelines and involvement in Project ECHO (Extension of Community Health Outcomes) and other program activities. Pursuant to 42 U.S.C. 300b–5(b)(3)(B), the Sickle Cell Disease Treatment Demonstration Regional Collaborative Program's National Coordinating Center (NCC) will work with the grantees to gather data and prepare a Report to Congress at the conclusion of the program. Additional information regarding the data collection activities is below:

Provider Survey

Regional grantees will administer the Provider Survey annually to providers within their region. The Provider Survey is a 13 item questionnaire that collects information on the provider type, their utilization of telementoring, and aggregate de-identified patient-level data. The number of states participating within a region may range from 5 to 17 states. Data from the Provider Survey will be aggregated by the regional grantee and submitted to the NCC.

Quality Improvement

As part of the requirement for funding under the grant, each regional grantee is required to conduct at least two quality improvement initiatives within their region. All grantees are required to conduct a quality improvement initiative on increasing the use of hydroxyurea. Grantees must conduct an additional quality improvement initiative on one of these topics: (1) Pneumococcal vaccinations, (2) TCD screening, or (3) transition planning. Each regional grantee will collect QI data from participating providers and medical centers within their region and aggregate the data for submission to the NCC. Specific quality improvement data will be extracted from patients' charts quarterly, either manually or via electronic health records (EHR). This will require an initial set-up time in year 1 to develop data collection and reporting protocols for manual or electronic collection for the quality improvement project(s) that each regional grantee decides to measure. This initial set-up time has been included in the burden estimates listed in the chart.

Likely Respondents: Providers who treat individuals with sickle cell disease will complete the Provider Survey. The five regional grantees will aggregate these data and submit to the NCC. The grantees will also aggregate data from medical record extraction for the quality improvement initiatives.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the tables below:

Provider Survey and QI Measures

TOTAL ANNUAL BURDEN ESTIMATE HOURS

Form name	Number of respondents	Number of responses per respondent per year	Total responses per year	Average burden per response (hrs/yr)	Total burden hours per year
SCDTDP Provider Survey, participant responses	70	1	70	1	70
SCDTDP QI Measures*	50	4	200	22	4,400
Total	120		270		4,470

* **Note:** Total burden hours per year shown represents the maximum number of estimated hours. Actual hours may be lower since many teams will not be assessing all four QI initiatives.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–01075 Filed 1–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; 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 Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: March 10–11, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–547, 301–435–2591, *pamela.jeter@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: January 16, 2020.

Ronald J. Livingston, Jr., Program Analyst,

Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01014 Filed 1–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, January 24, 2020, 8:15 a.m. to 4:00 p.m., National Institutes of Health, John E. Porter Neuroscience Research Center, Building 35A, Rooms 620/630, 35 Convent Drive, Bethesda, MD 20892 which was published in the **Federal Register** December 16, 2019, 84 FR 68467.

This meeting notice is amended to change the open and closed session meeting times. The morning open session will now be held from 8:15 a.m. to 11:55 a.m.; the closed session will be held from 12:25 p.m.–1:15 p.m.; and the afternoon open session will be held from 1:15 p.m. to 4:00 p.m.

Dated: January 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01028 Filed 1–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting 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 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 Advisory Environmental Health Sciences Council.

Date: February 11–12, 2020.

Closed: February 11, 2020, 8:30 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Durham Convention Center, Durham Marriott City Center, 301 W Morgan Street, Durham, NC 27701.

Open: February 11, 2020, 9:15 a.m. to 5:00 p.m.

Agenda: Discussion of program policies and issues.

Place: Durham Convention Center, Durham Marriott City Center, 301 W Morgan Street, Durham, NC 27701.

Open: February 12, 2020, 8:30 a.m. to 11:00 a.m.

Agenda: Discussion of program policies and issues.

Place: Durham Convention Center, Durham Marriott City Center, 301 W Morgan Street, Durham, NC 27701.

Contact Person: Patrick Mastin, Ph.D., Chief, Cellular, Organs, and Systems Pathobiology Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, 984–287–3285, *mastin@niehs.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.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to

Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 16, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01013 Filed 1–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: March 11–12, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Konrad Krzewski, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852, 240–747–7526, *konrad.krzewski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 16, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–01027 Filed 1–22–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2656–20; DHS Docket No. USCIS–2019–0022]

RIN 1615–ZB84

Notice Concerning Termination of Eligibility for E–1 and E–2 Nonimmigrant Classification Based on Treaty of Amity With Iran

AGENCY: U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security.

ACTION: Notice concerning termination of eligibility.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) is announcing that nationals of Iran and their dependents are no longer eligible to change to or extend their stay in E–1 or E–2 nonimmigrant status on the basis of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran (the Treaty of Amity) due to the treaty's termination.

DATES: This announcement is made on January 23, 2020, and describes policy that governs adjudications on or after that date.

FOR FURTHER INFORMATION CONTACT: Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC 20529–2120; telephone: (202) 272–8377 (not a toll-free call). Individuals with a hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (INA), as amended, establishes the E nonimmigrant visa classification. Under section 101(a)(15)(E) of the INA, an otherwise admissible alien is eligible for E visa classification if ''entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national[.]'' The existence of a qualifying treaty or authorizing legislation is therefore a threshold requirement for the issuance of an E visa or for obtaining such status.

On October 3, 2018, the U.S. Department of State notified Iran of the termination of the Treaty of Amity. Subsequently, on October 23, 2019, the U.S. Department of State provided DHS with formal notice of the termination of the treaty. There are no other qualifying treaties with Iran currently in force or other Iran-specific bases for granting or extending E–1 or E–2 status to Iranian nationals. Accordingly, a national of Iran is no longer eligible for an extension of stay in E–1 or E–2 status or a change of status to E–1 or E–2 on the basis of the Treaty of Amity. Aliens who are currently in valid E–1 or E–2 status on the basis of the Treaty of Amity, including their family members who are also in valid E status, will be required to depart from the United States upon expiration of their authorized period of stay in the United States, unless otherwise authorized to remain in the United States (*e.g.,* pursuant to a change of status to another nonimmigrant status or adjustment of status to lawful permanent residence).

USCIS will issue Notices of Intent to Deny (NOIDs) to the affected applicants who have pending applications for extensions of stay in, or changes of status to, E–1 or E–2 status on the basis of the Treaty of Amity. Through the issuance of NOIDs, affected applicants will be notified of the effect of the treaty termination and given an opportunity to respond. If the grounds for issuance of the NOID are not overcome, USCIS will proceed to deny the application.

The changes described in this notice do not prevent Iranian nationals and their dependents from seeking admission in, or applying for a grant of, another nonimmigrant visa classification for which they believe they can establish eligibility under U.S. immigration law.

Mark Koumans,

Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. 2020–01110 Filed 1–22–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–WSFR–2018–N129; 91400–5110–0000; 91400–9410–0000]

Multistate Conservation Grant Program; Fiscal Year 2018 Priority List and Approval To Award Funds for Conservation Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt and award of the priority list and publication of grant awards.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the Fiscal Year 2018 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (Association). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, the Association submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant Program. Once projects are awarded, this list must be published into the **Federal Register.** We have reviewed the list and recommended all projects on the list for award to the Service Director. The Service Director approved the entire list of projects for award, and we have awarded all projects from the list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator; Wildlife and Sport Fish Restoration Program; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: WSFR; Falls Church, VA 22041–3808.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, via phone at 703–358–2156, via email at *John_Stremple@fws.gov,* or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the Fiscal Year (FY) 2018 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (Association). As required by the Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*), the Association submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant Program. We have reviewed the list and recommended all projects on the list for award to the Service Director. The Service Director approved the entire list of projects for award, and we have awarded funds for all projects from the list.

Background

The Fish and Wildlife Programs Improvement and National Wildlife Refuge System Centennial Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the restoration acts, for a total of up to $6 million annually. Projects can be funded from both funds, depending on the project activities. We may award grants to projects from a list of priority projects recommended to us by the Association of Fish and Wildlife Agencies. The Service Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list. The Improvement Act provides that funding for Multistate grants is available in the year it is appropriated and for the following year.

Funding Amounts

Total funding available for FY 2018 was $6,039,090; the total requested was approximately $6,024,583.08. The available funding was due to funding carried over from FY 2017, as well as the availability of funding that had previously been sequestered. After subtracting committed funds ($3,261,027) among the three components of the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (parts A & B), there was $2,778,063 available for new awards. The 2018 new award Priority List requested $2,763,556.08.

Funding Eligibility

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation for at least 26 States, for a majority of the States in any one Service Region, or for one of the regional associations of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, we may award grants to the Service, if requested by the Association, or to a State or a group of States. Also, the Association requires all project proposals to address the Association's National Conservation Needs, which are announced annually at the same time requests for proposals are sent out. Further, applicants must provide certification that no activities conducted under a Multistate Conservation Grant will promote or encourage opposition to regulated hunting or trapping of wildlife, or to regulated angling or taking of fish.

The Association's committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's and -women's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery review and rank eligible project proposals. The Association's National Grants Committee recommends a final list of priority projects to the directors of the State fish and wildlife agencies for their approval by majority vote. By statute, the Association then transmits the final approved list to the Service for funding under the Multistate Conservation Grant program by October 1 of the fiscal year.

Fiscal Year 2018 Priority List of Awarded Wildlife and Sport Fish Conservation Projects

For FY 2018, the Association sent us a list of 18 new projects, plus the 3 previously approved components of the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation that they recommended for funding. The list is in the following table:

ID	Title	Recipient	PR funding	DJ funding	Total 2018 grant
1	Coordination of Farm Bill Program Implementation	AFWA	$83,880	$55,920	$139,800
2	State Fish and Wildlife Agency Technical Workgroup and Evaluation Team for the 2016 National Survey.	AFWA	59,200	59,200	118,400
3	State Fish and Wildlife Agency Director Travel—Enabling Coordination and Planning of National-Level Conservation Initiatives.	AFWA	47,500	47,500	95,000

ID	Title	Recipient	PR funding	DJ funding	Total 2018 grant
4	Coordinating and Planning National-Scale Conservation Initiatives through Communications.	AFWA	40,000	40,000	80,000
5	Track Participation Trends & R3 Effectiveness via License Sales Dashboards.	ASA	69,000	69,000	138,000
6	Coordination of the Industry, Federal, and State Agency Coalition.	AFWA	77,130	77,130	154,260
7	Developing Data-Based Strategies to Increase Bowhunting.	ATA	130,968.11	43,656.03	174,624.14
8	Determining Actionable Strategies for Angler R3	RBFF	0	174,562.30	174,562.30
9	Improving Recruitment of New Hunters and Recreational Shooters.	NSSF	149,100	0	149,100
10	Improving Local Angler Recruitment Events	ASA	0	134,900	134,900
11	Developing Strategies to Train Professionals How to Communicate About Hunting.	RMEF	149,831.21	0	149,831.21
12	Evaluating the Promise and Potential Impacts of R3 Efforts Targeting College Students.	NC State University	89,309.18	33,762.25	123,071.43
13	Coordination of State Fish and Wildlife Agencies' Authority to Manage Resources in Concert with Federal Actions Required by CITES.	AFWA	32,100	32,100	64,200
14	Increasing Awareness and Knowledge of State Fish and Wildlife Management (Based on AFWA Strategic Plan Goal 2).	AFWA	50,000	50,000	100,000
15	Management Assistance Team (MAT) and National Conservation Leadership Institute (NCLI).	AFWA	255,667.50	304,679.50	560,347
16	Multistate Conservation Grant Program Management.	AFWA	52,500	52,500	105,000
17	Conservation Collaboration across the United States through the National Fish Habitat Partnership.	AFWA	0	209,960	209,960
18	Chronic Wasting Disease Management in the West.	WY Game & Fish	92,500	0	92,500
			1,378,686	1,384,870.08	2,763,556.08
NS	2016 Survey Coordination (Part A)	FWS	136,102	136,102	272,204
NS	2016 National Report (Part A)	U.S. Census	185,106	185,106	370,212
NS	2016 Fifty-State Survey Reports (Part B)	Rockville Institute	1,309,305.50	1,309,305.50	2,618,611
			3,009,199.50	3,015,383.58	6,024,583.08

PR Funding: Pittman-Robertson Wildlife Restoration funds.
DJ Funding: Dingell-Johnson Sport Fish Restoration funds.
AFWA: Association of Fish and Wildlife Agencies.
ASA: American Sportfishing Association.
ATA: Archery Trade Association.
NC State University: North Carolina State University.
NFHB: National Fish Habitat Board.
NS: 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.
NSSF: National Shooting Sports Foundation.
RMEF: Rocky Mountain Elk Foundation, Inc.
RBFF: Recreational Boating & Fishing Foundation.
WY Game and Fish: Wyoming Game and Fish Commission.

Dated: November 3, 2019.

Margaret E. Everson,

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

[FR Doc. 2020–01017 Filed 1–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2019–0117; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Holland Development, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before February 24, 2020.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2019–0117 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2019–0117.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2019–0117; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904–731–3121 or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Holland Development, Inc. for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a housing development (project) in Lake County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for public review.

Project

Holland Development, Inc. requests a 5-year ITP to take sand skinks by converting approximately 2.8 acres of occupied skink foraging and sheltering habitat incidental to the construction of a housing development on a 26.89-acre property with parcel ID number 09–22–26–0700–017000000 in Section 19, Township 22 South, Range 26 East, Lake County, Florida. The applicant proposes to mitigate for take of the sand skinks by purchasing 5.6 credits from the Lake Wales Ridge Conservation Bank or another Service-approved sand skink conservation bank. The Service would require the applicant to make this purchase prior to engaging in activities associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measure, would individually and cumulatively have a minor or negligible effect on sand skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in significant cumulative effects to environmental values or resources over time.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 57069D–0 to Holland Development, Inc.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay Herrington,

Field Supervisor, Jacksonville Field Office, South Atlantic-Gulf & Mississippi-Basin Regions.

[FR Doc. 2020–01067 Filed 1–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2018–0079; FXES11140400000–178–FF04EF2000]

Receipt of Incidental Take Permit Application; Eastern Collier Property Owners, LLC, Multi-Species Habitat Conservation Plan, Collier County, Florida; Additional Applicant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce receipt of an application from Gargiulo, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests to join 11 other landowners, collectively known as ''Eastern Collier Property Owners, LLC,'' in requesting individual 50-year ITPs authorizing take of the Florida panther and 18 other Federal or State-listed species. The take would be incidental to residential and commercial development, earth mining, and low-intensity rural land activities on properties in Collier County, Florida (project). We are accepting comments on Gargiulo, Inc.'s ITP application.

DATES: We will accept comments received or postmarked on or before February 21, 2020. Comments submitted electronically at *http://www.regulations.gov* must be received by 11:59 p.m. Eastern time on the closing date. Any comments we receive after the closing date may not be considered in the final decision on these actions.

ADDRESSES:

Obtain Documents: You may obtain copies of documents related to this application by the following methods:

Internet: http://www.regulations.gov (search for Docket No. FWS–R4–ES–2018–0079).

Field Office: https://www.fws.gov/verobeach/.

Submit Comments: You may submit written comments by the following methods:

Internet: http://www.regulations.gov. Follow the instructions for submitting

comments on Docket No. FWS–R4–ES–2018–0079.

Hard Copy: Via U.S. mail or hand-delivery to Public Comments Processing, Attn: FWS–R4–ES–2018–0079, U.S. Fish and Wildlife Service Headquarters, JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Review Public Comments: Submitted comments may be viewed at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2018–0079.

FOR FURTHER INFORMATION CONTACT: David Dell, Regional HCP Coordinator, by mail at Attn: ECPO, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345, or by telephone at 404–679–7313; or Constance Cassler, Supervisory Fish and Wildlife Biologist, by mail at the South Florida Ecological Services Office, Attn: ECPO, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960; or by telephone at 772–469–4356.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, have received an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant seeks to join 11 other landowners, collectively known as ''Eastern Collier Property Owners, LLC'' (ECPO), in obtaining individual 50-year ITPs. ECPO collaborated on a joint HCP to address long-term land-use planning and conservation issues related to the Florida panther in the east Collier County area (see also *http://www.floridapantherprotection.com*). Table 1 lists the species covered by the HCP. The Service announced the availability of 11 landowners' ITP applications in the **Federal Register** on October 19, 2018 (83 FR 53078). The applications included a jointly prepared habitat conservation plan (HCP). We also sought comment on our draft environmental impact statement (EIS). The comment period closed on December 3, 2018. All 12 applicants are listed below in Table 2.

Applicant

Gargiulo, Inc. purchased approximately 5,000 acres from another ECPO member, Collier Enterprises Management, Inc. The purchased tracts are already included in the HCP area, and there have been no changes to the activities covered by the HCP since publication of the October 19, 2018, notice.

TABLE 1—HCP-COVERED WILDLIFE SPECIES AND THEIR PROTECTED STATUSES

Status	Common name	Scientific name
Listed as endangered under the ESA	Florida panther	*Puma concolor coryi.*
	Florida bonneted bat	*Eumops floridanus.*
	Red-cockaded woodpecker	*Picoides borealis.*
	Everglade snail kite	*Rostrhamus sociabilis plumbeus.*
Listed as threatened under the ESA	Wood stork	*Mycteria americana.*
	Crested caracara	*Polyborus plancus audubonii.*
	Florida scrub jay	*Aphelocoma coerulescens.*
	Eastern indigo snake	*Drymarchon corais couperi.*
Candidate species or species under review for Federal listing	Gopher tortoise	*Gopherus polyphemus.*
	Eastern diamondback rattlesnake	*Crotalus adamanteus.*
	Gopher frog	*Lithobates capito.*
State-listed species	Big Cypress fox squirrel	*Sciurus niger avicennia.*
	Everglades mink	*Neovison vison evergladensis.*
	Burrowing owl	*Athene cunicularia.*
	Florida sandhill crane	*Antigone canadensis pratensis.*
	Little blue heron	*Egretta caerulea.*
	Roseate spoonbill	*Platalea ajaja.*
	Southeastern American kestrel	*Falco sparverius paulus.*
	Tricolored heron	*Egretta tricolor.*

TABLE 2—MEMBERS OF EASTERN COLLIER PROPERTY OWNERS, LLC, AND THEIR INCIDENTAL TAKE PERMIT APPLICATION NUMBERS

Applicants	Permit application Nos.
Alico Land Development, Inc	TE05647D–0
Barron Collier Investment, Ltd	TE04440D–0
Collier Enterprises Management, Inc	TE04443D–0
Consolidated Citrus Limited Partnership.	TE04471D–0
English Brothers Partnership	TE04152D–0
Gargiulo, Inc	TE54442D–0
Half Circle L Ranch, LLP	TE05238D–0
Heller Bros. Packing Corp	TE05668D–0
JB Ranch I, LLC	TE04473D–0
Owl Hammock Immokalee, LLC	TE06114D–0
Pacific Land, Ltd	TE05665D–0
Sunniland Family Limited Partnership	TE04472D–0

Background

Section 9 of the ESA and its implementing regulations prohibit ''take'' of federally listed ''threatened'' or ''endangered'' fish and wildlife species. However, section 10(a) of the ESA provides exceptions to the prohibition by allowing the Service to issue permits authorizing take of listed species where such take is incidental to, and not the purpose of, otherwise lawful activities, provided the applicant meets certain statutory requirements.

The ECPO HCP proposes a programmatic approach and framework for engaging in incidental take of the covered species while providing for the permanent protection of portions of the HCP area via conservation easements and funding for conservation activities in addition to those provided in the HCP. ECPO collectively owns a total of 151,779 acres within the approximately 174,000-acre HCP area. Up to 45,000 acres of the area could be developed or used for other activities under the HCP. Impacts to covered species from the project would be mitigated through habitat management measures, the placement of conservation easements on up to 107,000 acres of the HCP area, and contributions to a conservation endowment, the Marinelli Fund, to implement conservation measures for the covered species throughout and beyond the HCP area.

Draft Environmental Impact Statement

We published a notice of intent to prepare an EIS for ECPO's HCP in the **Federal Register** on March 25, 2016 (81 FR 16200). A public scoping meeting was held in Naples, Florida, on April 12, 2016, and an online public participation webcast was conducted on April 19, 2016. We incorporated issues identified during the scoping meetings into the draft EIS. A summary of the comments received during the scoping period is provided in the scoping report appended to the draft EIS. We published

a notice of availability of the draft EIS on October 19, 2018.

The draft EIS assesses the likely environmental impacts associated with the implementation of the activities proposed in the HCP compared to the likely consequences of not issuing the requested ITPs, *i.e.,* uncoordinated project-by-project and lot-by-lot planning and mitigation. The Department of the Army, through its bureau the U.S. Army Corps of Engineers, Jacksonville District, is a cooperating agency in the development of the draft EIS.

Public Comments

Comments previously submitted on the HCP, draft EIS, or 11 ITP applications need not be resubmitted. We have incorporated them into the public record and will fully consider them in our deliberations on whether to issue the requested ITPs.

If you wish to comment on Gargiulo, Inc.'s ITP application, you may submit comments by any one of the methods listed above in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you may request in your comment that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Next Steps

We will evaluate the HCP, draft EIS, and public comments to determine whether the ITP application meets the permit issuance requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA. If the requirements for permit issuance are met, we will issue an ITP to the applicant.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*), ESA regulations in Title 50 of the Code of Federal Regulations, and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and NEPA regulation 40 CFR 1506.6.

Mike Oetker,

Deputy Regional Director.

[FR Doc. 2020–01008 Filed 1–22–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14400000.PN0000/LLWO350000/20X; OMB Control Number 1004–0009]

Agency Information Collection Activities; Land Use Application and Permit

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 23, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Chandra Little. U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington, DC 20240; or by email to *cclittle@blm.gov.* Please reference OMB Control Number 1004–0009 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeremy Bluma by email at *jbluma@blm.gov,* or by telephone at 208–373–3847.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, the BLM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps to assess the impact of the BLM's information collection requirements and minimize the public's reporting burden. It also helps the public understand the BLM's information collection requirements and provides the requested data in the desired format.

The BLM is soliciting comments on the proposed ICR that is described below. The BLM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BLM; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BLM enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BLM minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. The BLM will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to the BLM to withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Abstract: This control number enables the BLM to obtain the information that is necessary in order to authorize the issuance of leases, permits, and easements for a variety of uses of public lands.

Title of Collection: Land Use Application and Permit.

OMB Control Number: 1004–0009.

Form: Form 2920–1.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Individuals, state and local governments, and businesses that wish to use public lands.

Total Estimated Number of Annual Responses: 407.

Estimated Completion Time per Response: Varies from 1 to 120 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,455.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $131,760.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Chandra Little,

Bureau of Land Management, Acting Information Collection Clearance Officer.

[FR Doc. 2020–01098 Filed 1–22–20; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1088]

Certain Road Construction Machines and Components Thereof Notice of Commission Determination To Institute a Modification Proceeding; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a modification proceeding in the above-captioned investigation and is requesting written submissions from the parties on the issues discussed herein.

FOR FURTHER INFORMATION CONTACT: Megan Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2017, based on a complaint, as supplemented, filed by Caterpillar Inc. of Peoria, Illinois and Caterpillar Paving Products, Inc. of Minneapolis, Minnesota (collectively, ''Complainants''). *See* 82 FR 56625–26 (Nov. 29, 2017). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,140,693 (''the '693 patent''); 9,045,871; and 7,641,419. *See id.* The notice of investigation identified the following respondents: Wirtgen GmbH of Windhagen, Germany; Joseph Vögele AG of Ludwigshafen, Germany; Wirtgen Group Holding GmbH (''Wirtgen Group'') of Windhagen, Germany; and Wirtgen America, Inc. (''Wirtgen America'') of Antioch, Tennessee. *See id.* The Office of Unfair Import Investigations was not a party to this investigation. *See id.*

On February 14, 2019, the Administrative Law Judge (''ALJ'') issued a final initial determination (''FID'') finding a violation of section 337 with respect to claim 19 of the '693 patent. On June 27, 2019, the Commission affirmed with modification the FID's findings. *See* 84 FR 31910 (July 3, 2019). The Commission issued a limited exclusion order (''LEO'') against the infringing products of respondents Wirtgen GmbH, Wirtgen Group, and Wirtgen America (collectively, ''Wirtgen''), and a cease and desist order against Wirtgen America. *See id.* In particular, the LEO covers certain of Wirtgen's series 1810 road-milling machines which were found to infringe claim 19 of the '693 patent but explicitly does not cover Wirtgen's series 1310 road-milling machines, which were found not to infringe that claim. *See* Comm'n Op. at 46, 50; LEO at ¶ 2 (including an explicit exemption for Wirtgen's series 1310 machines).

On August 9 and 27, 2019, respectively, Wirtgen filed a first motion before the Commission and before the Federal Circuit requesting a stay of the remedial orders pending appeal. See ECF No. 2 (Appeal No. 19–2320). On September 12, 2019, the Commission denied Wirtgen's motion. EDIS Doc. No. 688119. On October 10, 2019, the Federal Circuit denied Wirtgen's motion.

On December 6, 2019, the Commission received a letter from United States Customs and Border Protection (''CBP'') requesting clarification as to whether the Commission adjudicated any redesigned versions of Wirtgen's series 1810 milling machines. *See* EDIS Doc. No. 699429. On December 12, 2019, the Commission responded to CBP's letter and confirmed that it did not adjudicate Wirtgen's redesigned series 1810 machines. *See* EDIS Doc. No. 699436.

On December 18, 2019, CBP excluded certain Wirtgen cold milling machines (Models W 120 XFi and W 120 XTi) from entry into the United States.

On December 31, 2019, Wirtgen filed a renewed motion (''Renewed Motion'') to stay the Commission's remedial orders. Should the Commission deny its Renewed Motion, Wirtgen requests that the Commission ''clarify that the current remedial order does not exclude Wirtgen's Redesigned 1810 Series machines.'' *See* Renewed Motion at 12; *see also id.* at 3, 7 (discussing ''changed circumstances'' warranting a stay).

The Commission has determined to institute a modification proceeding pursuant to Commission authority under 19 U.S.C. 1337(k) and Commission Rule 210.76, 19 CFR 210.76. The modification proceeding is addressed to whether Wirtgen's redesigned Models XFi and XTi machines infringe claim 19 of the '693 patent and therefore fall within the scope of the LEO, or whether the LEO should be modified to include an explicit exemption for Wirtgen's Model XFi and XTi redesigned machines.

The Commission finds such institution to be warranted in the present investigation in view of the following facts. First, Wirtgen's Renewed Motion requests the Commission to clarify the scope of the Commission's remedial orders. Second, as noted above, the Commission did not adjudicate whether any redesigned products infringe the asserted patent claims. Wirtgen alleges that it requested the ALJ to make findings as to those products in the underlying violation investigation. *See* Renewed Motion at 13. When the ALJ declined to do so, Wirtgen did not petition the Commission for review of that decision, and those issues were ''deemed to have been abandoned'' pursuant to Commission Rule 210.43(b)(2). Third, when CBP sought to adjudicate, pursuant to CBP's authority under 19 CFR part 177, whether the redesigned products infringe, Wirtgen declined to consent to an *inter partes* proceeding in which Caterpillar would be able to be heard, and thus declined CBP's invitation for CBP to issue a ruling under 19 CFR part 177.

Pursuant to the pilot program to test expedited procedures for modification proceedings (*see https://www.usitc.gov/press_room/featured_news/pilot_program_will_test_expedited_procedures_usitc.htm,* the parties shall provide their positions as to whether the modification proceeding requires extensive or limited fact-finding and whether delegation to an ALJ for issuance of a recommended determination is warranted. As part of their arguments concerning the appropriate procedure, the parties may also identify any evidence from the record establishing whether or not Wirtgen's redesigned Models XFi and XTi machines infringe claim 19 of the '693 patent and whether or not the LEO should be modified to include an explicit exemption for Wirtgen's Model

XFi and XTi machines. The parties shall also propose a schedule for issuing the ALJ's recommended determination, if any, and the final Commission determination in the modification proceeding.

Written Submissions: Parties to the investigation are requested to file written submissions on the issues discussed herein.

Written submissions must be filed no later than close of business on January 31, 2020, and may not exceed 30 pages in length, exclusive of any exhibits. Reply submissions must be filed no later than the close of business on February 7, 2020, and may not exceed 15 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1088'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210). To the extent that Commission Rule 210.76, 19 CFR 210.76, contemplates, as is ordinarily the case, the existence of a petition for a modification proceeding, the Commission has determined that Wirtgen's renewed motion for stay is tantamount to such a petition. Alternatively, the Commission has determined that institution of a modification proceeding is also warranted based on the Commission's authority, *sua sponte,* to institute a modification proceeding. Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1) (''The Commission may also in its own initiative consider such action'' to modify its remedial orders.). The Commission also finds that good cause exists, for the reasons set forth above—including Wirtgen's previous failures to exhaust administrative processes—to waive or suspend Rule 210.76's contemplation of a petition. Commission Rule 201.4(b), 19 CFR 201.4.

By order of the Commission.

Issued: January 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–01022 Filed 1–22–20; 8:45 am]

BILLING CODE 7020–02–P

[1] All contract personnel will sign appropriate nondisclosure agreements.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–637 and 731–TA–1471 (Preliminary)]

Vertical Shaft Engines From China; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–637 and 731–TA–1417 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of vertical shaft engines from China, provided for in subheadings 8407.90.10, 8407.90.90, 8409.91.50, and 8409.91.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 2, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 9, 2020.

DATES: January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Abu B. Kanu (205–2597), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on January 15, 2020, by the Coalition of American Vertical Engine Producers (Kohler Co., Kohler, Wisconsin, and Briggs & Stratton Corporation, Wauwatosa, Wisconsin).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioner) wishing to participate in the

investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, February 5, 2020, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before February 3, 2020. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 10, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: January 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–01016 Filed 1–22–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Office of Labor-Management Standards (OLMS) of the Department of Labor (Department) is soliciting comments concerning the proposed extension of the collection of information requirements for processing applications under the Federal Transit Law. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 23, 2020

ADDRESSES: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

Please use only one method of transmission (Email) to submit comments or to request a copy of this information collection and its supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden.

SUPPLEMENTARY INFORMATION:

I. Background: Under 49 U.S.C. 5333(b), when Federal funds are used to acquire, improve, or operate a transit system, the Department must ensure that the recipient of those funds establishes arrangements to protect the rights of affected transit employees.

Federal law requires such arrangements to be ''fair and equitable,'' and the Department of Labor (DOL or ''the Department'') must certify the arrangements before the U.S. Department of Transportation's Federal Transit Administration (FTA) can award certain funds to grantees. These employee protective arrangements must include provisions that may be necessary for the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their positions related to employment; assurances of employment to employees of acquired transportation systems; assurances of priority of reemployment of employees whose employment is ended or who are laid off; and paid training or retraining programs. 49 U.S.C. 5333(b)(2). Pursuant to 29 CFR part 215, upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b) from the FTA, together with a request for the certification of employee protective arrangements from the Department of Labor, DOL will process those applications. The FTA will provide the Department with the information necessary to enable the Department to process employee protections for certification of the project.

II. Review Focus: The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Actions: The Department seeks extension of the current approval to collect this information. An extension is necessary because, if the information is not collected, DOL will be unable to determine that arrangements are ''fair and equitable' concerning the rights of affected transit employees. The information collected by OLMS is used to certify projects and allow funds to reach the applying transit agencies, which would prevent a reduction in services for the public and work for employees.

DOL Procedural Guidelines (29 CFR part 215), encourage the development of employee protections through local negotiations, but establish time frames for certification to expedite the process and make it more predictable, while assuring that the required protections are in place.

Pursuant to the Guidelines, DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service area of the project and to the applicant and/or sub-recipient. No referral is made if the application falls under one of the following exceptions: (1) Employees in the service area are not represented by a union; (2) the grant is for routine replacement items; (3) the grant is for a Job Access project serving populations less than 200,000. (29 CFR 215.3). Grants where employees in the service area are not represented by a union will be certified without referral based on protective terms and conditions set forth by DOL.

When a grant application is referred to the parties, DOL recommends the terms and conditions to serve as the basis for certification. The parties have 15 days to inform DOL of any objections to the recommended terms including reasons for such objections. If no objections are registered and no circumstances exist inconsistent with the statue, or if objections are found not sufficient, DOL certifies the project on the basis of the recommended terms.

If DOL determines that the objections are sufficient, the Department, as appropriate, will direct the parties to negotiate for up to 30 days, limited to issues defined by DOL.

If the parties are unable to reach agreement within 30 days, DOL will review the final proposals and where no circumstances exist inconsistent with the statute, issue an interim certification permitting FTA to release funds, provided that no action is taken relating to the issues in dispute that would irreparably harm employees.

Following the interim certification, the parties may continue negotiations. If they are unable to reach agreement, DOL sets the terms for Final Certification within 60 days. DOL may request briefs on the issues in dispute before issuing the final certification.

Notwithstanding the above, the Department retains the right to withhold certification where circumstances inconsistent with the statue so warrant until such circumstances have been resolved.

Type of Review: Extension.

Agency: Office of Labor-Management Standards.

Title of Collection: Protections for Transit Workers under Section 5333(b) Urban Program.

OMB Control Number: 1245–0006.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 1,671.

Total Estimated Number of Responses: 1,671.

Total Estimated Annual Burden Hours: 13,368.

Total Estimated Annual Other Costs Burden: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget (OMB) approval of the information collection request; they will also become a matter of public record.

Dated: January 16, 2020.

Andrew R. Davis,

Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor.

[FR Doc. 2020–01006 Filed 1–22–20; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, 50–286, and 72–051; NRC–2020–0021]

Indian Point Nuclear Generating Unit Nos. 1, 2, and 3; Consideration of Approval of Transfer of Control of Licenses and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct and indirect transfers of licenses; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself, Entergy Nuclear Indian Point 2, LLC (ENIP2), Entergy Nuclear Indian Point 3, LLC (ENIP3), Holtec International (Holtec), and Holtec Decommissioning International, LLC (HDI) (collectively,

the applicants), on November 21, 2019. The application seeks NRC approval of the transfer of control of Provisional Operating License No. DPR–5 and Renewed Facility Operating License Nos. DPR–26 and DPR–64 for Indian Point Nuclear Generating, Unit Nos. 1, 2, and 3, respectively (referred to individually as IP1, IP2, or IP3, and collectively as the Indian Point Energy Center or IPEC), as well as the general license for the IPEC Independent Spent Fuel Storage Installation (ISFSI) (collectively, the licenses). Specifically, the application requests that the NRC consent to (1) the transfer of control of the licenses to Holtec subsidiaries to be known as Holtec Indian Point 2, LLC (Holtec IP2) and Holtec Indian Point 3, LLC (Holtec IP3) and (2) the transfer of ENOI's operating authority to HDI. The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by February 24, 2020. A request for a hearing must be filed by February 12, 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 is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0021. 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.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1030; email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0021 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–2020–0021.
- *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–2020–0021 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the direct and indirect transfers of control of Provisional Operating License No. DPR–5 and Renewed Facility Operating License Nos. DPR–26 and DPR–64 for IP1, IP2, and IP3, respectively, as well as the general license for the IPEC ISFSI. Specifically, the application, dated November 21, 2019 (ADAMS Accession No. ML19326B953), requests that the NRC consent to (1) the transfer of control of the licenses from ENIP2 and ENIP3 to Holtec subsidiaries Holtec IP2 and Holtec IP3, respectively, and (2) the transfer of ENOI's operating authority (*i.e.,* its authority to conduct licensed activities under the licenses) to HDI. In addition, HDI submitted a ''Post Shutdown Decommissioning Activities Report [PSDAR] including Site-Specific Decommissioning Cost Estimate for Indian Point Nuclear Generating Units 1, 2, and 3,'' dated December 19, 2019 (ADAMS Accession No. ML19354A698), which the NRC is considering as a supplement to the license transfer application. The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

Following approval of the proposed direct and indirect transfers of control of the licenses, Holtec IP2 and Holtec IP3 would be the licensed owners for the licenses and HDI would be the licensed operator for the licenses. HDI will contract with Comprehensive Decommissioning International, LLC to decommission IP1, 2, and 3.

No physical changes to the IPEC and the IPEC ISFSI or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings

required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI, which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, 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.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-*

help/e-submittals.html. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated November 21, 2019, and the HDI PSDAR and Site-Specific Decommissioning Cost Estimate dated December 19, 2019.

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Susan H. Raimo, Entergy Services, LLC, at 202–530–7330 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland, this 15th day of January 2020.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Sr. Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87991; File No. SR–C2–2020–001]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Governing the Give Up of a Clearing Trading Permit Holder by a Trading Permit Holder on Exchange Transactions

January 16, 2020.

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 January 2, 2020, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend its rules governing the give up of a Clearing Trading Permit Holder by a Trading Permit Holder on Exchange transactions. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), 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 proposes to amend Rule 6.30, which governs the give up of a Clearing Trading Permit Holder[5] by a Trading Permit Holder[6] on Exchange transactions, to substantially conform to existing Cboe Exchange, Inc. (''Cboe Options'') Rule 5.10, proposed Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.12, and proposed Cboe BZX Exchange, Inc. (''BZX Options'') Rule 21.12.[7]

Background

By way of background, Exchange Rule 6.30 provides that when a Trading Permit Holder executes a transaction on the Exchange, it must give up the name of the Clearing Trading Permit Holder (the ''Give Up'') through which the transaction will be cleared. Rule 6.30 also provides that a Trading Permit Holder may only give up a ''Designated Give Up''[8] or its ''Guarantor.''[9] This limitation is enforced by the Exchange's trading systems.[10]

A ''Designated Give Up'' of a Trading Permit Holder refers to a Clearing Trading Permit Holder identified to the Exchange by that Trading Permit Holder as a Clearing Trading Permit Holder the Trading Permit Holder requests the ability to give up and that has been processed by the Exchange as a Designated Give Up.[11] To designate a ''Designated Give Up'' every Trading Permit Holder (other than a Market-Maker) must submit written notification, in a form and manner prescribed by the Exchange.[12] Specifically, the Exchange uses a standardized form (''Notification Form'') that a Trading Permit Holder needs to complete and submit to the Exchange's Membership Services Department (''MSD'').[13] The Exchange notes that a Trading Permit Holder may currently designate any Clearing Trading Permit Holder as a Designated Give Up.[14] Additionally, there is no minimum or maximum number of Designated Give Ups that a Trading Permit Holder must identify. Paragraph (d) of Rule 6.30 also requires that the Exchange notify a Clearing Trading Permit Holder, in writing and as soon as practicable, of each Trading Permit Holder that has identified it as a Designated Give Up. The Exchange however, will not accept any instructions from a Clearing Trading Permit Holder to prohibit a Trading Permit Holder from designating the Clearing Trading Permit Holder as a Designated Give Up. Additionally, there is no subjective evaluation of a Trading Permit Holder's list of proposed Designated Give Ups by the Exchange.

For purposes of Rule 6.30, a ''Guarantor'' of an executing Trading Permit Holder refers to a Clearing Trading Permit Holder that has issued a Letter of Guarantee for the executing Trading Permit Holder under the Rules of the Exchange that are in effect at the time of the execution of the applicable trade.[15] An executing Trading Permit Holder may give up its Guarantor without having to first designate it to the Exchange as a ''Designated Give Up.''[16] Additionally, the Exchange notes that a Market-Maker is only enabled to give up the Guarantor of the Market-Maker pursuant to Exchange Rule 22.8 and also does not need to identify any Designated Give Ups.[17]

Beginning in early 2018, certain Clearing Trading Permit Holders (in conjunction with the Securities Industry and Financial Markets Association (''SIFMA'')) expressed concerns related to the process by which executing brokers on U.S. options exchanges (the ''Exchanges'') are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Trading Permit Holders have recently identified the current give up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Trading Permit Holders subsequently requested

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Clearing Trading Permit Holder'' means a Trading Permit Holder that has been admitted to membership in the Clearing Corporation pursuant to the provisions of the rules of the Clearing Corporation and is self-clearing or that clears transactions for other Trading Permit Holders. *See* Exchange Rule 1.1.

[6] The term ''Trading Permit Holder'' means an Exchange-recognized holder of a Trading Permit. A Trading Permit Holder is deemed a ''member'' under the Exchange Act. *See* Exchange Rule 1.1.

[7] *See* SR–CboeEDGX–2020–001 (filed January 2, 2020) and SR–CboeBZX–2020–002 (filed January 2, 2020).

[8] *See* Exchange Rule 6.30(b)(1).

[9] *See* Exchange Rule 6.30(b)(2).

[10] *See* Exchange Rule 6.30(c).

[11] *Supra* note 7.

[12] *See* Exchange Rule 6.30(b)(3).

[13] *Id.*

[14] *Id.*

[15] *Supra* note 8.

[16] The Exchange already knows each Trading Permit Holder's Guarantor and as such, no further designation or identification is required of Trading Permit Holders to enable their respective Guarantors. *See* Exchange Rule 6.30(b)(6).

[17] *See* Exchange Rule 6.30(b)(5).

that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[18]

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Trading Permit Holder to ''opt in'', at the Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Trading Permit Holder, will allow the Clearing Trading Permit Holder to specify which Trading Permit Holders are authorized to give up that OCC clearing number. As proposed, Rule 6.30 will continue to require that Trading Permit Holders identify to the Exchange, via the Notification Form, all Clearing Trading Permit Holders that the Trading Permit Holder would like to have the ability to give up (*i.e.,* Designated Give Ups).[19] However, the Exchange proposes to modify the language of paragraph (a) to provide that a Trading Permit Holder may indicate, at the time of the trade or through post trade allocation, any OCC number of the Clearing Trading Permit Holder through which the transaction will be cleared.[20] The Exchange proposes to also add to Rule 6.30(a) that Clearing Trading Permit Holders may elect to ''Opt In,'' as defined in paragraph (c) of the proposed Rule and described further below, and restrict one or more of its OCC number(s) (''Restricted OCC Number'').[21] A Trading Permit Holder may Give Up a Restricted OCC Number provided the Trading Permit Holder has written authorization as described in paragraph (c)(2) (''Authorized Trading Permit Holder'').[22] The Exchange notes that if a Trading Permit Holder identifies a particular Clearing Trading Permit Holder as a Designated Give Up, but that Clearing Trading Permit Holder has restricted its OCC number(s) and has not authorized the Trading Permit Holder to give it up, then the Exchange will not give effect to the designation on the Notification Form (*i.e.,* the Trading Permit Holder will not be able to give up that Clearing Trading Permit Holder even though it was identified as a Designated Give Up). Similarly, if a Clearing Trading Permit Holder authorizes a Trading Permit Holder to give up its Restricted OCC Number(s), the Exchange will not enable that Clearing Trading Permit Holder as a give up for that Trading Permit Holder until and unless the Trading Permit Holder identifies that Clearing Trading Permit Holder as a Designated Give Up on a Notification Form. In light of Clearing Trading Permit Holders having the ability to restrict their OCC numbers from being given up by unauthorized Trading Permit Holders, the Exchange also proposes to eliminate the process for Clearing Trading Permit Holders to ''reject'' trades. As such, the Exchange proposes to eliminate subparagraphs (e) and (f) of Rule 6.30 and any other references to the process in Rule 6.30.[23]

Proposed Rule 6.30(c) provides that Clearing Trading Permit Holders may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') from being given up unless otherwise authorized.[24] If a Clearing Trading Permit Holder Opts In, the Exchange will require written authorization from the Clearing Trading Permit Holder permitting a Trading Permit Holder to give up a Clearing Trading Permit Holder's Restricted OCC Number.[25] An Opt In would remain in effect until the Clearing Trading Permit Holder terminates the Opt In as described in proposed subparagraph (3).[26] If a Clearing Trading Permit Holder does not Opt In, that Clearing Trading Permit Holder's OCC number may be subject to being given up by any Trading Permit Holder that has designated it as a Designated Give Up.[27] Proposed Rule 6.30(c)(1) will set forth the process by which a Clearing Trading Permit Holder may Opt In.[28] Specifically, a Clearing Trading Permit Holder may Opt In by sending a completed ''Clearing Trading Permit Holder Restriction Form'' listing all Restricted OCC Numbers and Authorized Trading Permit Holders.[29] A copy of the proposed form is included in Exhibit 3. A Clearing Trading Permit Holder may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC.[30] The Clearing Trading Permit Holder would be required to submit the Clearing Trading Permit Holder Restriction Form to the Exchange's MSD as described on the form.[31] Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.[32] This time period is to provide adequate time for the Trading Permit Holders of that Restricted OCC Number who are not initially specified by the Clearing Trading Permit Holder as Authorized Trading Permit Holders to obtain the required written authorization from the Clearing Trading Permit Holder for that Restricted OCC Number. Such Trading Permit Holders would still be able to give up that Restricted OCC Number during this ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Rule 6.30(c)(2) will set forth the process for Trading Permit Holders to give up a Clearing Trading Permit Holder's Restricted OCC Number.[33] Specifically, a Trading Permit Holder desiring to give up a Restricted OCC Number must become an Authorized Trading Permit Holder.[34] The Clearing Trading Permit Holder will be required to authorize a Trading Permit Holder as described in subparagraph (1) or (3) of

[18] Cboe Options recently modified its give up procedure under rule 5.10 to allow clearing trading permit holders to ''Opt In'' such that the clearing trading permit holder (''TPH'') may specify which Cboe Options TPH organizations are authorized to give up that clearing trading permit holder. *See* Securities and Exchange Act Release No. 86401 (July 17, 2019), 84 FR 35433 (July 23, 2019) (SR–CBOE–19–036) (''Cboe Options Rule 5.10 Amendment''). Nasdaq PHLX LLC (''PHLX''), NYSE Arca, Inc., (''NYSE Arca''), and NYSE American LLC (''NYSE American'') also recently modified their respect give up rules to adopt an ''Opt In'' process. *See also* Securities and Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (SR–PHLX–2018–72), Securities and Exchange Act Release No. 85871 (May 16, 2019), 84 FR 23613 (May 22, 2019) (SR–NYSEArca 2019–32) and Securities and Exchange Act Release 85875 (May 16, 2019), 84 FR 23591 (May 22, 2019) (SR–NYSEAMER–2019–17). The Exchange's proposal leads to the same result of providing its Clearing Trading Permit Holder's the ability to control risk and includes PHLX's, NYSE Arca's and NYSE American's ''Opt In'' process, but it otherwise differs slightly in process from their give up rules. For example, the Exchange intends to maintain its provisions relating to Designated Give Ups and eliminate its provisions relating to the rejection of a trade. The Exchange's proposal is substantially the same as the existing give up process on Cboe Options.

[19] *Id.*

[20] The Exchange notes that Cboe Options plans to amend paragraph (a) of Rule 5.10 to conform to proposed paragraph (a) of C2 Options Rule 6.30 and EDGX Options Rule 21.12 with a slight modification as it relates to floor trading on Cboe Options.

[21] *See* proposed Exchange Rule 6.30(a); *see also* Cboe Options Rule 5.10(a).

[22] *Id.*

[23] The Exchange notes that Cboe Options similarly eliminated the process for which Clearing Trading Permit Holders may ''reject'' trades in Rule 5.10. *See* the Cboe Options Rule 5.10 Amendment.

[24] *See* proposed Exchange Rule 6.30(c); *see also* Cboe Options Rule 5.10(c).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *See* proposed Exchange Rule 6.30(c)(1); *see also* Cboe Options Rule 5.10(c)(1).

[29] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Trading Permit Holder's contact information to assist Trading Permit Holders (to the extent they are not already Authorized Trading Permit Holders) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Trading Permit Holders of such updates on a periodic basis.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* proposed Exchange Rule 6.30(c)(2); *see also* Cboe Option Rule 5.10(c)(2).

[34] *Id.*

Rule 6.30(c) (*i.e.,* through a Clearing Trading Permit Holder Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the Trading Permit Holder is a party to, as set forth in Rule 6.30(b)(6).[35] Pursuant to proposed Rule 6.30(c)(3), a Clearing Trading Permit Holder may amend the list of its Authorized Trading Permit Holders or Restricted OCC Numbers by submitting a new Clearing Trading Permit Holder Restriction Form to the Exchange's MSD indicating the amendment as described on the form.[36] Once a Restricted OCC Number is effective within the System pursuant to Rule 6.30(c)(1), the Exchange may permit the Clearing Trading Permit Holder to authorize, or remove authorization for, a Trading Permit Holder to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances.[37] The Exchange will promptly notify Trading Permit Holders if they are no longer authorized to give up a Clearing Trading Permit Holder's Restricted OCC Number.[38] If a Clearing Trading Permit Holder removes a Restricted OCC Number, any Trading Permit Holder may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing Trading Permit Holder has been designated as a Designated Give Up.[39]

The Exchange also proposes to amend current subparagraph (c) (System) (to be relettered to paragraph (d)) of Rule 6.30 to clarify that in addition to the Exchange's system not accepting orders that identify a give up that is not at the time a Designated Give Up or a Guarantor, the System will also reject any order that designates a Restricted OCC Number for which the Trading Permit Holder is not an Authorized Trading Permit Holder.[40]

The Exchange proposes to amend current paragraph (d) (Notice to Clearing Trading Permit Holders) (to be relettered to paragraph (e)) of Rule 6.30 to provide that the Exchange will provide notice to Trading Permit Holders that they are authorized or unauthorized by Clearing Trading Permit Holders.[41]

The Exchange also proposes to amend current paragraph (g) (Other Give Up Changes) (to be relettered to subparagraph (f)) of Rule 6.30 to provide that a Trading Permit Holder may change the give up on the trade to another Designated Give Up, provided it's an Authorized Trading Permit Holder for any Restricted OCC Number, or to its Grantor.[42] Additionally, the Exchange seeks to define a specific ''Trade Date Cutoff Time'' [43] and ''T+1 Cutoff Time'' in the rule text of proposed paragraph (f).[44]

The Exchange proposes to amend current paragraph (h) (Responsibility) (to be relettered to paragraph (g)) of Rule 6.30 to eliminate any applicable reference to current paragraph (e) or (f) of the Rule and to conform with Cboe Options Rule 5.10(g).

The Exchange also proposes to adopt subparagraph (h) of Rule 6.30 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 3.1, titled ''Business Conduct of Trading Permit Holders.'' [45] This language will make clear that the Exchange will regulate an intentional misuse of this Rule, and that such behavior would be a violation of Exchange rules. The proposed language is similar to corresponding provisions in other exchanges' give up rules.[46]

Lastly, the Exchange proposes to amend its current Trading Permit Holder Notification of Designated Give Ups Form (''Designated Give Ups Form''). As of October 7, 2019 the Exchange and each of its affiliated options exchanges (*i.e.,* C2 Options, BZX Options, and Cboe Options (collectively, ''Cboe Markets'')) are on the same technology platform. To provide further harmonization across the Cboe Markets and provide more seamless administration of the Give up rule, the Exchange proposes to eliminate the current Designated Give Ups Form and adopt a new form which would be applicable to all Cboe Markets going forward. The proposed Designated Give Ups Form is included in Exhibit 3.

Implementation Date

The Exchange proposes to announce the implementation date of the proposed rule change in an Exchange Notice, to be published no later than thirty (30) days following the operative date. The implementation date will be no later than sixty (60) days following the operative date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[47] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [48] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [49] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Trading Permit Holders to identify any Clearing Trading Permit Holder as a Designated Give Up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms. The Exchange believes that the proposed changes to Rule 6.30 help alleviate this risk by enabling Clearing Trading Permit Holders to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Trading Permit Holders may give up those Restricted OCC Numbers. As described above, all other Trading Permit Holders would be required to receive written authorization from the Clearing Trading Permit Holder before they can give up that Clearing Trading Permit Holder's

[35] *Id.*

[36] *See* proposed Exchange Rule 6.30(c)(3); *see also* Cboe Options Rule 5.10(c)(3).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* proposed Exchange Rule 6.30(d); *see also* Cboe Options Rule 5.10(d).

[41] *See* proposed Exchange Rule 6.30(e); *see also* Cboe Options Rule 5.10(e).

[42] *See* proposed Exchange Rule 6.30(f); *see also* Cboe Options Rule 5.10(f).

[43] The ''Trade Date Cutoff Time'' is established by the Clearing Corporation (or 15 minutes thereafter if the Exchange receives and is able to process a request to extend its time of final trade submission to the Clearing Corporation). *See* proposed Exchange Rule 6.30(f)(1); *see also* Cboe Options Rule 5.10(f)(1).

[44] The ''T+1 Cutoff Time'' is 1:00 p.m. Eastern Time on T+1; *see* proposed Exchange Rule 6.30(f)(3); *see also* Cboe Options Rule 5.10(f)(3) (which provides a cutoff time of 12:00 p.m. Central Time).

[45] *See* Cboe Options Rule 5.10(h), which states that intentional misuse of Rule 5.10 may be treated as a violation of Rule 8.1 (Just and Equitable Principles of Trade).

[46] *See, e.g.,* Cboe Options Rule 5.10(h).

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

[49] *Id.*

Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Trading Permit Holders as it provides controls for Clearing Trading Permit Holders to restrict access to their OCC clearing numbers, allowing access only to those Authorized Trading Permit Holders upon their request. The Exchange also believes that its proposed Clearing Trading Permit Holder Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Trading Permit Holders, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Trading Permit Holders (other than Authorized Trading Permit Holders) to seek authorization from Clearing Trading Permit Holders in order to have the ability to give them up, each Trading Permit Holder will still have the ability to give up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that Trading Permit Holder is party to that arrangement. The Exchange also notes that to the extent the executing Trading Permit Holder has a clearing arrangement with a Clearing Trading Permit Holder (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing Trading Permit Holder's guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Trading Permit Holder would be responsible for a trade, which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Trading Permit Holders. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become Trading Permit Holders on the Exchange to take advantage of the trading opportunities. Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Trading Permit Holders under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction. In the absence of a mechanism that governs a market participant's use of a Clearing Trading Permit Holder's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Trading Permit Holder to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Trading Permit Holders may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Trading Permit Holders to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [50] and Rule 19b–4(f)(6) [51] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [52] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, the Exchange requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change from Phlx, after which other options exchanges subsequently adopted subatantially similarly rules.[53] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the Exchange's proposal raises no new issues. Further, such waiver will permit the Exchange, without further delay, to begin implementing the new standardized give up process, thus aligning its give up process with that of the other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing .[54]

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,

[50] 15 U.S.C. 78s(b)(3)(A).

[51] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[52] 17 CFR 240.19b–4(f)(6)(iii).

[53] *See* Securities Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (Phlx–2018–72) (order approving a proposed rule change to establish rules governing give ups). *See also supra* note 18 (citing the filings in which other options exchanges adopted substantially similar rules).

[54] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–C2–2020–001 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–C2–2020–001. 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–C2–2020–001 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01035 Filed 1–22–20; 8:45 am]

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[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87994; File No. SR–NYSEArca–2020–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Introduce Two New Pricing Tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4

January 16, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 9, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to introduce two new pricing tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to introduce two new pricing tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders [4] to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 9, 2020.[5]

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for November 2019, no single exchange has more than 18% market share (whether including or excluding auction

[4] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[5] The Exchange originally filed to amend the Fee Schedule on January 2, 2020 (SR–NYSArca–2020–02). SR–NYSEArca–2020–02 was subsequently withdrawn and replaced by this filing.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[7] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[8] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in November 2019, the Exchange had 7.6% market share of executed volume of equity trades (excluding auction volume).[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders[12] is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the third quarter of 2019, TD Ameritrade routed 92% of its limit orders to off-exchange venues.[13] Similarly, E-Trade Financial and Charles Schwab routed more than 73% and more than 97%,[14] respectively, of its limit orders to off-exchange venues. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

As described in greater detail below, the Exchange proposes the following changes:

- Introduce Retail Order Step-Up Tier 3, which provides a credit of $0.0035 per share to ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.10% or more of the US CADV[15] above their April 2018 ADV taken as a percentage of US CADV; and
- Introduce Retail Order Step-Up Tier 4, which provides a credit of $0.0036 per share to ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.20% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV.

In this competitive environment, the Exchange has already established Retail Order Step-Up Tiers 1 and 2, which are designed to encourage ETP Holders that provide displayed liquidity in Retail Orders on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed Retail Order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity in Retail Orders on the Exchange:

Tier	Credit for providing displayed liquidity in retail orders
Retail Order Step-Up Tier 1	$0.0033 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 2	$0.0035 (Tape A, Tape B and Tape C).

Under the Retail Order Step-Up Tier 1, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in April 2018, it is eligible to earn higher credits. Specifically, to qualify for the credit under Retail Order Step-Up Tier 1, an ETP Holder must execute an average daily volume (ADV) per month of Retail Orders with a time-in-force of Day that add or remove liquidity that is an increase of 0.12% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV.

Currently, if an ETP Holder meets the Retail Order Step-Up Tier 1 requirement, such ETP Holder is eligible to earn a credit of $0.0033 per share for Retail Orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities, and is not charged a fee for Retail Orders with a time-in-force of Day that remove liquidity.[16]

Under Retail Order Step-Up Tier 2, if an ETP Holder increases its providing liquidity by a specified percentage over the US CADV, and the ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in April 2018, it is eligible to earn higher credits. Specifically, ETP Holders that provide liquidity an ADV per month of 1.10% or more of the US CADV, and execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.35% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV are eligible for the per share credit under the Retail Order Step-Up Tier 2 pricing tier.

Currently, if an ETP Holder meets the Retail Order Step-Up Tier 2

[10] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[11] *See id.*

[12] A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

[13] *See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.*

[14] *See https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf. See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.*

[15] US CADV means the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

[16] *See* Securities Exchange Act Release No. 83268 (May 17, 2018), 83 FR 23983 (May 23, 2018) (SR–NYSEArca–2018–34).

requirement, such ETP Holder is eligible to earn a credit of $0.0035 per share for Retail Orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities, and is not charged a fee for Retail Orders with a time-in-force of Day that remove liquidity.[17] Additionally, under Retail Order Step-Up Tier 2, ETP Holders are eligible to earn a credit of $0.0035 per share for orders in Tape C securities that provide displayed liquidity, can receive an incremental credit of $0.0002 per share for orders in Tape C securities that provide non-displayed liquidity, and are charged a fee of $0.0027 per share for orders in Tape C securities that take liquidity.[18]

With this proposed rule change, the Exchange proposes to introduce two new pricing tiers, Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. Under proposed Retail Order Step-Up Tier 3, ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.10% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV, would receive a credit of $0.0035 per share for Retail Orders that provide displayed liquidity in Tape A, Tape B and Tape C securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book will not be charged a fee. The Exchange notes that proposed Retail Order Step-Up Tier 3 provides the same level of credit for Retail Orders that provide displayed liquidity to the Book in Tapes A, B and C securities payable under the current Retail Order Step-Up Tier 2 but proposes a lower requirement to qualify for the credit. Proposed Retail Order Step-Up Tier 3 also does not provide the incremental $0.0002 per share credit in Tape C securities for orders that provide non-displayed liquidity to the Book, the $0.0035 per share credits for non-Retail Orders that provide displayed liquidity to the Book in Tape C Securities, or the $0.0027 per share fee applicable for orders in Tape C securities that take liquidity, all of which are currently payable under Retail Order Step-Up Tier 2.

For example, assume an ETP holder has an ADV of 7 million shares in Retail Orders with a time-in-force of Day that add or remove liquidity in April 2018 when US CADV was 7 billion shares, or 0.10% of US CADV. If that same ETP Holder has an ADV of at least 14 million shares in Retail Orders with a time-in-force of Day that add or remove liquidity in the billing month when US CADV was also 7 billion shares, or 0.20% of US CADV, for a step up of 0.10% of US CADV, that ETP holder would qualify for Retail Order Step-Up Tier 3 credit of $0.0035 per share.

Under proposed Retail Order Step-Up Tier 4, ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.20% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV, would receive a credit of $0.0036 per share for Retail Orders that provide displayed liquidity in Tape A, Tape B and Tape C securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book will not be charged a fee.

For example, assume the ETP holder in the previous example has an ADV of at least 21 million shares in Retail Orders with a time-in-force of Day that add or remove liquidity in the billing month when US CADV was 7 billion shares, or 0.30% of US CADV, for a step up of 0.20% of US CADV, then that ETP holder would qualify for Retail Order Step-Up Tier 4 credit of $0.0036 per share.

With this proposed rule change, the following credits would be available to ETP Holders that provide increased levels of displayed liquidity in Retail Orders on the Exchange:

Tier	Credit for providing displayed liquidity in retail orders
Retail Order Step-Up Tier 1	$0.0033 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 2	$0.0035 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 3	$0.0035 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 4	$0.0036 (Tape A, Tape B and Tape C).

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

The purpose of the proposed rule change is to encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that if it adopts the proposed credits, more ETP Holders will choose to route their liquidity-providing Retail Orders to the Exchange to qualify for the credits.

The Exchange does not know how much Retail Order flow ETP Holders choose to route to other exchanges or to off-exchange venues. While the proposed Retail Order Step-Up Tier 3 and Tier 4 pricing tiers would be available to all ETP Holders, no ETP Holder currently qualifies given the pricing tiers are new.[19] Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders sending more of their Retail Orders to the Exchange to qualify for the proposed Retail Order Step-Up Tier 3 and Tier 4 credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional liquidity-providing Retail Orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

[17] *See* Securities Exchange Act Release No. 83828 (August 10, 2018), 83 FR 40816 (August 16, 2018) (SR–NYSEArca–2018–58).

[18] *Id.*

[19] As of December 27, 2019, there are 12 ETP Holders on the Exchange that provide liquidity that could qualify for the Exchange's Retail Step-Up pricing tiers.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(4) and (5).

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [22]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [23] Indeed, equity trading is currently dispersed across 13 exchanges,[24] 31 alternative trading systems,[25] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

As noted above, the competition for Retail Order flow is stark given the amount of retail limit orders that are routed to non-exchange venues. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. This competition is particularly acute for non-marketable, or limit, retail orders, *i.e.,* retail orders that can provide liquidity on an exchange. That competition is even more fierce for retail limit orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces constrain exchange transaction fees, particularly as they relate to competing for retail orders.

The Exchange believes the proposed change to adopt the Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4 pricing tiers is reasonable because it would provide ETP Holders with additional incentives to send a greater number of Retail Orders to the Exchange. The proposed change to adopt Retail Order Step-Up Tier 3 would allow ETP Holders an alternative way to qualify for the $0.0035 per share credit that is currently available under Retail Order Step-Up Tier 2. The Exchange believes the proposed change is reasonable because the proposed credits would continue to encourage ETP Holders to send Retail Orders to the Exchange to qualify for the proposed pricing tiers. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide credits in general, and higher credits, with respect to the Retail Order Step-Up Tier 4 pricing tier, for Retail Orders that provide displayed liquidity if an ETP Holder meets the qualifications for the proposed pricing tiers.

Further, given the competitive market for attracting Retail Orders, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC (''Nasdaq'') provides its members with a credit of $0.0033 per share if such member has an 85% add to total volume (adding liquidity and removing liquidity) ratio during a billing month.[26] Cboe BZX Exchange, Inc. (''BZX'') provides its members with a credit of $0.0032 per share for retail orders that add liquidity to that market.[27] In addition, Cboe EDGX Exchange, Inc. ('EDGX'') provides its members with a credit of $0.0037 per share for retail orders that add liquidity to that market if an EDGX member adds liquidity in Retail Orders of 0.50% of CADV or more.[28]

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that the proposed rule change to adopt Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4 equitably allocates fees among its market participants because it is reasonably related to the value of the Exchange's market quality associated with higher volume in Retail Orders. The Exchange notes that currently 12 firms submit Retail Orders that add liquidity on the Exchange and of those 12 firms, the Exchange anticipates that as many as five [29] of those firms could meet, or would reasonably be able to meet, the proposed criteria and qualify for the credits and fees if those firms directed more of their Retail Orders to the Exchange. The Exchange believes that pricing is just one of the factors that ETP Holders consider when determining where to direct their order flow. Among other things, factors such as execution quality, fill rates, and volatility, are important and deterministic to ETP Holders in deciding where to send their order flow.

Further, the Exchange notes that, with this proposed rule change, the

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[23] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[24] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[25] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[26] *See* Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[27] *See* BZX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[28] *See* EDGX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[29] These five firms have historically submitted the most amount of Retail Orders to the Exchange. The Exchange believes each of these firms would qualify for the proposed pricing tiers if each were to submit all, or most of all, its Retail Orders to the Exchange, rather than to a competitor.

difference between the highest credit provided for Retail Orders, $0.0036 per share, as proposed, and the credit for Retail Orders that do not qualify for any Retail Order pricing tiers, $0.0030 per share, is $0.0006, or 17%, which the Exchange believes is small given the requirements that ETP Holders must meet to qualify for the higher credit. Similarly, with this proposed rule change, the difference in the highest credit for Retail Orders, $0.0036 per share, as proposed, and the credit provided for Retail Orders to those ETP Holders qualifying for the Retail Order Tier or Retail Order Step-Up Tier 1, $0.0033 per share, would only be $0.0003 per share, or 9%. Therefore, the Exchange believes the proposed Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4 pricing tiers are equitably allocated and provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. In today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and while only three ETP Holders have qualified to date for the current Retail Order pricing tiers, the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

Finally, the Exchange believes that the proposed Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4 pricing tiers are equitable because the magnitude of the proposed credits is not unreasonably high relative to credits paid by other exchanges for orders that provide additional step up liquidity in Retail Orders.[30] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Retail Orders to the Exchange, thereby improving market-wide quality and price discovery.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. ETP Holders that currently qualify for credits associated with Retail Order Step-Up pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to provide a higher per share step-up credit for Retail Orders, as the proposed credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the requirements of the proposed Retail Order Step-Up Tier 3 and Retail Order Step-Up Tier 4. Further, the Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current tiered requirements to send more of their Retail Orders to the Exchange to qualify for increased credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[31] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [32]

Intramarket Competition. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all ETP Holders equally in that all ETP Holders are eligible for the proposed tiers, have a reasonable opportunity to meet each tier's criteria and will all receive the proposed rebate if such criteria is met. Additionally, the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed new Retail Order Step-Up pricing tiers would continue to incentivize market participants to submit orders that qualify as Retail Orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) was 7.6% in November 2019. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

[30] *See* notes 26–28, *supra.*

[31] 15 U.S.C. 78f(b)(8).

[32] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [33] of the Act and subparagraph (f)(2) of Rule 19b–4 [34] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [35] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–05, and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01038 Filed 1–22–20; 8:45 am]

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[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(2).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA–180; File No. SIPC–2019–01]

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Change, as Revised by Amendment No. 1, Relating to SIPC Board Compensation

January 16, 2020.

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (''SIPA''),[1] on October 7, 2019 the Securities Investor Protection Corporation (''SIPC'') filed with the Securities and Exchange Commission (''Commission'') a proposed bylaw change relating to the SIPC Board of Directors' (''Board'') compensation. On October 24, 2019, SIPC consented to a 90-day extension of time before the proposed bylaw amendments would take effect pursuant to section 3(e)(1) of SIPA. On November 19, 2019, SIPC filed a revised version of the proposed bylaw change, which replaced and superseded the original proposed bylaw change in its entirety. Pursuant to section 3(e)(1)(B) of SIPA, the Commission finds that the proposed bylaw change, as revised by Amendment No. 1, involves a matter of such significant public interest that public comment should be obtained.[2] Therefore, pursuant to section 3(e)(2)(A) of SIPA, the Commission is publishing this notice to solicit comment from interested persons on the proposed bylaw change, as revised by Amendment No. 1.[3]

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis for the proposed bylaw change, as revised by Amendment No. 1, as described below, which description has been substantially prepared by SIPC.

I. SIPC's Statement of the Purpose of, and Statutory Basis for, Proposed SIPC Bylaw Change Relating to SIPC Board Compensation

Pursuant to Section 3(e)(1) of SIPA, SIPC hereby submits for filing with the Commission a proposed amendment to Article 2, Section 6, of the SIPC Bylaws. Article 2, Section 6, of the Bylaws relates to the honoraria paid to non-Governmental members of the SIPC Board.

As amended, Article 2, Section 6, would: (1) Change the Board Chairperson's yearly honorarium from $15,000 to $28,000; (2) change the Directors' yearly honorarium from $6,250 to $12,000; (3) while the position of Chairperson remains vacant, authorize the Board Vice Chairperson who serves as acting Chairperson for a continuous twelve month period, to receive an honorarium of $28,000; (4) while the positions of Chairperson and Vice Chairperson remain vacant, authorize any Director, to whom the SIPC Board delegates authority to perform certain functions of the Chairperson, to receive an honorarium of $28,000 provided that the Director performs those functions for a continuous twelve month period; and (5) provide for a re-evaluation of Board honoraria every ten (10) years under a formula tied to the Senior Executive Service pay scale.

The proposed bylaw amendment was approved by the SIPC Board. Under SIPA section 78ccc(e)(1), unless it is disapproved by the Commission or the Commission determines that the matter is of such significant public interest as

[1] 15 U.S.C. 78ccc(e)(1).

[2] 15 U.S.C. 78ccc(e)(1)(B).

[3] 15 U.S.C. 78ccc(e)(2)(A).

to warrant public comment, the amendment will take effect thirty (30) days after a copy is filed with the Commission. The Board has provided that, if approved by the Commission, the proposed amendment would not be implemented until six (6) months from the date of Commission approval or non-disapproval. Section IV below provides the text of the proposed changes to Article 2, Section 6, of the Bylaws.

Background

The SIPC Board consists of seven members. Five of SIPC's Directors are appointed by the President of the United States and confirmed by the Senate. Of the five Directors, three are associated with, and representative of, the securities industry (''Securities Directors''), and two are from outside of the industry. The Directors from outside of the securities industry serve as Chairman and Vice Chairman of SIPC. In addition, one SIPC Director is an officer or employee of the Department of the Treasury and one Director is an officer or employee of the Federal Reserve Board. SIPA § 78ccc(c)(1)–(3).

Under SIPA Section 78ccc(c)(5), all matters relating to Director compensation are as provided in the SIPC Bylaws. Since 1994, when the position of Chairperson ceased to be a full-time position, the honoraria awarded to the Directors have been as follows:

Bylaw date	Bylaw	Chairman	Vice Chairman	Industry directors
1994	Art. 2, § 6	$1,000/meeting; $500/day for official business + expenses.	$500/meeting; $500/day for official business + expenses.	Expenses only.
2006	Art. 2, § 6	$15,000 honorarium + expenses	$6,250 honorarium + expenses	$6,250 honorarium + expenses.

Because the Government Directors are ineligible, the recipients of the honoraria are limited to the Directors from the private sector. The honoraria are paid from the SIPC Fund, 15 U.S.C. 78ddd(a)(1), and no taxpayer monies are used.

The amounts of the Director honoraria have been the same for more than 10 years. For the reasons discussed below, the Board has determined that it is appropriate that the proposed changes to Article 2, Section 6, of the Bylaws be made.

General Statement of Basis and Purpose of Proposed Changes

Enhanced Responsibilities and Risk

The SIPC Board sets the direction and policies for the Corporation. Since the 2008 financial crisis, SIPC's responsibilities have grown, and greater demands have been placed upon the time, commitment, and energy, of the Directors.

The Directors oversee a Fund which currently stands at more than $3.3 billion. The size of the Fund is modest compared to the amounts of customer assets at risk in SIPA liquidations over the last several years. These have included MF Global Inc., involving the largest commodities brokerage liquidation in history; Lehman Brothers Inc., with $106 billion owed to more than 111,000 customers; and Bernard L. Madoff Investment Securities LLC, with over $20 billion of customer assets owed. Each of these liquidations contained or contains complex and significant legal or operational hurdles for their resolution. Today, such large cases cannot be viewed as isolated events or SIPC's involvement in them as incidental. For example, in a too-big-to-fail situation, Congress has given SIPC an important role. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, SIPC serves as trustee in the orderly liquidation of a covered broker-dealer. *See* 12 U.S.C. 5385(a)(1).

Given the breadth of SIPC's mission, whether the Fund is sufficient to satisfy SIPA's goal of customer protection is one of the most important issues that Directors face. The potential exposure arising from the liquidation of large firms alone highlights the importance of the Board's decision-making.

The sizeable amounts at stake in recent cases also create more risk for the Directors including the risk that Directors may be sued for tactical reasons, however frivolous such suits may be. For example, in the Madoff case, the SIPC Board and its President were sued in a multi-million dollar complaint brought by Madoff investors. *Canavan* v. *Harbeck,* Case No. 2:10–cv–00954–FSH–PS (D.N.J.). Although the Directors are shielded from liability for their good faith actions or omissions under SIPA Section 78kkk(c), the burden of having to defend against a law suit, the uncertainty of the outcome of litigation, the demands on a Director's time, and the reputational risk to the Director, remain.

Today, more accountability is asked of corporate directors. At SIPC, the Directors not only oversee the administration of the quasi-public SIPC Fund, but also of the SIPC Employees' Savings Plan, and the SIPC Employees' Retirement Plan. As a result of their role in these and other matters, the Board must carefully oversee Management and the policies and procedures Management has put in place.

Time Commitment

SIPC Directors willingly devote their time to SIPC, often at the expense of other important commitments, and potential compensation, outside of their SIPC responsibilities. The time, even for some Directors to travel to SIPC, can be burdensome since under SIPA section 78ccc(c)(2)(C)(i), the Securities Directors cannot be from the same geographical area of the United States. SIPC Directors travel from their home base to Washington, DC, to attend regular Board, as well as Committee, Meetings. There are three committees at SIPC on which the Directors serve: One for investments, another for compensation, and a third, for audit and budget. *See* Article 3, Section 1, of the SIPC Bylaws. In addition to their attendance and participation at Meetings, the Directors regularly meet in Executive Session to discuss matters of importance to SIPC business.

Attracting and Retaining Qualified Directors

In order for the SIPC program to be successful, it must have a Board that is engaged, resourceful, and willing to devote the time and energy to the program and to be committed to it. While it is an honor to be appointed as a Director, there should be some recognition of the contributions made by these individuals. Measured against the demands placed upon the Directors and the responsibilities and risks they are expected to assume, the changes proposed by the Board are modest.

Basis for the Amounts Proposed

In considering a possible Bylaw change, the Board, through its Government Directors, commissioned Korn/Ferry International (''Korn/Ferry''), a leading global management and executive consulting firm, to provide recommendations with respect to compensation for SIPC Board

members, including the Chair and Vice Chair. In undertaking the engagement, Korn/Ferry constructed a peer group of 23 organizations comparable to SIPC and analyzed their Director compensation. The peer group included non-profit groups, regulatory advocacy organizations, as well as federally funded ones.

Based upon its analysis, Korn/Ferry concluded that entities similar to SIPC in purpose and responsibilities typically provide some compensation to their Directors. Specifically, with respect to SIPC, Korn/Ferry recommended that:

(1) Director compensation consist of an annual retainer paid quarterly and ranging between $30,000 and $50,000;

(2) The Vice Chair receive an additional amount of $3,000 to $5,000 per year; and

(3) The Chair receive an additional $10,000 to $15,000 per year.

Korn/Ferry Director Compensation Analysis, dated May 31, 2019, at 10.

Independently, the Government Directors formulated a separate approach to the matter. Under their analysis, they reasoned that because the non-Government Directors are Presidential appointees confirmed by the Senate who render a public service, it would be appropriate to measure the amount of a Director honorarium against the pay of a Senior Executive Service (''SES'') Government employee. The maximum amount under the SES pay scale currently is $189,600. Based upon an average of 16 days of service per year comprised of six days of meetings, five days for preparation, and five days for ad hoc work, the Directors concluded that the non-Government Directors should receive an honorarium of $12,000 per year which would continue to be paid in quarterly installments. Applying the current ratio of Chair versus non-Chair honoraria, the non-Government Directors calculated the honorarium of the Chair at $28,000. The Board also calculated that an adjustment for inflation since the honoraria were last set in 2006 would have resulted in an honorarium of more than $19,000 for the Chair.

The Board adopted the recommendations of the non-Government Directors, and agreed with their proposal that the amount of the honoraria be reviewed every ten years, and adjusted according to the above methodology. The Directors also agreed that the requested amendment, if approved, would take effect six months from the date of approval or non-disapproval by the Commission.

II. Need for Public Comment

Section 3(e)(1) of SIPA provides that the Board of Directors of SIPC must file a copy of any proposed bylaw change with the Commission, accompanied by a concise general statement of the basis and purpose of the proposed bylaw change.[4] The proposed bylaw change will become effective thirty days after the date of filing with the Commission or upon such later date as SIPC may designate or such earlier date as the Commission may determine unless: (1) The Commission, by notice to SIPC setting forth the reasons for such action, disapproves the proposed bylaw change as being contrary to the public interest or contrary to the purposes of SIPA; or (2) the Commission finds that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures for SIPC proposed rule changes in section 3(e)(2) of SIPA be followed with respect to the proposed bylaw change.[5]

Compensation paid to members of the financial service industry and paid to officials serving the public interest has become a topic of public interest in recent years. Therefore, the Commission finds, pursuant to section 3(e)(1)(B) of SIPA,[6] that the proposed bylaw changes involve a matter of such significant public interest that public comment should be obtained and is requiring that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA [7] be followed. As required by section 3(e)(1)(B) of SIPA,[8] the Commission has notified SIPC of this finding in writing.

III. Date of Effectiveness of the Proposed Bylaw Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (A) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (B) as to which SIPC consents, the Commission shall: (i) By order approve such proposed bylaw change; or (ii) institute proceedings to determine whether such proposed bylaw change should be disapproved.[9]

[4] 15 U.S.C. 78ccc(e)(1).

[5] 15 U.S.C. 78ccc(e)(1).

[6] 15 U.S.C. 78ccc(e)(1)(B).

[7] 15 U.S.C. 78ccc(e)(2).

[8] 15 U.S.C. 78ccc(e)(1)(B).

[9] 15 U.S.C. 78ccc(e)(2)(B).

IV. Text of Proposed Bylaw Change

The text of the proposed bylaw change, as revised by Amendment No. 1, is provided below. Proposed new language is in italics; proposed deletions are in brackets.

ARTICLE 2

BOARD OF DIRECTORS

Section 6. Honorarium and Reimbursement of Expenses

The Chairman of the Corporation shall receive a yearly honorarium of $[15,000]*28,000.* The Chairman also shall be reimbursed for expenses incurred in connection with official business of the Corporation. The Vice Chairman shall receive a yearly honorarium of $[6,250]*12,000, except that, if the position of Chairman is vacant and the Vice Chairman serves as acting Chairman for a continuous twelve-month period, then the Vice Chairman shall receive a yearly honorarium of $28,000 for such period, calculated on a ratable basis for any partial period of such service in excess of the first twelve-month period.* The Vice Chairman also shall be reimbursed for expenses incurred in connection with official business of the Corporation. The three Directors selected from the securities industry (''*Securities Directors*'') each shall receive a yearly honorarium of $[6,250]*12,000, except that, if the positions of Chairman and Vice Chairman are vacant and, during such vacancy and pursuant to a delegation of authority from the Board, one of the Securities Directors performs certain functions of the Chairman for a continuous twelve-month period, then that Securities Director shall receive a yearly honorarium of $28,000 for such period, calculated on a ratable basis for any partial period of such service in excess of the first twelve-month period.* The [three]*Securities* Directors [selected from the securities industry] also shall be reimbursed for expenses incurred in connection with official business of the Corporation. [The yearly honoraria shall be paid in quarterly installments as of November 21, 2006.] The remaining two Directors shall receive no honoraria from the Corporation and shall not be reimbursed by the Corporation for their official business expenses.

The honoraria described herein shall be paid in quarterly installments beginning on May 6, 2020. At ten year intervals thereafter, without further amendment of these Bylaws, the Board shall have authority to evaluate and adjust the amounts of the honoraria provided herein. In adjusting the amount of the honoraria, the Board

shall give due consideration to the number of days of service rendered by such member of the Board, and the maximum pay of a Senior Executive Service Government employee.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SIPC–2019–01 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All comments should refer to File Number SIPC–2019–01. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw change that is filed with the Commission, and all written communications relating to the proposed bylaw 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 Commission. 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 SIPC–2019–01, and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01024 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87990; File No. SR–NYSE–2020–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 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 January 3, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT;
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository

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[10] 17 CFR 200.30–3(f)(2)(i); 17 CFR 200.30–3(f)(3).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

with time stamps in such finer increment up to nanoseconds;

• Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and

• Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

i. Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member.[4] As a result, the Exchange proposes to amend the definition of ''Firm Designated ID'' in Rule 6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6810(r) (previously Rule 6810(q)) defines the term ''Firm Designated ID'' to mean ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

The Exchange proposes to amend the definition of a ''Firm Designated ID'' in proposed Rule 6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.''

In addition, the Exchange proposes to amend the definition a ''Firm Designated ID'' in proposed Rule 6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.[5] To effect this change, the Exchange proposes to amend the definition of ''Firm Designated ID'' in proposed Rule 6810(r) to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows:

> a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member.

ii. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.''[6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members[7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.''[8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order

[4] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

[5] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (''ATSs'') in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 6810 to facilitate the addition to the Plan of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 6830.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, proposed paragraph (a)(2)(D) of Rule 6830 would state that:

> An Industry Member that operates an ATS must provide to the Central Repository:
> (1) A list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> (6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and
> (7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

> (1) The NBBO (or relevant reference price) in effect at the time of order execution;
> (2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and
> (3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6830.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 6830 would

[9] *See* FINRA *Regulatory Notice* 16–28 (Nov. 2016).

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(4) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(4) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(4) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add new paragraph (a)(1)(E)(viii)(3) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 6830. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6830 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 6830. Specifically, proposed new paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(5) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add new paragraph (a)(1)(C)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or

that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(x) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

iii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receive from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iv. Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting''). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.''

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

(1) Its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[12] To implement the Phased Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 6830. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.[13]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 6830. Paragraph (a)(1)(A)(i) of Rule 6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is

[12] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[13] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

(a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 6830, Industry Members would be required to provide a timestamp pursuant to Rule 6860. Rule 6860(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[14]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[15] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(A) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraphs (c)(2)(A) and (B) of Rule 6895. Proposed new paragraph (c)(2)(A) of Rule 6895 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 6830. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[16] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created

[14] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[15] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[16] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(B) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as new paragraph (t)(3) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.'' Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader identifiers [17] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [18] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (''OMS'') and represented by a principal order originated in an Execution Management System (''EMS'') that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to

[17] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[18] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order'' [19]

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; [20] and (5) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as new paragraph (t)(5) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 6810 of the Compliance Rule.[21]

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(E) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 6880(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to replace Rules 6880(a)(1)–(4) with proposed new Rule 6880(a)(1) through (8).

[19] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[20] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[21] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, individual tax payer identification numbers and social security numbers (collectively, ''SSNs''). *See* Rule 6810. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at *https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf.* If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

Proposed new Rule 6880(a)(1) would provide that ''Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.'' Proposed new Rule 6880(a)(2) would provide that ''Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.'' Proposed new Rule 6880(a)(3) would provide that ''The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.'' Proposed new Rule 6880(a)(4) would provide that ''The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.'' Proposed new Rule 6880(a)(5) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.'' Proposed new Rule 6880(a)(6) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.'' Proposed new Rule 6880(a)(7) would provide that ''Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.'' Finally, proposed new Rule 6880(a)(8) would provide that ''The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.''

v. FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would be the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 6830, which states that:

(F) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:

(1) the Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 6830(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 6830, which states that, ''if an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:'' ''the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 6830(a)(2)(A)(ii)'' and ''if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 6830(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.''

vi. Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 6860. Rule 6860(a)(2) states that

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central

Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision by adding the phrase ''up to nanoseconds'' to the end of the provision.

vii. Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier in lieu of the ''account number;'' (ii) the ''account type'' as a ''relationship;'' and (iii) the Account Effective Date in lieu of the ''date account opened.''

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.,* the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the ''Account Effective Date'' in paragraph (a) of the definition of ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.[22]

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 6810.

The definition of Customer Account Information in Rule 6810(m) states that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the ''date account opened'', provide the relationship identifier in lieu of the ''account number''; and identify the ''account type'' as ''relationship.'' The Exchange proposes to extend this provision to apply to trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) of Rule 6810 to state the following:

> (1) In those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) Provide the Account Effective Date in lieu of the ''date account opened''; (B) provide the relationship identifier in lieu of the ''account number''; and (C) identify the ''account type'' as a ''relationship''.

Similarly, the Exchange proposes to amend the definition of ''Account Effective Date'' as set forth in Rule 6810(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise paragraph(a)(1) of Rule 6810 to state ''with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual.''

viii. CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.[23] Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. NYSE Rule 6830(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, . . . and in accordance with Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 6810(n) (previously Rule 6810(m)), in turn, defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' In addition, Rule 6810(m) (previously Rule 6810(l)) defines ''Customer Account Information'' to include account numbers for individuals. Accordingly, the Exchange proposes to delete ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from the definition of ''Customer Identifying Information'' in Rule 6830(a)(2)(C) and to delete account numbers for individuals from the definition of ''Customer Account Information.'' The Exchange proposes to amend the definition of ''Customer Account Information'' to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 6830(a)(2)(C).

[22] 2016 Exemptive Order at 11861–11862.

[23] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[24] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[25] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [26] To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE notes that the proposed rule changes are consistent with certain proposed amendment to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–01 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01034 Filed 1–22–20; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(8)

[26] Approval Order at 84697.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87986; File No. SR–NYSENAT–2020–01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend the Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 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 January 3, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6.6800 Series, the Compliance Rule regarding the CAT NMS Plan to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT;
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

i. Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member.[4] As a result, the Exchange proposes to amend the definition of ''Firm Designated ID'' in Rule 6.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6.6810(r) (previously Rule 6.6810(q)) defines the term ''Firm Designated ID'' to mean ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

The Exchange proposes to amend the definition of a ''Firm Designated ID'' in proposed Rule 6.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.''

In addition, the Exchange proposes to amend the definition a ''Firm Designated ID'' in proposed Rule 6.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.[5] To effect this change, the Exchange proposes to amend the definition of ''Firm Designated ID'' in proposed Rule 6.6810(r) to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows:

A unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member.

ii. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.''[6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

[5] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 6.6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (''ATSs'') in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 6.6810 to facilitate the addition to the Plan of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

[9] *See* FINRA *Regulatory Notice* 16–28 (Nov. 2016).

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 6.6830.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, proposed paragraph (a)(2)(D) of Rule 6.6830 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

(1) a list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6.6830.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add new paragraph (a)(1)(E)(viii)(3) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 6.6830. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6.6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such

modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6.6830 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 6.6830. Specifically, proposed new paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

> whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(5) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add new paragraph (a)(1)(C)(ix) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(x) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

iii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receive from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and

offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 6.6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 6.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 6.6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 6.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 6.6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iv. Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting''). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.''

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[12] To implement the Phased Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 6.6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 6.6830. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

[12] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.[13]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 6.6830. Paragraph (a)(1)(A)(i) of Rule 6.6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 6.6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 6.6830, Industry Members would be required to provide a timestamp pursuant to Rule 6.6860. Rule 6.6860(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[14]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[15] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(A) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraphs (c)(2)(A) and (B) of Rule 6.6895. Proposed new paragraph (c)(2)(A) of Rule 6.6895 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 6.6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase

[13] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

[14] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[15] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 6.6830. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[16] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(B) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as new paragraph (t)(3) of Rule 6.6810. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.'' Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader

[16] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

identifiers [17] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [18] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (''OMS'') and represented by a principal order originated in an Execution Management System (''EMS'') that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 6.6810. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order'' [19]

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; [20] and (5) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(D) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as new paragraph (t)(5) of Rule 6.6810. Specifically, the Exchange proposes to

[17] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[18] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[19] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[20] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

define the term ''Phase 2e Industry Member Data'' as ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 6.6810 of the Compliance Rule.[21]

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(E) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(D) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

[21] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, individual tax payer identification numbers and social security numbers (collectively, ''SSNs''). *See* Rule 6.6810. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at *https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf*. If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

F. Industry Member Testing Requirements

Rule 6.6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 6.6880(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to replace Rules 6.6880(a)(1)–(4) with proposed new Rule 6.6880(a)(1) through (8).

Proposed new Rule 6.6880(a)(1) would provide that ''Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.'' Proposed new Rule 6.6880(a)(2) would provide that ''Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.'' Proposed new Rule 6.6880(a)(3) would provide that ''The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.'' Proposed new Rule 6.6880(a)(4) would provide that ''The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.'' Proposed new Rule 6.6880(a)(5) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.'' Proposed new Rule 6.6880(a)(6) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.'' Proposed new Rule 6.6880(a)(7) would provide that ''Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.'' Finally, proposed new Rule 6.6880(a)(8) would provide that ''The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.''

v. FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting

Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 6.6830, which states that:

(F) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:

(1) the Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 6.6830(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6.6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 6.6830, which states that, ''if an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:'' ''the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 6.6830(a)(2)(A)(ii)'' and ''if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 6.6830(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.''

vi. Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 6.6860. Rule 6.6860(a)(2) states that

Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision by adding the phrase ''up to nanoseconds'' to the end of the provision.

vii. Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier in lieu of the ''account number;'' (ii) the ''account type'' as a ''relationship;'' and (iii) the Account Effective Date in lieu of the ''date account opened.''

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.,* the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the ''Account Effective Date'' in paragraph (a) of the definition of ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.[22]

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 6.6810.

The definition of Customer Account Information in Rule 6.6810(m) states that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the ''date account opened'', provide the relationship identifier in lieu of the ''account number''; and identify the ''account type'' as ''relationship.'' The Exchange proposes to extend this provision to apply to trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) of Rule 6.6810 to state the following:

(1) in those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) provide the Account Effective Date in lieu of the ''date account opened''; (B) provide the relationship identifier in lieu of the ''account

[22] 2016 Exemptive Order at 11861–11862.

number''; and (C) identify the ''account type'' as a ''relationship''.

Similarly, the Exchange proposes to amend the definition of ''Account Effective Date'' as set forth in Rule 6.6810(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise paragraph(a)(1) of Rule 6.6810 to state ''with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual.''

viii. CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.[23] Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. NYSE National Rule 6.6830(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6.6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, . . . and in accordance with Rule 6.6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 6.6810(n) (previously Rule 6.6810(m)), in turn, defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' In addition, Rule 6.6810(m) (previously Rule 6.6810(l)) defines ''Customer Account Information'' to include account numbers for individuals. Accordingly, the Exchange proposes to delete ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from the definition of ''Customer Identifying Information'' in Rule 6.6830(a)(2)(C) and to delete account numbers for individuals from the definition of ''Customer Account Information.'' The Exchange proposes to amend the definition of ''Customer Account Information'' to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 6.6830(a)(2)(C).

2. Statutory Basis

NYSE National believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[24] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[25] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE National believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[26] To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE National does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE National notes that the proposed rule changes are consistent with certain proposed amendment to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE National also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[23] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(8)

[26] Approval Order at 84697.

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–01 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01030 Filed 1–22–20; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA–179; File No. SIPC–2019–02]

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Changes Relating to SIPC Member Assessments

January 16, 2020.

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 (''SIPA''),[1] on November 19, 2019 the Securities Investor Protection Corporation (''SIPC'') filed with the Securities and Exchange Commission (''Commission'') proposed bylaw changes relating to SIPC member assessments. Pursuant to section 3(e)(1)(B) of SIPA, the Commission finds that these proposed bylaw changes involve a matter of such significant public interest that public comment should be obtained.[2] Therefore, pursuant to section 3(e)(2)(A) of SIPA, the Commission is publishing this notice to solicit comment from interested persons on the proposed bylaw changes.[3]

In its filing with the Commission, SIPC included statements concerning the purpose of and statutory basis for the proposed bylaw changes as described below, which description has been substantially prepared by SIPC.

I. SIPC's Statement of the Purpose of, and Statutory Basis for, SIPC Proposed Bylaw Changes Relating to SIPC Member Assessments

Pursuant to Section 3(e)(1) of SIPA, SIPC hereby submits for filing with the Commission proposed amendments to Article 6 of the SIPC Bylaws (''Bylaws''). Article 6 relates to the assessments that SIPC imposes upon its members.

As revised, Article 6 would maintain assessments at the current rate of 0.15 percent of a member's net operating revenue from the securities business until SIPC's unrestricted net assets reach $5 billion.[4] ''Unrestricted net assets'' are comprised primarily of the amount in the SIPC Fund at year end, minus the estimated cost to complete pending liquidation proceedings, as reflected in SIPC's most recent audited Statement of Financial Position. Once the aforementioned condition is met, SIPC would commission a study to consider the adequacy of the SIPC Fund, and would do so every four years thereafter. The study would analyze a variety of factors, as set forth in the proposed amended Bylaw. After consideration of the study and the report thereon, and after consultation with the Commission and self-regulatory organizations, SIPC could increase or decrease, within certain limits, the appropriate assessment rate in order to maintain the Fund and effect SIPA's purposes.

Pursuant to SIPA Section 78ddd(c)(2), SIPC has consulted with self-regulatory organizations with respect to the proposed amendments. SIPC has determined that the changes are necessary and appropriate to maintain the SIPC Fund.

Background

SIPC is a non-profit member organization created in 1970 under SIPA, for the protection of customers of member broker-dealers placed in liquidation under SIPA. With some exceptions set by statute, all registered securities brokers or dealers are members of SIPC. SIPC protects the customers of member firms in liquidation under SIPA. Among other things, SIPC advances funds to satisfy the claims of customers. Each customer is protected by SIPC up to $500,000 against the loss of missing cash and/or securities entrusted by the customer to the broker. The $500,000 includes a limit of up to $250,000 where the allowed claim is for cash only. The advances by SIPC come from a ''Fund'' that SIPC administers. The Fund largely is comprised of assessments paid to SIPC by its members. The Fund also is used to pay the administrative expenses of a liquidation proceeding where the debtor's general estate is insufficient, and to finance the day-to-day operations of SIPC.

The Assessment Bylaw

Article 6 of the Bylaws now imposes a yearly assessment rate of 0.15% of net operating revenues from the member's securities business (''NOR'') where the balance of the SIPC Fund is less than $2.5 billion and will remain at that amount for six months or more. If the SIPC Fund has reached $2.5 billion but SIPC's unrestricted net asset amount is less than $2.5 billion, then the yearly assessment rate is .15% of NOR. Once the unrestricted net assets total at least $2.5 billion, then the assessment rate is a minimum assessment of .02% of NOR.

Currently, SIPC's only sources of funding are its Fund and a possible Government loan. To ensure that SIPC

[1] 15 U.S.C. 78ccc(e)(1).

[2] 15 U.S.C. 78ccc(e)(1)(B).

[3] 15 U.S.C. 78ccc(e)(2)(A).

[4] ''Net operating revenues from the securities business'' is ''gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.'' SIPC Bylaw Article 6, Section 1(a)(3)(g) [*sic*].

has sufficient independent resources to carry out its purposes (thus obviating the need to borrow from the Federal Government), SIPC has determined to keep the assessment rate at 0.15% of NOR until SIPC's unrestricted net assets total $5 billion. This will accomplish a few things: (1) Provide a larger cushion for unknown contingencies; (2) reduce the potential volatility of member assessments during periods of economic downturn or individual member crisis; and (3) promote sound financial management in light of SIPC's statutory mission.

General Statement of Basis and Purpose of Proposed Changes

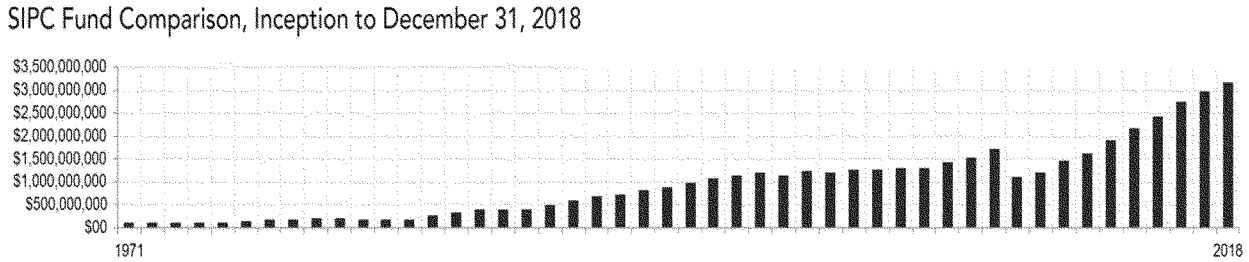
There is no scientific basis for determining the exact adequacy of the SIPC Fund. Nevertheless, SIPC's statutory obligation to protect customers of failed firms, and in certain cases, to pay the costs and expenses of administration of the liquidation proceeding, impose upon SIPC a duty to take a responsible approach to calculating both the size of the SIPC Fund, and the reasonableness of an assessment rate that maintains and promotes adequate funding.

As SIPC has witnessed over the past decade, risks abound—from a large firm failure with encumbered assets, to a Ponzi scheme with significant losses to customers, to risks presented by a cybersecurity attack or the use of digital assets. Assessing the adequacy of the Fund is especially challenging because the cost of a liquidation does not necessarily correlate with any traditional measure of financial exposure for broker-dealers. Instead, the Fund's adequacy depends largely on member firms' compliance with customer protection or net capital rules, the probability of which is challenging to quantify.

SIPC's resources must enhance investor confidence. Given the risks described above, and remaining vigilant regarding the uncertainties in an ever-changing marketplace, SIPC believes that in order for its mission of customer protection to succeed, SIPC must maintain a robust Fund.

Historical Perspective

The initial SIPC Fund totaled $77.6 million.[5] In 1992, SIPC's Board (''the Board'') raised the target balance of the SIPC Fund to $1 billion, and the SIPC Fund reached that amount in 1996. The Board last sought to augment the size of the Fund in 2009, when, following the commencement of the liquidation proceedings of Lehman Brothers Inc. (''LBI''), and Bernard L. Madoff Investment Securities LLC (''BLMIS''), the assessment rate was revised to cause the Fund to grow to $2.5 billion.



As the graph above reveals, before the liquidation of BLMIS in 2008, SIPC's Fund balance had doubled roughly every ten years. In addition, during those years and until 2010, SIPC had a substantial confirmed private line of credit.[6] Due to the high cost and/or unavailability, SIPC no longer has the private line of credit.

The Risk Landscape

The financial crisis of 2008, and the ensuing liquidation proceedings of LBI and BLMIS, revealed clearly the need for SIPC to increase the Fund balance. Although the LBI liquidation proceeding ultimately did not require SIPC to advance funds to satisfy claims, or pay for expenses of administration, any future failure of a global enterprise and its broker-dealer affiliate could have a very different outcome for SIPC. For example, had funds sought by LBI been encumbered overseas, or had LBI been reducing artificially its segregated customer reserve requirement through otherwise legal complex transactions, that may have imposed significant demands on the SIPC Fund.

The liquidation proceeding of BLMIS has required SIPC to make the largest aggregate advance in its history. In statistical terms, the amount is more than 100 standard deviations greater than the amounts advanced by SIPC in all of its previous cases.[7] Today, an event statistically comparable to BLMIS would require advances to customers amounting to between $4 billion and $5 billion.

SIPC faces risks beyond those posed by large Ponzi schemes or a credit crisis. These additional risks, many of which are hard to quantify, include, for example, technology-related failures, such as a cyberattack on a large SIPC member that restricts access by customers to their assets; or risks stemming from the delay in computing a broker-dealer's reserve requirement. For example, SEC Rule 15c3–3, 17 CFR 240.15c3–3, which governs the protection of customer assets, requires a broker-dealer to compute its cash reserve requirement on a weekly, not daily, basis. Although a number of SIPC members voluntarily rebalance their cash reserves on a daily basis, a large SIPC member that does not might not have enough cash in its Rule 15c3–3(e) reserve account due to an increase in its net cash obligations following its last required reserve computation.

Another factor underscoring SIPC concerns is the potential risk to the solvency of the SIPC Fund under the Orderly Liquidation provisions of the Dodd Frank Act, Title II. Dodd-Frank creates an important role for SIPC in the event of the failure of a covered, large complex securities broker-dealer that presents systemic risk. Under Dodd-Frank, SIPC is designated as trustee for the liquidation of the broker-dealer under SIPA. 12 U.S.C. 5385(A). As trustee, SIPC must determine and satisfy claims against the broker-dealer consistent with SIPA. 12 U.S.C. 5385(D). While the FDIC has expressed a preference to use Dodd-Frank to intervene at the holding company

[5] Comprised of member assessments of $9.6 million, the transfer of $3 million from the American Stock Exchange, Inc. trust fund, and confirmed lines of credit totaling $65 million.

[6] SIPC's last credit agreement, a $500 million, 3-yr. revolving credit facility, expired March 1, 2010.

[7] In addition, the amounts advanced by SIPC in the BLMIS liquidation are more than 107 times greater than the average advance of the ten next largest SIPC cases.

level,[8] the law nevertheless remains available to liquidate a systemically important broker-dealer.

Mechanism for Setting the Assessment Rate

Once the unrestricted net asset amount is $5 billion, SIPC would, as it often has in the past,[9] commission a study to review the adequacy of the SIPC Fund. In the ordinary course, SIPC would commission the study every four years. The study would entail consideration of such factors as the overall state of the SIPC Fund, current and projected financial market conditions and trends, historic and perceived risks and threats to the viability of the SIPC Fund, any undue burden on members, or members' customers, and other factors deemed appropriate by the SIPC Board.

Upon consideration of the results of the study and the report thereon that would issue, and after consultation with the Commission and one or more self-regulatory organizations, SIPC would set the appropriate assessment rate necessary to maintain the Fund and satisfy SIPA's purposes.

Other provisions of SIPC Bylaw Article 6 are unchanged such as the rate when the Fund is less than $150 million, or less than $100 million, or the circumstances under which the rate imposed can be more than ½ of 1% of gross revenues from the securities business but not more than 1% thereof.[10] These provisions largely track the requirements under SIPA Sections 78ddd(c)(3)(B) and 78ddd(d)(1)(A) and B.

Given not only the risks described above, but the risk to members that, by statute, a significant event could cause assessment rates immediately to jump to at least 0.50% of gross revenues from the securities business and possibly be as high as 1%, SIPC submits that growing the Fund at a consistent pace lessens any negative impact on members, with the attendant benefit of reaching $5 billion sooner. Barring unforeseen sizeable expenditures, SIPC estimates that at the current yearly assessment rate of .15% of NOR, SIPC's unrestricted net assets, as reflected in SIPC's audited Statement of Financial Position, would be $5 billion by no later than December 31, 2026. If SIPC did nothing to address the adequacy of the Fund or the assessment rate, then at a rate of 0.02% per annum, which would be the assessment under the current version of the Assessment Bylaw, the $5 billion balance would not be reached until the year 2040.

Impact on Members

Adopting the modifications proposed by SIPC should have a limited impact on member firms. As the chart below reveals, based on 2018 data, SIPC staff estimates that two-thirds of the total difference in annual assessments under the proposed assessment rate structure would be paid by only 30 members for which the difference in the assessment payment would amount, on average, only to .091% of their total revenue.

[8] Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 FR 76614 (Dec. 18, 2013).

[9] At various times, the size of SIPC's Fund has been independently reviewed. *See, e.g.,* GAO Report, *The Regulatory Framework Has Minimized SIPC's Losses,* September 1992; *Review of SIPC Risk Profile and Practices,* Fitch Risk Management, 2003; *Loss Modeling and Capital Reserve Adequacy Study,* Algorithmics Inc., 2008; *Task Force Recommendation Analysis: Methodology and Summary of Results,* Opera Solutions LLC, 2013.

[10] ''Gross revenues from the securities business'' is defined in SIPA Section 78*lll*(9).

ESTIMATED IMPACT OF APPLYING A NEW ASSESSMENT RATE OF 15BPS INSTEAD OF 2BPS (BASED ON FY 2018)

Difference in assessments 0.15%-0.02%	Number of BDs	% of BDs	Difference Assessments 0.15%-0.02% Amount	% Total	Average % Total Revenue
>$2,000,000	30	0.84%	$172,316,807	66.92%	0.091%
$2,000,000-$1,500,000	2	0.06%	$3,572,213	1.39%	0.059%
$1,499,000-$1,000,000	5	0.14%	$6,485,442	2.52%	0.069%
$999,999-$500,000	32	0.90%	$23,444,971	9.10%	0.092%
$499,999-$100,000	123	3.46%	$26,752,835	10.39%	0.092%
$2,000,000-$100,000	162	4.56%	$60,255,460	23.40%	
$99,999-$50,000	113	3.18%	$7,808,062	3.03%	0.093%
$49,999-$25,000	181	5.09%	$6,441,463	2.50%	0.105%
$24,999-$10,000	363	10.21%	$5,650,161	2.19%	0.106%
$9,999-$5,000	360	10.12%	$2,536,530	0.99%	0.108%
$4,999-$2,500	385	10.83%	$1,399,645	0.54%	0.106%
$99,999-$2,500	1,402	39.43%	$23,835,861	9.26%	
$2,499-$2,000	110	3.09%	$245,514	0.10%	0.108%
$1,999-$1,000	343	9.65%	$495,237	0.19%	0.104%
$999-$500	313	8.80%	$228,636	0.09%	0.085%
$499-$100	432	12.15%	$116,247	0.05%	0.101%
$99-$1	330	9.28%	$11,807	0.00%	0.078%
<$1	434	12.20%	$4	0.00%	
<$2,500	1,962	55.17%	$1,097,445	0.43%	
	3,556	100.00%	$257,505,573	100.00%	

In the above chart, column 1 refers to the difference in amount that a broker-dealer would pay as a result of being assessed at a rate of .15% instead of .02%. Column 2 is the number of broker-dealers impacted at that amount. Column 3 is the percentage that the broker-dealers at a certain level represent relative to the total number of broker-dealers. Column 4 is the total additional amount paid by all broker-dealers at a given level. Column 5 is the percentage that the payments reflect relative to all payments. Column 6 is the percentage that the payments represent, on average, relative to the broker-dealers' revenue.

Thus, an assessment rate of .15%, as opposed to .02%, would cause the largest 30 SIPC members to pay approximately $172 million more out of their approximately $213 billion in revenue. This increase amounts to approximately 8/100 of 1% of such members' revenue, and represents ⅔ of the total impact on all members. More than half of SIPC members would see an increase of less than $2,500 in the amount of their annual assessment, with more than 20% of members paying a difference of less than $100. In other words, the impact of modifying the assessment structure on both the total assessment burden, and the distribution of the assessment burden, among individual broker-dealers, would be comparatively limited.

Proposed Technical Changes

Clarification of Role of Collection Agent

In addition to the above, SIPC proposes to amend that portion of the Assessment Bylaw relating to Collection of General Assessments (SIPC Bylaw Article 6, Section 1(c)).

Under SIPA Section 78iii(a), each self-regulatory organization (''SRO'') may act as the collection agent for SIPC to collect assessments payable by members for which the SRO is the examining authority. However, SIPA does not mandate that SIPC use a collection agent to collect assessments, and SIPA does not restrict collection exclusively to collection agents. *See, e.g.,* SIPA Section 78ddd(c)(1) (''Each member of SIPC shall pay to SIPC, *or* the collection agent for SIPC . . . . [emphasis added]''). Furthermore, under SIPA Section 78ccc(b)(8), since SIPC has the power to ''do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC,'' SIPC has the general authority

directly to collect assessments. Indeed, for more than 20 years—since the mid-1990s—members have paid assessments directly to SIPC. Where members have failed to pay their assessments, SIPC has referred the delinquency to Commission staff and currently brings the matter to the attention of FINRA for collection.

In keeping with current practice, and in light of technological developments and capabilities that have continued to improve considerably, the proposed bylaw removes the provision that requires members to pay assessments to collection agents. The proposed Bylaw amendment re-letters the provisions that follow current Bylaw Article 6, Section 1(c). The re-lettered provisions include current Section 1(d) of Bylaw Article 6 (Report by Collection Agents). Section 1(d) requires the SROs to report in writing to SIPC as to any member from which the SRO has or has not been successful in collecting payment. In this manner, SIPC can stay informed as to any member that continues to be delinquent and refer the member, as needed, to the Commission for further action under SIPA Section 78jjj(a).

Elimination of Interest Payment Period on Past-Due Payments

Currently, the SIPC Bylaw provides that if a member's assessment payment has not been received within 15 days of the due date, the stated interest rate for late payments applies to unpaid amounts. In January, 2019, SIPC developed an internet payment portal, whereby members can pay SIPC directly online. SIPC is also presently working on the development of a portal through which, among other things, members can file assessment forms. The creation by SIPC of the means by which members can make immediate payment obviates the need for a grace period.

II. Need for Public Comment

Section 3(e)(1) of SIPA provides that the SIPC Board must file a copy of any proposed bylaw change with the Commission, accompanied by a concise general statement of the basis and purpose of the proposed bylaw change.[11] The proposed bylaw change will become effective thirty days after the date of filing with the Commission or upon such later date as SIPC may designate or such earlier date as the Commission may determine unless: (A) The Commission, by notice to SIPC setting forth the reasons for such action, disapproves the proposed bylaw change as being contrary to the public interest or contrary to the purposes of SIPA; or (B) the Commission finds that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures for SIPC proposed rule changes in section 3(e)(2) of SIPA be followed with respect to the proposed bylaw change.[12]

The SIPC Fund, which is built from assessments on its members and the interest earned on the Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets. In light of this fact and that the bylaw change provides for a modified calculation of the assessment rate and a change to collection practices, the Commission finds, pursuant to section 3(e)(1)(B) of SIPA,[13] that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained and is requiring that the procedures applicable to SIPC proposed rule changes in section 3(e)(2) of SIPA [14] be followed. As required by section 3(e)(1)(B) of SIPA,[15] the Commission has notified SIPC of this finding in writing.

III. Date of Effectiveness of the Proposed Bylaw Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (A) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (B) as to which SIPC consents, the Commission shall: (i) By order approve such proposed bylaw changes; or (ii) institute proceedings to determine whether such proposed bylaw changes should be disapproved.[16]

IV. Text of Proposed Bylaw Change

The text of the proposed bylaw changes is provided below. Proposed new language is in italics; proposed deletions are in brackets.

ARTICLE 6

ASSESSMENTS

Section 1. General

(a) Amount of Assessment

(1) The amount of each member's assessment for the member's fiscal year shall be the product of the assessment rate established by SIPC for that fiscal year and either the member's gross [or net]revenues *or net operating revenues* from the securities business, as follows:

(A) [The assessment rate shall be one-fourth (¼) of one (1) percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof unless SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, will remain at or above $2.5 billion for six months or more] *If at any time SIPC determines that SIPC's unrestricted net assets are:*

(i) *Less than $5.0 billion but not less than $2.5 billion, and are reasonably likely to remain less than $5.0 billion but not less than $2.5 billion, the amount of each member's assessment shall be 0.15 percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.*[has aggregated a balance of $2.5 billion, and]

(ii) *less than $2.5 billon, the amount of each member's assessment shall be one-fourth (¼) of one (1) percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.*

(B) *Notwithstanding anything herein to the contrary, if at any time SIPC determines that the balance of the SIPC Fund aggregates or is reasonably likely to aggregate:*

(i) Less than $150,000,000—the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment be less than an assessment rate of one-fourth (¼) of one (1) percent per annum of such member's gross revenues from the securities business.

(ii) less than $100,000,000—the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment be less than an assessment rate of one-half (½) of one (1) percent per annum of such member's gross revenues from the securities business.

(iii) The amount of each member's assessment shall not exceed one-half (½) of one (1) percent per annum of such member's gross revenues from the securities business, unless SIPC determines that a rate in excess of one-half (½) of one (1) percent during any twelve (12) month period will not have a material adverse effect on the financial condition of its members or their customers. No assessment made pursuant to this section 1(a)(1) shall require payments during any such period that exceed in the aggregate one (1) percent of any member's gross

[11] 15 U.S.C. 78ccc(e)(1).

[12] 15 U.S.C. 78ccc(e)(1).

[13] 15 U.S.C. 78ccc(e)(1)(B).

[14] 15 U.S.C. 78ccc(e)(2).

[15] 15 U.S.C. 78ccc(e)(1)(B).

[16] 15 U.S.C. 78ccc(e)(2)(B).

revenues from the securities business for such period.

[Notwithstanding the provisions of Section 1(a)(1)(A) herein, if SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, (i) has aggregated $2.5 billion, and (ii) will remain at or above $2.5 billion for six months or more, but SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are less than $2.5 billion, the assessment rate shall be 0.15 percent per annum of net operating revenues from the member's securities business for each calendar year or part thereof.]*(C) SIPC shall commission a study (''Study'') every four years to examine the adequacy of the balance of SIPC's unrestricted net assets and the SIPC Fund and the appropriate assessment rate that is necessary to fulfill the purposes of the Act. The Study will examine the overall state of SIPC's unrestricted net assets and Fund balances, current and projected financial market conditions and trends, historic and perceived risks and threats to the viability of SIPC's unrestricted net assets and Fund, any undue burden on members or members' customers, and such other factors as the Board determines. The Study shall result in a report (''Report'') to be furnished to SIPC. The first Study shall be commissioned when SIPC reasonably anticipates that SIPC's unrestricted net assets have reached a total of $5.0 billion.* [If SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, has aggregated $2.5 billion or more, and will remain at or above $2.5 billion for six months or more, and SIPC's unrestricted net assets, as reflected in SIPC's most recent audited Statement of Financial Position, are at or above $2.5 billion, members shall pay a minimum assessment, which shall be 0.02 percent of the net operating revenues from the securities business for each calendar year or part thereof.]*(D) Without limitation of SIPC's authority under 15 U.S.C. 78ccc and 78ddd to set assessments, if SIPC determines that SIPC's unrestricted net assets are $5.0 billion or more and are reasonably likely to remain above $5.0 billion, and after review of the information contained in the last Report at such time, and after consultation with the Securities and Exchange Commission and self-regulatory organizations, SIPC may not more than once in any four-year period, increase or decrease the assessment rate by up to, but not more than, twenty-five percent (25%) of the rate in effect at that time.* [Anything to the contrary herein notwithstanding, if at any time SIPC determines that the balance of the SIPC Fund, as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit, aggregates or is reasonably likely to aggregate:

(i) Less than $2.5 billion and will likely remain less than $2.5 billion for a period of six (6) months or more—the amount of each member's assessment shall be at an assessment rate of one-fourth (¼) of one (1) percent per annum of net operating revenue.

(ii) less than $150,000,000—the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment be less than an assessment rate of one-fourth (¼) of one (1) percent per annum of such member's gross revenues from the securities business.

(iii) less than $100,000,000—the amount of each member's assessment shall be at an amount to be determined by SIPC, but in no case shall the amount of each member's assessment be less than an assessment rate of one-half (½) of one (1) percent per annum of such member's gross revenues from the securities business.

(iv) The amount of each member's assessment shall not exceed one-half (½) of one (1) percent per annum of such member's gross revenues from the securities business, unless SIPC determines that a rate in excess of one-half (½) of one (1) percent during any twelve (12) month period will not have a material adverse effect on the financial condition of its members or their customers. No assessment made pursuant to this section 1(a)(1) shall require payments during any such period that exceed in the aggregate one (1) percent of any member's gross revenues from the securities business for such period.]

(E) *Any minimum assessment imposed upon each member of SIPC shall be 0.02 percent of the net operating revenues from the securities business of such member for each calendar year or part thereof.*

(2) Any change in assessments made in accordance with Section 1(a)(1) herein shall commence on the first day of the year following the date on which SIPC announces its determination, or on such other date if the exigency of the circumstances so warrants in SIPC's determination, and continue until such time as SIPC provides otherwise.

(3) Commencing on the first day of the month following the date on which SIPC borrows moneys pursuant to Section 4(f) or Section 4(g) of the Act, and continuing while any such borrowing is outstanding and until such further time as SIPC provides otherwise, the amount of each member's assessment shall be at an assessment rate of not less than one-half (½) of one (1) percent per annum of such member's gross revenues from the securities business.

(b) Payments. Assessments shall be payable at such times and in such manner as may be determined by SIPC's Vice President—Finance with the approval of the Chairman.

[(c) Collection of General Assessments. Each member of the Corporation who is a member of a self-regulatory organization shall pay assessments to its collection agent. In the case of members who are not members of any self-regulatory organization, assessments shall be paid directly to the Corporation.]

[(d)]*(c)* Report by Collection Agents. Within 45 days after each due date, each self-regulatory organization *that acts* as[which is the] collection agent *for SIPC* shall submit a written report to *SIPC*[the Corporation] as to any entity [for whom it acts as collection agent]whose filing or assessment payment has not been received.

[(e)]*(d)* Interest on Assessments. If all or any part of an assessment payable under Section 4 of the Act has not been *timely* received[by the collection agent within 15 days after the due date thereof], the member shall pay, in addition to the amount of the assessment, interest at the rate of 20% per annum on the unpaid portion of the assessment for each day it has been overdue. If any broker or dealer has incorrectly filed a claim for exclusion from membership in the Corporation, such broker or dealer shall pay, in addition to assessments due, interest at the rate of 20% per annum on the unpaid assessment for each day it has not been paid since the date on which it should have been paid.

[(f) Gross Revenues. The term ''gross revenues from the securities business'' includes the revenues in the definition of gross revenues from the securities business set forth in the applicable sections of the Act.]

Section 2. Overpayments

If the final annual reconciliation filed by a terminated member reflects an assessment overpayment carried forward that exceeds $150.00, SIPC may refund such excess to the member upon receipt of the member's written request therefor and after [the member's]SIPC [collection agent]has confirmed [to SIPC]that all of the member's SIPC assessment form filings and payments

and reports required by SEC Rule 17a–5 covering periods through the termination date have been reviewed and accepted.

Section 3. Interpretation of Terms

(a) For purposes of *calculating assessments*[this article]:

[(a)]*(i)* The term ''securities in trading accounts'' shall mean securities held for sale in the ordinary course of business and not identified as having been held for investment.

[(b)]*(ii)* The term ''securities in investment accounts'' shall mean securities that are clearly identified as having been acquired for investment in accordance with provisions of the Internal Revenue Code applicable to dealers in securities.

[(c)]*(iii)* The term ''fees and other income from such other categories of the securities business'' shall mean all revenue related either directly or indirectly to the securities business except revenue included in Section 16(9)(A)–(K) and revenue specifically excepted in Section 4(c)(3)(C).

(b) For purposes of this Article:

(i) Gross Revenues. The term ''gross revenues from the securities business'' includes the revenues in the definition of gross revenues from the securities business set forth in the applicable sections of the Act.

(ii) Net Operating Revenues. The term ''net operating revenues from the securities business'' means gross revenues from the securities business less interest and dividend expenses, and includes those clarifications as are set forth in the SIPC assessment forms and instructions.

(iii) SIPC Fund or Fund. The term ''SIPC Fund'' or ''Fund'' is as defined in Section 4(a)(2) of the Act, exclusive of confirmed lines of credit.

(iv) SIPC's unrestricted net assets. The term ''SIPC's unrestricted net assets'' means the lesser of SIPC's unrestricted net assets as reflected in SIPC's most recent audited Statement of Financial Position or reasonably expected by SIPC to be reflected in its next audited Statement of Financial Position.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SIPC–2019–02 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All comments should refer to File Number SIPC–2019–02. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw changes that are filed with the Commission, and all written communications relating to the proposed bylaw changes 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 Commission. 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 SIPC–2019–02, and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01023 Filed 1–22–20; 8:45 am]

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[17] 17 CFR 200.30–3(f)(2)(i); 17 CFR 200.30–3(f)(3).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88004; File No. SR–NASDAQ–2020–003]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 4121(b)

January 17, 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 January 14, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4121(b) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4121(b) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. The Exchange is proposing this rule change in conjunction with other national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'').

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (*i.e.,* market-wide circuit breakers). The market-wide circuit breaker mechanism (''MWCB'') under Rule 4121 was approved by the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission to operate on a pilot basis,[3] the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[4] including any extensions to the pilot period for the LULD Plan.[5] The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[6] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[7] The Exchange then filed to extend the pilot for an additional year to the close of business on October 18, 2020.[8]

The market-wide circuit breaker under Rule 4121 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (''MWCB Rules''), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.[9] Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Today, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day. Thus, if the primary listing market is Nasdaq, the Exchange would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, which is the beginning of the Exchange's Pre-Market Session.[10] Effectively, Nasdaq would open its listed securities for trading following a Level 3 halt the same as a regular trading day under its current MWCB Level 3 re-opening procedures.[11] For non-Nasdaq listed securities, however, Nasdaq would resume trading once the primary listing market has re-opened the security for trading, which time may currently vary depending on the primary listing market.[12]

Upon feedback from industry participants, the Exchange has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.[13]

As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to re-open trading in a security before it could start trading such security.[14] Accordingly, under the proposal, the Exchange could begin trading all securities at the beginning of the Exchange's Pre-Market Session, just as it currently does for Nasdaq-listed securities.

To effect this change, the Exchange proposes to delete the language in Rule 4121(b)(ii) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day.[15] The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under its rules, which for Nasdaq would be at the beginning of the Pre-Market Session at 4:00 a.m. ET under its current rules. The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (''SIP'') to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[5] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR–NASDAQ–2013–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date of a Rule Change to Nasdaq Rule 4121).

[6] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[7] *See* Securities Exchange Act Release No. 85578 (April 9, 2019), 84 FR 15271 (April 15, 2019) (SR–NASDAQ–2019–027).

[8] *See* Securities Exchange Act Release No. 86944 (September 12, 2019), 84 FR 49141 (September 18, 2019) (SR–NASDAQ–2019–072).

[9] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

[10] Pre-Market Session means the trading session that begins at 4:00 a.m. and continues until 9:30 a.m. *See* Rule 4120(b)(4).

[11] The Nasdaq system begins accepting and processing eligible orders in time priority at 4:00 a.m. ET. *See* Nasdaq Rule 4752(b) for further description of trading in the Pre-Market Session.

[12] Furthermore, there may be cross-market differences in how each exchange currently opens the next day after a Level 3 MWCB halt. As discussed above, while Nasdaq currently resumes trading in its listed securities no differently from a regular trading day, other exchanges may, for instance, conduct a halt auction rocess [sic] instead of opening in the normal course under their respective rules. As discussed later in this filing, the proposed changes will allow each exchange to resume trading in all securities the next trading day following a Level 3 halt no differently from a regular trading day.

[13] Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their ''next day'' trading session at 6:00 p.m. ET (for CFE and CME) or at 8:00 p.m. ET (for ICE). If the U.S. futures markets amend their MWCB rules, as needed, to allow for normal course trading following a Level 3 halt, the futures markets would resume trading in their normal course at 6:00 p.m. ET (CFE and CME) or 8:00 p.m. ET (ICE) the same day as the Level 3 halt.

[14] The Exchange anticipates that the other national securities exchanges and FINRA will also file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

[15] Presently, the Exchange's equities trading day ends at 8:00 p.m. ET.

separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange believes that opening in the normal course in all equity securities as opposed to, for instance, having a normal opening for Nasdaq-listed securities only or conducting a halt auction prior to resuming trading, will be more beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the Exchange at the beginning of the Pre-Market Session in all NMS Stocks will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 market decline. As described above, the Exchange, together with other national securities exchanges and FINRA, is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt. In this regard, the Exchange believes that the proposal to resume trading in all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day (*i.e.,* the beginning of the Pre-Market Session at 4 a.m. ET on Nasdaq) will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks.

Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 4121 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, the Exchange understands that FINRA and other national securities exchanges will file similar proposals to adopt the proposed Level 3 rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2020–003 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–NASDAQ–2020–003. 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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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–NASDAQ–2020–003 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01096 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87989; File No. SR–NYSEAMER–2020–03]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend the Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 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 January 3, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6800 Series, the Compliance Rule regarding the CAT NMS Plan to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT;
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

i. Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member.[4] As a result, the Exchange proposes to amend the definition of ''Firm Designated ID'' in Rule 6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6810(r) (previously Rule 6810(q)) defines the term ''Firm Designated ID'' to mean ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

The Exchange proposes to amend the definition of a ''Firm Designated ID'' in

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

proposed Rule 6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.''

In addition, the Exchange proposes to amend the definition a ''Firm Designated ID'' in proposed Rule 6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.[5] To effect this change, the Exchange proposes to amend the definition of ''Firm Designated ID'' in proposed Rule 6810(r) to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows: A unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member.

ii. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.''[6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members[7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''If the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.''[8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) If the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this

[5] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

[9] *See* FINRA *Regulatory Notice* 16–28 (Nov. 2016).

information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (''ATSs'') in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 6810 to facilitate the addition to the Plan of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 6830.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, proposed paragraph (a)(2)(D) of Rule 6830 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

(1) a list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6830.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(4) to

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(4) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(4) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add new paragraph (a)(1)(E)(viii)(3) to Rule 6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 6830. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6830 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 6830. Specifically, proposed new paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order, whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(5) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add new paragraph (a)(1)(C)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been

routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(x) to Rule 6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

iii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receive from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iv. Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting''). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.''

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[12] To implement the Phased Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 6830. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.[13]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 6830. Paragraph (a)(1)(A)(i) of Rule 6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 6830, Industry Members would be required to provide a timestamp pursuant to Rule 6860. Rule 6860(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[14]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was

[12] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[13] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

[14] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[15] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(A) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraphs (c)(2)(A) and (B) of Rule 6895. Proposed new paragraph (c)(2)(A) of Rule 6895 would state that

Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

[15] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 6830. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[16] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

[16] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(B) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is

seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as new paragraph (t)(3) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.'' Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader identifiers [17] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [18] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (''OMS'') and represented by a principal order originated in an Execution Management System (''EMS'') that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order'' [19]

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; [20] and (5) Allocation Reports as required to be recorded and reported to the Central

[17] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[18] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[19] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[20] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(C) of Rule 6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 6810 and amend paragraphs (c)(1) and (2) of Rule 6895.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as new paragraph (t)(5) of Rule 6810. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 6810 of the Compliance Rule.[21]

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6895 with new paragraph (c)(1)(E) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6895 with new paragraph (c)(2)(D) of Rule 6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 6880(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to replace Rules 6880(a)(1)–(4) with proposed new Rule 6880(a)(1) through (8).

Proposed new Rule 6880(a)(1) would provide that ''Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.'' Proposed new Rule 6880(a)(2) would provide that ''Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.'' Proposed new Rule 6880(a)(3) would provide that ''The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.'' Proposed new Rule 6880(a)(4) would provide that ''The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.'' Proposed new Rule 6880(a)(5) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.'' Proposed new Rule 6880(a)(6) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.'' Proposed new Rule 6880(a)(7) would provide that ''Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.'' Finally, proposed new Rule 6880(a)(8) would provide that ''The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.''

v. FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's

[21] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, individual tax payer identification numbers and social security numbers (collectively, ''SSNs''). *See* Rule 6810. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at *https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf*. If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 6830, which states that:

> (F) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:
>
> (1) The Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 6830(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 6830, which states that, ''if an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:'' ''the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 6830(a)(2)(A)(ii)'' and ''if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 6830(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.''

vi. Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 6860. Rule 6860(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision by adding the phrase ''up to nanoseconds'' to the end of the provision.

vii. Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier in lieu of the ''account number;'' (ii) the ''account type'' as a ''relationship;'' and (iii) the Account Effective Date in lieu of the ''date account opened.''

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.,* the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship

was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the ''Account Effective Date'' in paragraph (a) of the definition of ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.[22]

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 6810.

The definition of Customer Account Information in Rule 6810(m) states that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the ''date account opened'', provide the relationship identifier in lieu of the ''account number''; and identify the ''account type'' as ''relationship.'' The Exchange proposes to extend this provision to apply to trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) of Rule 6810 to state the following:

> (1) in those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) Provide the Account Effective Date in lieu of the ''date account opened''; (B) provide the relationship identifier in lieu of the ''account number''; and (C) identify the ''account type'' as a ''relationship''.

Similarly, the Exchange proposes to amend the definition of ''Account Effective Date'' as set forth in Rule 6810(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise paragraph(a)(1) of Rule 6810 to state ''with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual.''

viii. CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.[23] Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. NYSE American Rule 6830(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, . . . and in accordance with Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 6810(n) (previously Rule 6810(m)), in turn, defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' In addition, Rule 6810(m) (previously Rule 6810(l)) defines ''Customer Account Information'' to include account numbers for individuals. Accordingly, the Exchange proposes to delete ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from the definition of ''Customer Identifying Information'' in Rule 6830(a)(2)(C) and to delete account numbers for individuals from the definition of ''Customer Account Information.'' The Exchange proposes to amend the definition of ''Customer Account Information'' to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 6830(a)(2)(C).

2. Statutory Basis

NYSE American believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[24] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[25] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE American believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[26] To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE American does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE American notes that the proposed rule

[22] 2016 Exemptive Order at 11861–11862.

[23] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(8).

[26] Approval Order at 84697.

changes are consistent with certain proposed amendment to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE American also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–03 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01033 Filed 1–22–20; 8:45 am]

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87995; File No. SR–NASDAQ–2019–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 4121

January 16, 2020.

On July 16, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Nasdaq Rule 4121 (''Trading Halts Due to Extraordinary Market Volatility'') to enhance the re-opening auction process for Nasdaq-listed securities following trading halts due to extraordinary market volatility. The proposed rule change was published for comment in the **Federal Register** on July 25, 2019.[3] On September 5, 2019, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to October 23, 2019.[4] On October 23, 2019, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[7] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on July 25, 2019. January 21, 2020 is 180 days from that date, and March 21, 2020 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates March 20, 2020 as the date by which the Commission shall either approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86412 (July 19, 2019), 84 FR 35900.

[4] *See* Securities Exchange Act Release No. 86875, 84 FR 47998 (September 11, 2019).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 87391, 84 FR 57929 (October 29, 2019).

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

disapprove the proposed rule change (File No. SR–Nasdaq–2019–057).[9]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01039 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87985; File No. SR–CboeBZX–2020–002]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Governing the Give Up of a Clearing Member by a User on Exchange Transactions

January 16, 2020.

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 January 2, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''''BZX'''') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX Options'') proposes to amend its rules governing the give up of a Clearing Member by a User on Exchange transactions. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 21.12, which governs the give up of a Clearing Member[5] by a User[6] on Exchange transactions, to substantially conform to Cboe Exchange, Inc. (''Cboe Options'') Rule 5.10, proposed Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.12, and proposed Cboe C2 Exchange, Inc. (''C2 Options'') Rule 6.30.[7]

Background

Under current Exchange rules, Users entering transactions on the Exchange must either be a Clearing Member or must establish a clearing arrangement with a Clearing Member, and must have a Letter of Guarantee issued by a Clearing Member. In addition, under current Rule 21.12, a User must give up the name of the Clearing Member through which each transaction will be cleared. Every Clearing Member accepts financial responsibility for all BZX Options transactions made by the guaranteed User pursuant to Exchange Rule 22.8(b) (Terms of Letter Guarantee). The proposed amendment will result in a more structured and coherent streamlined give up process on the Exchange as it will align with the give up functionality on BZX Options with that currently available on Cboe Options, C2 Options, and EDGX Options.

Additionally, beginning in early 2018, certain Clearing Members (in conjunction with the Securities Industry and Financial Markets Association (''SIFMA'')) expressed concerns related to the process by which executing brokers on U.S. options exchanges (the ''Exchanges'') are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms. SIFMA-affiliated Clearing Members subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[8] Therefore, the Exchange is now seeking to amend its Rule 21.17 to align with applicable rules of the Exchanges and also to substantially conform to existing Cboe Options Rule 5.10 and proposed EDGX Options Rule 22.12 and C2 Options Rule 6.30.

Proposed Rule

The Exchange proposes to amend Rule 21.12 by replacing the current rule text with details regarding the give up procedure for a User executing transactions on the Exchange. As amended, Rule 21.12 would provide that a User may indicate, at the time of the trade or through post trade allocation, any Options Clearing Corporation (''OCC'') number of the Clearing Member through which the transaction will be cleared (''give up'')

[9] The 240th day from publication in the **Federal Register** is March 21, 2020, which is a Saturday. Therefore, the date by which the Commission must take action is designated to be March 20, 2020.

[10] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Clearing Member'' means an Options Member that is self-clearing or an Options Member that clears BZX Options Transactions for other Members of BZX Options. *See* Exchange Rule 16.1.

[6] The term ''User'' means any Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access). *See* Exchange Rule 16.1.

[7] *See* SR–CboeEDGX–2020–001 (filed January 2, 2020) and SR–C2–2020–001 (filed January 2, 2020) (collectively referred to as the ''EDGX Options and C2 Options Proposed Give Up Rule'').

[8] Cboe Options recently modified its give up procedure under rule 5.10 to allow clearing trading permit holders to ''Opt In'' such that the clearing trading permit holder (''TPH'') may specify which Cboe Options TPH organizations are authorized to give up that clearing trading permit holder. *See* Securities and Exchange Act Release No. 86401 (July 17, 2019), 84 FR 35433 (July 23, 2019) (SR–CBOE–19–036). Nasdaq PHLX LLC (''PHLX''), NYSE Arca, Inc., (''NYSE Arca''), and NYSE American LLC (''NYSE American'') also recently modified their respect give up rules to adopt an ''Opt In'' process; *see also* Securities and Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (SR–PHLX–2018–72), Securities and Exchange Act Release No. 85871 (May 16, 2019), 84 FR 23613 (May 22, 2019) (SR–NYSEArca 2019–32) and Securities and Exchange Act Release 85875 (May 16, 2019), 84 FR 23591 (May 22, 2019) (SR–NYSEAMER–2019–17). The Exchange's proposal leads to the same result of providing its Clearing Member's the ability to control risk and includes PHLX's, NYSE Arca's and NYSE American's ''Opt In'' process, but it otherwise differs slightly in process from their give up rules. For example, the Exchange intends to maintain its provisions relating to Designated Give Ups and eliminate its provisions relating to the rejection of a trade. The Exchange's proposal is substantially the same as the current give up process on Cboe Options.

to either a ''Designated Give Up'' [9] or a ''Guarantor'',[10] as those roles would be defined in the Rule and discussed in further detail below.[11] Further, Rule 21.12 would provide that Clearing Members may elect to ''Opt In'' and restrict one or more of its OCC number(s) (''Restricted OCC Number''), as defined in the Rule and described in further detail below.[12]

Amended Rule 21.12(b)(1) would define the term ''Designated Give Up'' as a Clearing Member that a User (other than a Market-Maker) [13] identifies to the Exchange, in writing, as a Clearing Member the User requests the ability to give up.[14] To designate a Designated Give Up, a User must submit written notification to the Exchange, in a form and manner prescribed by the Exchange (''Notification Form'').[15] A copy of the proposed Notification Form is included with this filing in Exhibit 3. Similarly, should a User no longer want the ability to give up a particular Designated Give Up, the User would have to submit written notification to the Exchange, in a form and manner prescribed by the Exchange.[16]

The Exchange notes that, as proposed, a User may designate any Clearing Member as a Designated Give Up, provided that the Designated Give Up has not Opted In, or provided that the User is an Authorized User [17] of that Designated Give Up. Further, there would be no maximum number of Designated Give Ups that a User can identify. The Exchange would notify a Clearing Member, in writing and as soon as practicable, of each User that has identified it as a Designated Give Up.[18]

As amended, Rule 21.12(b)(2) would define the term Guarantor as a Clearing Member that has issued a Letter of Guarantee for the executing User, pursuant to the Rules of the Exchange [19] that are in effect at the time of the execution of the applicable trade.[20] An executing User may give up its Guarantor without such Guarantor being a Designated Give Up. The Exchange's Rule 22.8 provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a User clears transactions. Accordingly, a Market-Maker would only be enabled to give up a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 22.8. Thus, Market-Makers would not identify any Designated Give Ups.

Proposed Rule 21.12(c) would provide that Clearing Members may request the Exchange restrict one or more of their OCC numbers (''Opt In'') from being given up unless otherwise authorized.[21] If a Clearing Member Opts In, the Exchange will require written authorization from the Clearing Member permitting a User to give up a Clearing Member's Restricted OCC number.[22] An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in proposed subparagraph (c)(3).[23] If a Clearing Member does not Opt In, that Clearing Member's OCC number may be subject to being given up by any User that has designated it as a Designated Give Up.[24] Proposed Rule 21.12(c)(1) will set forth the process by which a Clearing Member may Opt In.[25] Specifically, a Clearing Member may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Users.[26] A copy of the proposed form is included in Exhibit 3. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at the OCC.[27] The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange's MSD as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System.[28] This time period is to provide adequate time for the Users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Users to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such Users would still be able to give up that Restricted OCC Number during this ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Rule 21.12(c)(2) will set forth the process for Users to give up a Clearing Member's Restricted OCC Number.[29] Specifically, a User desiring to give up a Restricted OCC Number must become an Authorized User.[30] The Clearing Member will be required to authorize a User as described in subparagraph (1) or (3) of Rule 21.12(c) (*i.e.,* through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the User is a party to, as set forth in Rule 21.12(b)(6).[31] Pursuant to proposed Rule 21.12(c)(3), a Clearing Member may amend the list of its Authorized Users or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's MSD indicating the amendment as described on the form.[32] Once a Restricted OCC Number is effective within the System pursuant to Rule 21.12(c)(1), the Exchange may permit the Clearing Member to authorize, or remove authorization for, a User to give up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances.[33] The Exchange will promptly notify Users if they are no longer authorized to give up a Clearing Member's Restricted OCC Number.[34] If a Clearing Member removes a Restricted OCC Number, any User may give up that OCC clearing number once the removal has become effective on or before the next business day, provided that Clearing Member has been designated as a Designated Give Up.[35]

As noted above, amended Rule 21.12 would provide that a User may only give up (A) a Clearing Member that has

[9] *See* proposed Exchange Rule 21.12(b)(1).

[10] *See* proposed Exchange Rule 21.12(b)(2).

[11] *See* proposed Exchange Rule 21.12(a); *see also* paragraph (a) of the EDGX Options and C2 Options Proposed Give Up Rule. The Exchange notes that paragraph (a) of Cboe Options 5.10 slightly differs from the proposed paragraph (a) on the Exchange, EDGX Options, and C2 Options; however, Cboe Options plans to amend its paragraph (a) of Rule 5.10 to conform to proposed Exchange, EDGX Options, and C2 Options rules with slight differences as it relates to floor trading.

[12] *Id.*

[13] For purposes of this rule, references to ''Market-Maker'' shall refer to a Member acting in the capacity of a Market-Maker and shall include all Market-Maker capacities.

[14] *See* proposed Exchange Rule 21.12(b)(1); *see also* Cboe Options 5.10(b)(1).

[15] *See* proposed Exchange Rule 21.12(b)(3); *see also* Cboe Options Rule 5.10(b)(3).

[16] *See* proposed Exchange Rule 21.12(b)(7); *see also* Cboe Options Rule 5.10(b)(7).

[17] An ''Authorized User'' refers to a User that has written authorization as described in proposed Rule 21.12(c)(2) to give up a Restricted OCC Number. *See* proposed Exchange Rule 21.12(a).

[18] *Supra* note 14.

[19] *See* Exchange Rule 22.8 (Letters of Guarantee).

[20] *See* proposed Exchange Rule 21.12(b)(2); *see also* Cboe Options Rule 5.10(b)(2).

[21] *See* proposed Exchange Rule 21.12(c); *see also* Cboe Options Rule 5.10(c).

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *See* proposed Exchange Rule 21.12(c)(1); *see also* Cboe Options Rule 5.10(c)(1).

[26] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member's contact information to assist Users (to the extent they are not already Authorized Users) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its Members of such updates on a periodic basis.

[27] *Supra* note 29.

[28] *Supra* note 29.

[29] *See* proposed Exchange Rule 21.12(c)(2); *see also* Cboe Options Rule 5.10(c)(2).

[30] *Id.*

[31] *Id.*

[32] *See* proposed Exchange Rule 21.12(c)(3) and (e); *see also* Cboe Options Rule 5.10(c)(3) and (e).

[33] *Id.*

[34] *Id.*

[35] *Id.*

previously been identified and processed by the Exchange as a Designated Give Up for that User, provided that the Designated Give Up has not Opted In, or provided that the User is an Authorized User of that Designated Give Up, or (B) a Guarantor for that user.[36] This proposed requirement would be enforced by the Exchange's trading systems.[37] Specifically, the Exchange has configured its trading systems to only accept orders from a User that identifies a Designated Give Up or Guarantor for that User. For any Restricted OCC Number, the Exchange's trading systems will only accept orders for that number from an Authorized User that has also designated that Clearing Member as a Designated Give Up. The System would reject any order entered by a User not meeting the aforementioned criteria. The Exchange notes that it would notify a User in writing when an identified Designated Give Up becomes effective (*i.e.,* when a Clearing Member has been identified by the User as a Designated Give Up, has been enabled by the Exchange's trading systems to be given up).[38] A Guarantor for a User, by virtue of having an effective Letter of Guarantee on file with the Exchange, would be enabled to be given up for that User without any further action by the User.[39] The Exchange notes that this configuration (*i.e.,* the trading systems accepting only orders that identify a Designated Give Up or a Guarantor) is intended to help reduce keypunch errors (errors involving erroneous data entry), and prevent the User from mistakenly giving up the name of a Clearing Member that it does not have the ability to give up a trade. However, in light of Clearing Members having the ability to restrict their OCC numbers from being given up by unauthorized Users, the Exchange does not propose to adopt a process for Clearing Members to ''reject'' trades.[40]

The Exchange also proposes in Rule 21.12(f) three scenarios in which a give up on a transaction may be changed without Exchange involvement.[41] First, if an executing User has the ability through an Exchange system to do so, it could change the give up on a trade to another Designated Give Up, provided it's an Authorized User for any Restricted OCC Number, or its Guarantor.[42] The Exchange notes that Users often make these changes when, for example, there is a keypunch error. The ability of the executing User to make any such change would end at the ''Trade Date Cutoff Time''.[43] Next, the modified rule would provide that, if a Designated Give Up has the ability to do so, it may change the give up on a transaction for which it was given up to (A) another Clearing Member affiliated with the Designated Give Up or (B) a Clearing Member for which the Designated Give Up is a back office agent.[44] The ability to make such a change would end at the Trade Date Cutoff Time.[45] The Exchange notes that often Clearing Members themselves have the ability to change a give up on a trade for which it was given up to another Clearing Member affiliate or Clearing Member for which the Designated Give Up is a back office agent. Therefore, Exchange involvement in these instances is not necessary. In addition, the proposed rule provides that if both a Designated Give Up or Guarantor and a Clearing Member have the ability through an Exchange system to do so, the Designated Give Up or Guarantor and Clearing Member may each enter trade records into the Exchange's systems on the next trading day (''T+1'') that would effect a transfer of the trade in a non-expired option series from that Designated Give Up (or Guarantor) to that Clearing Member.[46] The Designated Give Up or Guarantor could not make any such change after the T+1 Cutoff Time.[47] The Exchange notes that a Designated Give Up or Guarantor must notify, in writing, the Exchange and all the parties to the trade, of any such change made pursuant to this provision.[48] This notification alerts the parties and the Exchange that a change to the give up has been made. Finally, the Designated Give Up or Guarantor would be responsible for monitoring the trade and ensuring that the other Clearing Member has entered its side of the transaction timely and correctly. If either a Designated Give Up (or Guarantor) or Clearing Member cannot themselves enter trade records into the Exchange's systems to effect a transfer of the trade from one to the other, the Designated Give Up (or Guarantor) may request the ability from the Exchange to enter both sides of the transaction in accordance with amended Rule 21.12(f)(3).

The Exchange proposes Rule 21.12(g) to state that a Clearing Member would be financially responsible for all trades for which it is the give up at the Applicable Cutoff Time (for purposes of the proposed rule, the ''Applicable Cutoff Time'' shall refer to the T+1 Cutoff Time for non-expiring option series and to the Trade Date Cutoff Time for expiring option series).[49] The Exchange notes, however, that nothing in the proposed rule shall preclude a different party from being responsible for the trade outside of the Rules of the Exchange pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise.[50] Additionally, the proposed Rule does not preclude these factors from being considered in a different forum (*e.g.,* court or arbitration), nor does it preclude any Clearing Member that violates any provision of amended Rule 21.12 from being subject to disciplinary actions in accordance with Exchange rules.

The Exchange also proposes to adopt subparagraph (h) of Rule 21.12 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 3.1, titled ''Business Conduct of Members''.[51] This language will make clear that the Exchange will regulate an intentional

[36] *See* proposed Exchange Rule 21.12(b)(3); *see also* Cboe Options Rule 5.10(b)(3).

[37] *See* proposed Exchange Rule 21.12(d); *see also* Cboe Options Rule 5.10(d).

[38] *See* proposed Exchange Rule 21.12(e); *see also* Cboe Options Rule 5.10(e).

[39] *See* proposed Exchange Rule 21.12(b)(6); *see also* Cboe Options Rule 5.10(b)(6).

[40] *See* paragraph (f) of existing EDGX Options Rule 21.12 and C2 Options Rule 6.30(f). The Exchange notes, that the EDGX Options and C2 Options Proposed Give Up Rule seeks to eliminate existing paragraph (f). Further, Cboe Options Rule 5.10 does not have a process for Clearing Members to ''reject'' trades.

[41] *See* proposed Exchange Rule 21.12(f); *see also* Cboe Options Rule 5.10(f).

[42] *See* proposed Exchange Rule 21.12(f)(1); *see also* Cboe Options Rule 5.10(f)(1).

[43] The ''Trade Date Cutoff Time'' is established by the Clearing Corporation (or 15 minutes thereafter if the Exchange receives and is able to process a request to extend its time of final trade submission to the Clearing Corporation). *Id.*

[44] *See* proposed Exchange Rule 21.12(f)(2); *see also* Cboe Options Rule 5.10(f)(2).

[45] *Id.*

[46] *See* proposed Exchange Rule 21.12(f)(3); *see also* Cboe Options Rule 5.10(f)(3).

[47] The ''T+1 Cutoff Time'' is 1:00 p.m. Eastern Time on T+1; *see* proposed Exchange Rule 21.12(f)(3); *see also* Cboe Options Rule 5.10(f)(3) (which provides a cutoff time of 12:00 p.m. Central Time).

[48] *Id.*

[49] *See* proposed Exchange Rule 21.12(g); *see also* Cboe Options Rule 5.10(g).

[50] *See* proposed Interpretation and Policy .01 to Exchange Rule 21.12 (''Nothing herein will be deemed to preclude the clearance of Exchange transactions by a non-User pursuant to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is a User is also designated as having responsibility under these Rules for the clearance of such transactions.''); *see also* Interpretation and Policy .01 to Cboe Options Rule 5.10.

[51] *See* Cboe Options Rule 5.10(h), which states that intentional misuse of Rule 5.10 may be treated as a violation of Rule 8.1 (Just and Equitable Principles of Trade).

misuse of this Rule, and that such behavior would be a violation of Exchange rules. The proposed language is similar to corresponding provisions in other exchanges' give up rules.[52]

Lastly, the Exchange proposes to amend its current Member Notification of Designated Give ups Form (''Designated Give ups Form''). As of October 7, 2019 the Cboe affiliated Options Exchanges are on the same technology platform. To provide further harmonization across the Cboe affiliated Options Exchanges and provide more seamless administration of the Give Up rule, the Exchange proposes to adopt the forms currently applicable to the Cboe Exchange, Inc., which will be applicable to all Cboe affiliated Options Exchanges. The proposed Designated Give Up forms are included in Exhibit 3.

Implementation Date

The Exchange proposes to announce the implementation date of the proposed rule change in an Exchange Notice, to be published no later than thirty (30) days following the operative date. The implementation date will be no later than sixty (60) days following the operative date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[53] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[54] 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 facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[55] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Detailing in the rules how Users would give up Clearing Members provides transparency and operational certainty. The Exchange believes additional transparency removes a potential impediment to, and would contribute to perfecting, the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest. Moreover, the Exchange notes that amended Rule 21.12 requires Users to adhere to a standardized process to ensure a seamless administration of the Rule. For example, all notifications relating to a change in give up must be made in writing. The Exchange believes that these requirements will aid the Exchange's efforts to monitor and regulate Users and Clearing Members as they relate to amended Rule 21.12 and changes in give ups, thereby protecting investors and the public interest.

Further, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits Users to identify any Clearing Member as a Designated Give Up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms. The Exchange believes that the proposed changes to Rule 21.12 help alleviate this risk by enabling Clearing Members to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Users may give up those Restricted OCC Numbers. As described above, all other Users would be required to receive written authorization from the Clearing Member before they can give up that Clearing Member's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Users upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require Users (other than Authorized Users) to seek authorization from Clearing Members in order to have the ability to give them up, each User will still have the ability to give up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that User is party to that arrangement. The Exchange also notes that to the extent the executing User has a clearing arrangement with a Clearing Members (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing User's Guarantor. Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Members would be responsible for a trade, which protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become Members on the Exchange to take advantage of the trading opportunities. Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to provide transparency and operational certainty to the Exchange's give up process, and also to reduce risk for Clearing Members. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction. In the absence of a mechanism that governs a market participant's use of a Clearing Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal imposes an undue burden on competition. Rather, the Exchange believes that the proposed

[52] *See e.g.,* Cboe Options Rule 5.10(h).

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(5).

[55] *Id.*

rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [56] and Rule 19b–4(f)(6) [57] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [58] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, the Exchange requested that the Commission waive the 30-day operative delay. The Exchange represented that the proposal establishes a rule regarding the give up of a Clearing Member in order to help clearing firms manage risk while continuing to allow market participants choice in broker execution services. The Commission notes that it recently approved a substantially similar proposed rule change from Phlx, after which other options exchanges subsequently adopted subatantially similarly rules.[59] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the Exchange's proposal raises no new issues. Further, such waiver will permit the Exchange, without further delay, to begin implementing the new standardized give up process, thus aligning its give up process with that of the other option exchanges. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[60]

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–CboeBZX–2020–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–002 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

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[56] 15 U.S.C. 78s(b)(3)(A).

[57] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[58] 17 CFR 240.19b–4(f)(6)(iii).

[59] *See* Securities Exchange Act Release No. 85136 (February 14, 2019), 84 FR 5526 (February 21, 2019) (Phlx-2018–72) (order approving a proposed rule change to establish rules governing give ups). *See also supra* note 18 (citing the filings in which other options exchanges adopted substantially similar rules).

[60] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87987; File No. SR–NYSEARCA–2020–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Rule 11.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 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 January 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 11.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 11.6800 Series, the Compliance Rule regarding the CAT NMS Plan to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT;
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

i. Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member.[4] As a result, the Exchange proposes to amend the definition of ''Firm Designated ID'' in Rule 11.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 11.6810(r) (previously Rule 11.6810(q)) defines the term ''Firm Designated ID'' to mean ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

The Exchange proposes to amend the definition of a ''Firm Designated ID'' in proposed Rule 11.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.''

In addition, the Exchange proposes to amend the definition a ''Firm Designated ID'' in proposed Rule 11.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.[5] To effect this change, the Exchange proposes to amend the definition of ''Firm Designated ID'' in proposed Rule 11.6810(r) to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows: A unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member.

ii. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

[5] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 11.6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (''ATSs'') in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 11.6810 to facilitate the addition to the Plan of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

[9] *See* FINRA *Regulatory Notice* 16–28 (Nov. 2016).

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 11.6830.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 11.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 11.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 11.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, proposed paragraph (a)(2)(D) of Rule 11.6830 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

(1) A list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.6830.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 11.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 11.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(4) to Rule 11.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 11.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(4) to Rule 11.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(4) to Rule 11.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add new paragraph (a)(1)(E)(viii)(3) to Rule 11.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 11.6830. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 11.6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is

modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(5) of Rule 11.6830 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 11.6830. Specifically, proposed new paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

> whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(5) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add new paragraph (a)(1)(C)(ix) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(viii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(x) to Rule 11.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

iii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receive from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 11.6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 11.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 11.6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 11.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 11.6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iv. Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting''). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.''

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[12] To implement the Phased

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

[12] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 11.6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 11.6895.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 11.6830. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.[13]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 11.6830. Paragraph (a)(1)(A)(i) of Rule 11.6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 11.6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 11.6830, Industry Members would be required to provide a timestamp pursuant to Rule 11.6860. Rule 11.6860(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[14]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[15] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 11.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 11.6895 with new paragraph (c)(1)(A) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement

[13] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

[14] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[15] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 11.6895 with new paragraphs (c)(2)(A) and (B) of Rule 11.6895. Proposed new paragraph (c)(2)(A) of Rule 11.6895 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 11.6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 11.6810 and amend paragraphs (c)(1) and (2) of Rule 11.6895.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 11.6830. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[16] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 11.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 11.6895 with new paragraph (c)(1)(B) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.''

Pursuant to paragraph (c)(2) of Rule 11.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 11.6895 with new paragraph (c)(2)(C) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 11.6810 and amend paragraphs (c)(1) and (2) of Rule 11.6895.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as new paragraph (t)(3) of Rule 11.6810. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.'' Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2)

[16] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader identifiers [17] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [18] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (''OMS'') and represented by a principal order originated in an Execution Management System (''EMS'') that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 11.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 11.6895 with new paragraph (c)(1)(C) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 11.6895 with new paragraph (c)(2)(C) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to Rule 11.6810 and amend paragraphs (c)(1) and (2) of Rule 11.6895.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 11.6810. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order'' [19]

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; [20] and (5) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 11.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 11.6895 with new paragraph (c)(1)(D) of Rule 11.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 11.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 11.6895 with new paragraph (c)(2)(C) of Rule 11.6895, which would state, in relevant part, that ''Each Industry Member that is a Small

[17] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[18] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[19] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[20] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 11.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 11.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 11.6810 and amend paragraphs (c)(1) and (2) of Rule 11.6895.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as new paragraph (t)(5) of Rule 11.6810. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 11.6810 of the Compliance Rule.[21]

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 11.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 11.6895 with new paragraph (c)(1)(E) of Rule 11.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 11.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 11.6895 with new paragraph (c)(2)(D) of Rule 11.6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 11.6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 11.6880(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to replace Rules 6.6880(a)(1)–(4) with proposed new Rule 11.6880(a)(1) through (8).

Proposed new Rule 11.6880(a)(1) would provide that ''Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.'' Proposed new Rule 11.6880(a)(2) would provide that ''Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.'' Proposed new Rule 11.6880(a)(3) would provide that ''The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.'' Proposed new Rule 11.6880(a)(4) would provide that ''The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.'' Proposed new Rule 11.6880(a)(5) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.'' Proposed new Rule 11.6880(a)(6) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.'' Proposed new Rule 11.6880(a)(7) would provide that ''Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.'' Finally, proposed new Rule 11.6880(a)(8) would provide that ''The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.''

v. FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade

[21] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, individual tax payer identification numbers and social security numbers (collectively, ''SSNs''). *See* Rule 11.6810. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at *https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf*. If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 11.6830, which states that:

(F) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:

(1) the Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 11.6830(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6.6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 11.6830, which states that, ''if an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:'' ''the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 11.6830(a)(2)(A)(ii)'' and ''if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 11.6830(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.''

vi. Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 11.6860. Rule 11.6860(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision by adding the phrase ''up to nanoseconds'' to the end of the provision.

vii. Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier in lieu of the ''account number;'' (ii) the ''account type'' as a ''relationship;'' and (iii) the Account Effective Date in lieu of the ''date account opened.''

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.,* the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the ''Account Effective Date'' in paragraph (a) of the definition of ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.[22]

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 11.6810.

The definition of Customer Account Information in Rule 11.6810(m) states

[22] 2016 Exemptive Order at 11861–11862.

that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the ''date account opened'', provide the relationship identifier in lieu of the ''account number''; and identify the ''account type'' as ''relationship.'' The Exchange proposes to extend this provision to apply to trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) of Rule 11.6810 to state the following:

(1) In those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) Provide the Account Effective Date in lieu of the ''date account opened''; (B) provide the relationship identifier in lieu of the ''account number''; and (C) identify the ''account type'' as a ''relationship''.

Similarly, the Exchange proposes to amend the definition of ''Account Effective Date'' as set forth in Rule 11.6810(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise paragraph(a)(1) of Rule 11.6810 to state ''with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual.''

viii. CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.[23] Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. NYSE Arca Rule 11.6830(a)(2)(C) states that

[s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 11.6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, . . . and in accordance with Rule 11.6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 11.6810(n) (previously Rule 11.6810(m)), in turn, defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' In addition, Rule 11.6810(m) (previously Rule 11.6810(l)) defines ''Customer Account Information'' to include account numbers for individuals. Accordingly, the Exchange proposes to delete ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from the definition of ''Customer Identifying Information'' in Rule 11.6830(a)(2)(C) and to delete account numbers for individuals from the definition of ''Customer Account Information.'' The Exchange proposes to amend the definition of ''Customer Account Information'' to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 11.6830(a)(2)(C).

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[24] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[25] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE Arca believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[26] To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Arca notes that the proposed rule changes are consistent with certain proposed amendment to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Arca also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds

[23] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(8)

[26] Approval Order at 84697.

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–01 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01031 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87992; File No. SR–CboeBZX–2020–003]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the -1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (Trust Issued Receipts)

January 16, 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 January 3, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the -1x Short VIX Futures ETF, a series of VS Trust, under Rule 14.11(f)(4) (''Trust Issued Receipts'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade Shares of the -1x Short VIX Futures ETF (the ''Fund'') under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts[3] on the Exchange.[4]

The Fund seeks to provide daily investment results (before fees and expenses), as further described below, that correspond to the performance of a benchmark that seeks to offer short exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Short VIX Futures Index (the ''Index'' or ticker symbol SHORTVOL).[5] The Index measures the daily inverse (*i.e.,* the opposite) performance of a portfolio of first- and second-month futures contracts on the Cboe Volatility Index (''VIX'').[6]

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR–BZX–2012–044).

[5] The index is sponsored by Cboe Global Indexes (the ''Index Sponsor''). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to its relevant personnel regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures around the relevant personnel that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

[6] The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P

Continued

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (''CFE'') (hereinafter referred to as ''VIX Futures Contracts'') based on the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX Futures Contracts, the Sponsor may cause the Fund to obtain exposure to the Index through Over-the-Counter (OTC) swaps referencing the Index or particular VIX Futures Contracts comprising the Index (hereinafter referred to as ''VIX Swap Agreements''). The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared. The Fund will collateralize its obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

The Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty.

The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with its counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund. In addition to VIX Swap Agreements, if the fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (''Cboe'') (hereinafter referred to as ''VIX Options Contracts'').

The Fund may also invest in Cash and Cash Equivalents [7] that may serve as collateral in the above referenced VIX Futures Contracts, VIX Swap Agreements, and VIX Option Contracts (collectively referred to as the ''VIX Derivative Products'').

Volatility Shares LLC (the ''Sponsor''), a Delaware limited liability company, serves as the Sponsor of VS Trust (the ''Trust''). The Sponsor is a commodity pool operator.[8] Tidal ETF Services LLC serves as the administrator (the ''Administrator'') and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC serves as the sub-administrator (the ''Sub-Administrator'') and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to such Trust portfolio. The Sponsor is not affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately as much on a percentage basis as the level of the Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of the Index when it declines. The Fund primarily acquires short exposure through VIX Futures Contracts, such that the Fund has exposure intended to approximate the benchmark at the time of the net asset value (''NAV'') calculation of the Fund. However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund's investments in VIX Derivative Products.

The Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Fund seeks to remain fully invested at all times in VIX Derivative Products (and Cash and Cash Equivalents as collateral) [9] that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction.

In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX, as illustrated below.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will

500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

[7] For purposes of this proposal, the term ''Cash and Cash Equivalents'' shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

[8] The Fund has filed a draft registration statement on Form S–1 under the Securities Act of 1933, dated December 6, 2019 (File No. 377–02945) (''Draft Registration Statement''). The description of the Fund and the Shares contained herein are based on the Registration Statement.

[9] *Supra* note 7.

be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Fund should be expected to perform very differently from the inverse of the VIX over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or ''spot,'' volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

Short VIX Futures Index

The Index is designed to express the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (the ''Index Components''), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises. Further, as described above, because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund may perform significantly different from the inverse of the VIX.

Unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded exclusively on Cboe.

The Short VIX Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (the ''Cboe VIX Monthly Futures Settlement Date''), and runs to the Tuesday prior to the subsequent month's Cboe VIX Monthly Futures Settlement Date.

Calculation of the Index

The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. ET and at the close of trading on each Business Day [10] by Bloomberg and Reuters.

The Index Components comprising the Index represent the prices of first- and second-month VIX Futures Contracts. The Index takes a daily rolling short position in such VIX Futures Contracts and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The Index measures the return from a rolling short position in the first- and second-month VIX Futures Contracts. The Index rolls continuously throughout each month from the first-month VIX Futures Contracts into the second-month VIX Futures Contracts.

The Index rolls on a daily basis. One of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying VIX Futures Contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Index operates by buying back, on a daily basis, Index Components with a nearby settlement date and selling Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant futures contracts. This process is known as ''rolling'' a futures position, and the Index is a ''rolling index''. The constant weighted average maturity for the VIX Futures Contracts underlying the Index is approximately one month.

Purchases and Redemptions of Creation Units

The Fund will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof (''Creation Units''). A Creation Unit is a block of at least 10,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Sub-Administrator to create one or more Creation Units.[11] The total cash payment required to create each Creation Unit is the NAV of at least 10,000 Shares of the Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Sub-Administrator to redeem one or more Creation Units. The redemption proceeds from the Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Fund requested in the authorized participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Fund's Shares will be calculated by the Sub-Administrator once each Business Day and will be disseminated daily to all market participants at the same time.[12] Pricing information will be available on the Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the Bid/Ask Price, daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the

[10] A ''Business Day'' means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

[11] Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders.

[12] NAV means the total assets of the Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. The Fund's NAV is calculated at 4:00 p.m. ET.

frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices and settlement prices of the Index Components (*i.e.,* the first- and second-month VIX Futures Contracts) will also be readily available from the websites of CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component VIX Futures Contracts underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. ET and at the close of trading on each Business Day [13] by Bloomberg and Reuters.

The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications of Index Components (*i.e.,* first-month and second-month VIX Futures Contracts) underlying the Index are also available on such websites, as well as other financial informational sources.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Information relating to VIX Futures Contracts and VIX Options Contracts will be available from the exchange on which such instruments are traded. Information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for VIX Swap Agreements for which the Fund may invest. Pricing information regarding each asset class in which the Fund will invest is generally available through nationally recognized data services providers through subscription agreements.

In addition, the Fund's website at *www.volatilityshares.com* will display the end of day closing Index level, and NAV per share for the Fund. The Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Derivative Products, and characteristics of such instruments, as well as Cash and Cash Equivalents held in the portfolio of the Fund. This website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Fund of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Intraday Indicative Value (''IIV'') will be calculated. The IIV is an indicator of the value of the Fund's holdings, which includes the value of the VIX Derivative Products (which, as stated above, includes VIX Futures Contracts, VIX Swap Agreements, and VIX Options Contracts) and Cash and Cash Equivalents less liabilities of the Fund at the time the IIV is disseminated. The IIV is calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.[14]

In addition, the IIV is published on the Exchange's website and is available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement.

Initial and Continued Listing

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Sponsor of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. All of the VIX Futures Contracts and VIX Options Contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[15] The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Fund, with the ISG, other markets or entities who are members or affiliates of the ISG,

[13] A ''Business Day'' means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

[14] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. ET.

[15] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.* The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange or FINRA may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset, and IIVs, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV and the Fund's holdings is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening [16] and After Hours Trading Sessions [17] when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [18] in general and Section 6(b)(5) of the Act [19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to such Trust portfolio. The Sponsor is not affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts and VIX Options Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Fund's holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the Bid/Ask Price, daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will

[16] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

[17] The After Hours Trading Session is from 4:00 p.m. to 8:00 p.m. ET.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

be available on the facilities of the CTA. The websites for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

Intraday price quotations on VIX Derivative Products held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund. Pricing information related to exchange-listed instruments, including exchange-listed VIX Futures Contracts and VIX Options Contracts, will be available directly from the listing exchange. For VIX Futures Contracts and VIX Options Contracts, such intraday information is available directly from CFE and Cboe, respectively. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–003 and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01036 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87988; File No. SR–NYSECHX–2020–01]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

January 16, 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 January 3, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On January 14, 2020, the Exchange filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 6.6800 Series, the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Rule 6.6800 Series, the Compliance Rule regarding the CAT NMS Plan to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.

This Amendment No. 1 amends and replaces in its entirety the original proposal filed by the Exchange on January 3, 2020. The Exchange submits this Amendment No. 1 in order to make a technical correction to the text of the proposed rule change by deleting the word ''Plan'' from current Rules 6.6810(dd) and (kk) to maintain consistency with the definitions in the Compliance Rule of the Exchange's affiliates, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and NYSE National, Inc.

As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Revise data reporting requirements for the Firm Designated ID;
- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT;
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Revise the reporting requirements to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT; and
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals.

i. Firm Designated ID

The Participants filed with the Commission a proposed amendment to the CAT NMS Plan to amend the requirements for Firm Designated IDs in two ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; and (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member.[4] As a result, the Exchange proposes to amend the definition of ''Firm Designated ID'' in Rule 6.6810 to reflect the changes to the CAT NMS Plan regarding the requirements for Firm Designated IDs.

Rule 6.6810(r) (previously Rule 6.6810(q)) defines the term ''Firm Designated ID'' to mean ''a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.''

The Exchange proposes to amend the definition of a ''Firm Designated ID'' in proposed Rule 6.6810(r) to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account.''

In addition, the Exchange proposes to amend the definition a ''Firm Designated ID'' in proposed Rule 6.6810(r) to require a Firm Designated ID assigned by an Industry Member to a trading account to be persistent over time, not for each business day.[5] To effect this change, the Exchange proposes to amend the definition of ''Firm Designated ID'' in proposed Rule 6.6810(r) to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows:

a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Nov. 20, 2019).

[5] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/entity identifier in use at the Industry Member for the entity.

identifier is unique among all identifiers from any given Industry Member.

ii. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the CAT NMS Plan to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 6.6830 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for alternative trading systems (''ATSs'') in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 6.6810 to facilitate the addition to the Plan of the reporting requirements for ATSs set forth in

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

[9] *See* FINRA *Regulatory Notice* 16–28 (Nov. 2016).

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 6.6830.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, proposed paragraph (a)(2)(D) of Rule 6.6830 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

(1) A list of all of its order types twenty (20) days before such order types become effective; and (ii) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6.6830.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(2) The National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 6.6830 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(4) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally,

the Exchange proposes to add new paragraph (a)(1)(E)(viii)(3) to Rule 6.6830, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 6.6830. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6.6830 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(5) of Rule 6.6830 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into new paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 6.6830. Specifically, proposed new paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

> whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(5) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add new paragraph (a)(1)(C)(ix) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(x) to Rule 6.6830, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

iii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently

receive from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 6.6830 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 6.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 6.6830 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 6.6830 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 6.6830, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iv. Revised Industry Member Reporting Timeline

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting''). Specifically, in their exemptive request, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) for each Participant, through its Compliance Rule, to require its Large Industry Members to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants request that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants request that the SEC provide an exemption from the requirement in Section 6.4 that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.''

As a condition to these proposed exemptions, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data will be required to be reported when all five phases of the Phased Reporting have been implemented.

As a further condition to these exemptions, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the proposed exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[12] To implement the Phased Reporting for Phase 2a, the Exchange proposes to amend paragraph (t) of Rule 6.6810 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 6.6830. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a as set forth in the Technical Specifications.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. The following summarizes categories of Industry Member Data required for Phase 2a; the full requirements are set forth in the Industry Member Technical Specifications.[13]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities; electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 6.6830. Paragraph (a)(1)(A)(i) of Rule 6.6830 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 6.6830 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 6.6830, Industry Members would be required to provide a timestamp pursuant to Rule 6.6860. Rule 6.6860(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[14]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than in Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[15] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT

[12] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[13] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

[14] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[15] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(A) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by April 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraphs (c)(2)(A) and (B) of Rule 6.6895. Proposed new paragraph (c)(2)(A) of Rule 6.6895 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member data by April 20, 2020.

Proposed new paragraph (c)(2)(B) of Rule 6.6895 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add new paragraph (t)(2) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 6.6830. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Technical Specifications.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. The following summarizes the categories of Industry Member Data required for Phase 2b; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[16] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

[16] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(B) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by May 18, 2020.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as new paragraph (t)(3) of Rule 6.6810. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2e Industry Member Data.'' Phase 2c

Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. The following summarizes the categories of Industry Member Data required for Phase 2c; the full requirements are set forth in the Industry Member Technical Specifications.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an interdealer quotation system operated by a CAT Reporter; (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO or short sale exempt, which are required to be reported in Phase 2a); (9) a cancellation of an order received from a Customer after the order has been executed; (10) reporting of large trader identifiers [17] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [18] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; and (12) linkages for representative order scenarios involving agency average price trades, net trades, and aggregated orders. In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an Order Management System (''OMS'') and represented by a principal order originated in an Execution Management System (''EMS'') that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add new paragraph (t)(4) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 6.6810. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data or Phase 2e Industry Member Data, and Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order'' [19]

Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d and includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and paired manual orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; [20] and (5) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan. In addition, it includes Industry Member Data related to all Eligible Securities for the modification or cancellation of an internal route of an order.

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(D) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D)

[17] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[18] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[19] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[20] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 6.6810 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 6.6810 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(C) of Rule 6.6895, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add new paragraph (t)(5) to Rule 6.6810 and amend paragraphs (c)(1) and (2) of Rule 6.6895.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as new paragraph (t)(5) of Rule 6.6810. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 6.6810 of the Compliance Rule.[21]

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 6.6895, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to replace paragraph (c)(1) of Rule 6.6895 with new paragraph (c)(1)(E) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 6.6895, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to replace paragraph (c)(2) of Rule 6.6895 with new paragraph (c)(2)(D) of Rule 6.6895, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 6.6880(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 6.6880(a) with the testing milestones set forth in the proposed request for exemptive relief. Specifically, the Exchange proposes to replace Rules 6.6880(a)(1)–(4) with proposed new Rule 6.6880(a)(1) through (8).

Proposed new Rule 6.6880(a)(1) would provide that ''Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.'' Proposed new Rule 6.6880(a)(2) would provide that ''Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.'' Proposed new Rule 6.6880(a)(3) would provide that ''The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.'' Proposed new Rule 6.6880(a)(4) would provide that ''The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.'' Proposed new Rule 6.6880(a)(5) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.'' Proposed new Rule 6.6880(a)(6) would provide that ''The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.'' Proposed new Rule 6.6880(a)(7) would provide that ''Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.'' Finally, proposed new Rule 6.6880(a)(8) would provide that ''The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.''

v. FINRA Facility Data Linkage

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators. Under this alternative approach, FINRA would report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data would be the clearing number of the clearing broker in place of the SRO-Assigned Market Participant Identifier of the clearing broker required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan as well as the cancelled trade indicator required to be reported to the Central Repository pursuant to Section 6.4(d)(ii)(B) of the CAT NMS Plan. The process would link the FINRA Facility Data to the related execution reports reported by Industry Members. To implement this approach, the Participants request exemptive relief

[21] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, individual tax payer identification numbers and Social Security Numbers (collectively, ''SSNs''). *See* Rule 6.6810. The Participants have requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and Social Security Numbers for individuals to the CAT. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019), available at *https://www.catnmsplan.com/wpcontent/uploads/2019/10/CCID-and-PII-Exemptive-Request-Oct-16-2019.pdf.* If this requested relief is granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator. As conditions to this exemption, the Participants would require Industry Members to submit a trade report for a trade and, if the trade is cancelled, a cancellation to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, the Participants' Compliance Rules would provide that if an Industry Member does not submit a cancellation to a FINRA Facility, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator if the trade is cancelled. As a result, the Exchange proposes to amend its Compliance Rule to reflect the request for exemptive relief to implement this alternative approach.

Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would be the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add a new paragraph to (a)(2)(E) to Rule 6.6830, which states that:

(F) If an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:

(1) The Industry Member is required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 6.6830(a)(1)(E);

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 6.6830(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT. Accordingly, the Exchange proposes new paragraphs (a)(1)(E)(2) and (3) of Rule 6.6830, which states that, ''if an Industry Member is required to submit and submits a trade report for a trade to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution to the Central Repository:'' ''the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 6.6830(a)(2)(A)(ii)'' and ''if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 6.6830(a)(2)(B), but is required to submit the time of cancellation to the Central Repository.''

vi. Granularity of Timestamps

The Participants intend to file with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. As a result, the Exchange proposes to amend its Compliance Rule to reflect the proposed exemptive relief.

Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 6.6860. Rule 6.6860(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision by adding the phrase ''up to nanoseconds'' to the end of the provision.

vii. Relationship IDs

The Participants intend to file with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to address circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT. Specifically, in this exemptive relief, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual Customer. As conditions to this exemption, each Participant would require, through its Compliance Rules, its Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier in lieu of the ''account number;'' (ii) the ''account type'' as a ''relationship;'' and (iii) the Account Effective Date in lieu of the ''date account opened.''

With regard to the third condition, an Account Effective Date would depend upon when the trading relationship was established. When the trading relationship was established prior to the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be either the date the relationship identifier was established within the Industry Member, or the date when trading began (*i.e.,* the date the first order was received) using the relevant relationship identifier. If both dates are available, the earlier date will be used to the extent that the dates differ. When the trading relationship was established on or after the implementation date of the CAT NMS Plan applicable to the relevant Industry Member, the Account Effective Date would be the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received. This definition of the Account Effective Date is the same as the definition of the ''Account Effective Date'' in paragraph (a) of the definition of ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan except it would apply with regard to those circumstances in which an Industry Member has established a trading relationship with an individual, instead of an institution. Such exemptive relief would be the

same as the SEC provided with regard to institutions in its 2016 Exemptive Order granting exemptions from certain provisions of Rule 613 under the Exchange Act.[22]

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. Specifically, the Exchange proposes to amend paragraphs (a)(1) and paragraph (m) (previously (l)) of Rule 6.6810.

The definition of Customer Account Information in Rule 6.6810(m) states that in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will provide the Account Effective Date in lieu of the ''date account opened'', provide the relationship identifier in lieu of the ''account number''; and identify the ''account type'' as ''relationship.'' The Exchange proposes to extend this provision to apply to trading relationships with individuals as well as institutions. Specifically, the Exchange proposes to revise paragraph (m)(1) of Rule 6.6810 to state the following:

> (1) In those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual, the Industry Member will: (A) Provide the Account Effective Date in lieu of the ''date account opened''; (B) provide the relationship identifier in lieu of the ''account number''; and (C) identify the ''account type'' as a ''relationship''.

Similarly, the Exchange proposes to amend the definition of ''Account Effective Date'' as set forth in Rule 6.6810(a) to apply to circumstances in which an Industry Member has established a trading relationship with an individual in addition to institutions. Specifically, the Exchange proposes to revise paragraph(a)(1) of Rule 6.6810 to state ''with regard to those circumstances in which an Industry Member has established a trading relationship with an institution or an individual but has not established an account with that institution or individual.''

viii. CCID/PII

On October 16, 2019, the Participants filed with the Commission a request for exemptive relief from certain requirements related to SSNs, dates of birth and account numbers for individuals in the CAT NMS Plan.[23] Specifically, to implement the CCID Alternative and the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order SSNs, dates of birth and account numbers for individuals. As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief request. NYSE Chicago Rule 6.6830(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 6.6830(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, . . . and in accordance with Rule 6.6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Rule 6.6810(n) (previously Rule 6.6810(m)), in turn, defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' In addition, Rule 6.6810(m) (previously Rule 6.6810(l)) defines ''Customer Account Information'' to include account numbers for individuals. Accordingly, the Exchange proposes to delete ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from the definition of ''Customer Identifying Information'' in Rule 6.6830(a)(2)(C) and to delete account numbers for individuals from the definition of ''Customer Account Information.'' The Exchange proposes to amend the definition of ''Customer Account Information'' to include only account numbers other than for individuals. With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers for individuals pursuant to Rule 6.6830(a)(2)(C).

2. Statutory Basis

NYSE Chicago believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[24] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[25] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

NYSE Chicago believes that this proposal is consistent with the Act because it is consistent with certain proposed amendments to and exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[26] To the extent that this proposal implements the Plan, including the proposed amendments and exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Chicago does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. NYSE Chicago notes that the proposed rule changes are consistent with certain proposed amendment to and exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. NYSE Chicago also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it

[22] 2016 Exemptive Order at 11861–11862.

[23] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Oct. 16, 2019).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(8)

[26] Approval Order at 84697.

does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–01 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01032 Filed 1–22–20; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88002; File No. SR–BOX–2019–19]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC

January 16, 2020.

On September 27, 2019, BOX Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC (''BSTX''). The proposed rule change was published for comment in the **Federal Register** on October 18, 2019.[3] On November 29, 2019, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On December 26, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended the proposed rule change as originally filed.[6] The Commission has received one comment letter on the proposed rule change.[7] The Commission is publishing this notice and order to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87287 (October 11, 2019), 84 FR 56022 (October 18, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87641 (November 29, 2019), 84 FR 66701 (December 5, 2019). The Commission designated January 16, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange revised the proposal to: (1) Adopt listing standards that are similar to those of NYSE American, rather than quantitative listing standards that are 20% lower than those of NYSE American as initially proposed; (2) remove the requirement that, for a period of one year from the commencement of trading in security tokens on BSTX, non-BSTX Participants must obtain a wallet address from the Exchange and agree to report their end-of-day security token balances to BSTX; (3) provide for an omnibus wallet address to which the Exchange would instruct Wallet Managers to allocate unreported end-of-day balances for a given type of security token, resulting either from security tokens held by non-BSTX Participants who are not subject to the end-of-day balance reporting requirement or from any missing end-of-day balance reports among BSTX Participants; (4) state that a BSTX Participant who fails to obtain a wallet address prior to acquiring a position in a security token, fails to report the end-of-day balances in a timely manner, or inaccurately reports such balances would be subject to disciplinary action; (5) add additional listing requirements for security tokens issued by affiliates of the Exchange; (6) require at least three market makers upon initial listing for a security token that does not utilize a designated market maker (''DMM''); (7) state that the Ethereum blockchain serves as ancillary records that would not create or convey any ownership of security tokens or shareholder equity in the issuer; and (8) make technical and conforming changes. *See* text accompanying *infra* note 12 for the Exchange's definition of ''security tokens,'' *infra* note 15 for the definition of ''BSTX Participant,'' and *infra* note 18 for the definition of ''Wallet Manager.'' When the Exchange filed Amendment No. 1 to BOX–2019–19, it also submitted the text of the partial amendment as a comment letter to the filing, which the Commission made publicly available at *https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6613675-202939.pdf* (''Amendment No. 1'').

[7] *See* Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 13, 2020, *available at https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6640676-203567.pdf* (''SIFMA Letter'').

solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Summary of the Proposal, as Modified by Amendment No. 1

As described in the Notice and Amendment No. 1,[9] the Exchange proposes to adopt rules governing the trading of equity securities through a facility of the Exchange known as BSTX.[10] BSTX proposes to operate a fully automated, price-time priority execution system to trade equity securities that are NMS stocks and meet BSTX listing standards.[11] These securities would have ancillary records of ownership reflecting certain end-of-day security token balances as reported by market participants that would be created and maintained using distributed ledger technology (such securities to be referred to as ''security tokens'').[12] According to the Exchange, official records of security ownership would be maintained by participants at The Depository Trust Company (''DTC''), and attribution of a security token on the Ethereum blockchain would not convey ownership of shareholder equity in the issuer.[13]

According to the Exchange, security tokens would have their ancillary record of ownership recorded on the Ethereum blockchain using a protocol standard determined by BSTX (the ''BSTX Security Token Protocol'').[14] The Exchange proposes that each BSTX Participant [15] would be required to establish, either directly or through a carrying firm, a whitelisted wallet address to which its end-of-day security token ownership balances may be recorded.[16] The Exchange proposes that each business day, each BSTX Participant would be required to report to BSTX certain end-of-day security token ownership balances in a manner and form acceptable to BSTX.[17] The Exchange would then, in coordination with a Wallet Manager,[18] cause the Ethereum blockchain to be updated as an ancillary recordkeeping mechanism to reflect changes in ownership of security tokens.[19] According to the Exchange, non-BSTX Participants that may trade security tokens would not be subject to the requirement to obtain a wallet address or to the end-of-day ownership reporting requirements.[20]

According to the Exchange, to account for instances in which a BSTX Participant fails to report or inaccurately reports its end-of-day ownership balance and the position of security tokens held by non-BSTX Participants who are not subject to the end-of-day ownership reporting requirement, the Exchange would require the Wallet Mangers to allocate all such unreported security token balances for a given security token to a single omnibus wallet address.[21] The Exchange states that the Ethereum blockchain would display security token balances that would reflect end-of-day ownership balances reported to BSTX pursuant to proposed BSTX Rule 17020 [22] and a balance allocated to the omnibus wallet address for any type of security token for which the sum of the reported positions is less than the number of security tokens known by the Exchange to be issued and outstanding. Thus, according to the Exchange, the Ethereum blockchain may not reflect the precise distribution of a security token among holders, and may also display inaccurate information to the extent that BSTX Participants inaccurately report their end-of-day ownership balances to BSTX.[23]

The Exchange proposes that security tokens would be only eligible for trading on another national securities exchange if that exchange is able to support trading in security tokens [24] and has in effect rules providing for the trading of security tokens on that exchange, including rules requiring that exchange members obtain a wallet address compatible with the BSTX Security Token Protocol and adopt some mechanism to report end-of-day security token ownership balances to BSTX.[25]

The Exchange also proposes rules for participation on BSTX, business conduct for BSTX Participants, financial and operational rules for BSTX Participants, supervision, trading practices, discipline, trading rules, and market making.[26] In addition, the Exchange proposes listing standards that, according to the Exchange, are similar to the listing standards of NYSE American.[27] The Exchange proposes that these listing standards would also specify that all listed security tokens must comply with the BSTX Security Token Protocol.[28]

According to the Exchange, all transactions in security tokens would clear and settle in accordance with the rules, policies, and procedures of registered clearing agencies.[29] The Exchange states that BSTX anticipates that DTC would serve as the securities depository for security tokens and that confirmed trades in securities tokens on BSTX would be transmitted to National Securities Clearing Corporation (''NSCC'') for clearing.[30]

II. Summary of the Comment

To date the Commission has received one comment letter on the proposal.[31] The commenter notes that the proposal was only recently brought to its attention because it did not anticipate that a filing by an options exchange to create a facility could impact the U.S. equities markets.[32] The commenter expresses concern that the approval of the proposal ''could be a significant change for the equities market.'' [33] The

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Notice, *supra* note 3; Amendment No. 1, *supra* note 6.

[10] *See* Notice, *supra* note 3, 84 FR at 56022.

[11] *See id.*

[12] *See id.*

[13] *See id.* at 56026.

[14] *See id.* at 56025.

[15] A ''BSTX Participant'' would be a participant that is authorized to trade security tokens on the Exchange. *See* proposed BSTX Rule 17000(a)(11).

[16] *See* Notice, *supra* note 3, 84 FR at 56027. According to the Exchange, a whitelisted wallet address would be a permissioned number associated with a particular market participant to which security tokens may be sent. The Registry Smart Contract, which is an ancillary smart contract within the BSTX Security Token Protocol, contains a list of whitelisted addresses. *See id.* at 56026–27.

[17] *See id.* at 56027.

[18] The Exchange proposes to define a ''Wallet Manager'' as a party approved by BSTX to operate software compatible with the BSTX Security Token Protocol. *See* proposed Rule 17000(a)(31). According to the Exchange, the Wallet Manager would act as a third-party service provider for the Exchange that would facilitate establishing wallet addresses and updating the Ethereum blockchain. *See* Notice, *supra* note 3, 84 FR at 56027 n.44.

[19] *See* Notice, *supra* note 3, 84 FR at 56027–28.

[20] *See* Amendment No. 1, *supra* note 6, at 5.

[21] *See id.* at 6.

[22] Proposed BSTX Rule 17020 sets forth the proposed end-of-day reporting requirements for BSTX Participants. *See* proposed BSTX Rule 17020.

[23] *See* Amendment No. 1, *supra* note 6, at 6.

[24] *See* Notice, *supra* note 3, 84 FR at 56029.

[25] *See id.*

[26] *See id.* at 56030–43. The trading rules that the Exchange proposes include provisions for primary distributions of securities to be made through the Exchange, including using an auction process. *See id.* at 56035–36.

[27] *See* Amendment No. 1, *supra* note 6, at 10–11.

[28] *See* Notice, *supra* note 3, 84 FR at 56025.

[29] *See id.* at 56023.

[30] *See id.*

[31] *See* SIFMA Letter, *supra* note 7.

[32] *Id.* at 2.

[33] *Id.* The commenter's letter also references another filing by the Exchange, SR–BOX–2019–37, which also relates to the commencement of operations of BSTX. *Id.* at 1 (referencing Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345 (January 3, 2020) (SR–BOX–2019–37) (''BSTX Corporate Governance Proposal'')). With the BSTX Corporate Governance Proposal, BSTX proposes the corporate governance documents for the BSTX facility, and describes the proposed initial ownership structure for the facility, which would be 50% owned by BOX Digital Markets LLC, a subsidiary of BOX Holdings Group

Continued

commenter requests an extension of the comment period to consider the proposal, particularly on the implications of the characterization of security tokens as NMS stocks, the use of blockchain, and the potential impact on unlisted trading privileges.[34]

III. Proceedings To Determine Whether To Approve or Disapprove SR–BOX–2019–19 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [35] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[36] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(1) of the Exchange Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange; [37]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [38]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(7) of the Exchange Act, which requires that the rules of the exchange provide a fair procedure for the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange; [39]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(8) of the Exchange Act, which requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act; [40]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 11A of the Exchange Act, which provides the Commission's authority to establish and maintain a national market system; [41]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 12 of the Exchange Act, which provides, among other things, certain requirements that a national securities exchange must comply with to extend unlisted trading privileges to securities originally listed on another national securities exchange; [42] and
- Whether the Exchange has demonstrated how the proposal is consistent with Section 17A of the Exchange Act, which provides, among other things, the Commission's authority to establish linked or coordinated facilities for the clearance and settlement of transactions in securities.[43]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [44] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[45] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[46]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Exchange Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(1),[47] 6(b)(5),[48] 6(b)(7),[49] 6(b)(8),[50] 11A,[51] 12,[52] and 17A [53] of the Exchange Act or any other provision of the Securities Act of 1933 (''Securities Act'') or the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Exchange Act,[54] any request for an opportunity to make an oral presentation.[55]

Interested persons are invited to submit written data, views, and arguments regarding whether the

LLC—an affiliate of the Exchange, and 50% owned by tZERO Group, Inc., an indirect subsidiary of Overstock.com, Inc. *See id.* The commenter also requests more time to provide feedback on the BSTX Corporate Governance Proposal. *See* SIFMA Letter, *supra* note 7, at 2.

[34] *See* SIFMA Letter, *supra* note 7, at 2.

[35] 15 U.S.C. 78s(b)(2)(B).

[36] *Id.*

[37] 15 U.S.C. 78f(b)(1).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(7).

[40] 15 U.S.C. 78f(b)(8).

[41] 15 U.S.C. 78k–1.

[42] 15 U.S.C. 78l.

[43] 15 U.S.C. 78q–1.

[44] 17 CFR 201.700(b)(3).

[45] *See id.*

[46] *See id.*

[47] 15 U.S.C. 78f(b)(1).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78f(b)(7).

[50] 15 U.S.C. 78f(b)(8).

[51] 15 U.S.C. 78k–1.

[52] 15 U.S.C. 78l.

[53] 15 U.S.C. 78q–1.

[54] 17 CFR 240.19b–4.

[55] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

proposal should be approved or disapproved by February 13, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 27, 2020.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice and Amendment No. 1,[56] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

- What are commenters' views on the use of distributed ledger technology to create and maintain unofficial ancillary records of ownership reflecting certain end-of-day security token ownership balances as reported by market participants, and the use of the Ethereum blockchain in particular? What are commenters' views on whether the use of the Ethereum blockchain for an ancillary record of ownership is consistent with referring to the security as a ''token''? What are commenters' views on advantages and disadvantages of having an unofficial ancillary record of a security's ownership on the Ethereum blockchain, in addition to an official record of such security's ownership through DTC, including costs and benefit to investors or the integrity of the securities markets?
- What are commenters' views on potential discrepancies that may exist between the official records of ownership and the unofficial ancillary records maintained on the Ethereum blockchain, how erroneous entries of transactions on the Ethereum blockchain would be identified and addressed, and how the unofficial ancillary record would be updated after events such as dividends and stock splits? Do commenters believe that potential discrepancies between the official records of ownership and the unofficial ancillary records maintained on the Ethereum blockchain could pose risks to investors, other market participants, the securities market, or the national clearance and settlement system? Please explain why or why not.
- What are commenters' views on whether the ancillary recordkeeping mechanism is inconsistent with Section 17A(a)(2)(A)(ii) of the Exchange Act,[57] which directs the Commission to facilitate the establishment of linked or coordinated facilities for clearance and settlement of securities transactions, or any other provision of the Exchange Act, or the rules and regulations thereunder?
- The Exchange states that ''[p]ursuant to Rule 12f–5 under the Exchange Act,[58] an exchange may not extend unlisted trading privileges to any security unless the national securities exchange has in effect rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges'' [59] and that to be able to extend unlisted trading privileges to BSTX-listed security tokens, another national security exchanges would need rules that would ''(i) requir[e] that exchange members obtain a wallet address compatible with the BSTX Security Token Protocol in order to attribute security token balances with that exchange member; and (ii) adopt[] some mechanism to report end-of-day security token [ownership] balances to BSTX in order to facilitate updates of ownership to the Ethereum blockchain as an ancillary recordkeeping mechanism.'' [60] What are commenters' views on how a national securities exchange seeking to extend unlisted trading privileges to a BSTX-listed security token might fulfill these requirements and whether doing so would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act? Do commenters agree with the Exchange's assertion that the burden on another exchange of adopting additional rules to extend unlisted trading privileges to trade BSTX-listed security tokens is no different than the burden on an exchange that only trades equities having to first adopt rules to govern options trading prior to offering trading in options? [61] Why or why not?
- Do commenters believe that the proposal, including the proposed requirement that the BSTX Participants report their end-of-day ownership balances to BSTX to be recorded to the Ethereum blockchain, is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system for NMS stock? [62] Why or why not? Do commenters believe that the proposal is in the public interest and appropriate for the protection of investors and is designed to maintain fair and orderly markets to assure, among other things, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and the practicability of brokers executing investors' orders in the best market? [63] Why or why not?
- Do commenters agree with the Exchange's assertion that requiring BSTX Participants to report their end-of-day ownership balances to the Exchange, while non-BSTX Participants would not be subject to the same requirement, would ''impose only a minimal burden on BSTX Participants''? [64] Why or why not? Do commenters believe that the requirements imposed by the end-of-day ownership reporting requirements would result in a burden or impact on competition between BSTX Participants and non-BSTX Participants or otherwise, that would be necessary or appropriate in furtherance of the Exchange Act? Why or why not?
- What are commenters' views on the Exchange's proposal to disseminate end-of-day ownership information, potential inaccuracies in that information, how and when that information would be disseminated, and how market participants would have access to view this information on the Ethereum blockchain? What are commenters' views on any advantages or disadvantages with the Exchange's proposal to disseminate end-of-day ownership information?
- What are commenters' views on the use of an omnibus account to reflect discrepancies between the sum of end-of-day balances reported by BSTX Participants and the number of security tokens known by the Exchange to be issued and outstanding? Do commenters have concerns about how and when the balances attributed to the omnibus wallet address would be calculated and by whom? What are commenters' views on how the number of securities for a given security token attributed to the omnibus wallet address may change over time and the potential for the total number of securities for a security token attributed to the omnibus wallet address to exceed the number of disseminated whitelisted address for that security token? What are commenters' views on whether they would have access to the information necessary to differentiate the balances attributed to the omnibus wallet address from the balances attributed to whitelisted addresses in the information disseminated on the Ethereum blockchain and, if not, the potential for confusion by investors or other market participants?

[56] *See* Notice, *supra* note 3; Amendment No. 1, *supra* note 6.

[57] 15 U.S.C. 78q–1(a)(2)(A)(ii).

[58] 17 CFR 240.12f–5 (citation in original).

[59] Notice, *supra* note 3, 84 FR at 56029.

[60] *Id.*

[61] *See id.* at 56055.

[62] *See* 15 U.S.C. 78f(b)(5).

[63] *See* 15 U.S.C. 78k–1(a)(1)(C)(ii), (iv).

[64] Amendment No. 1, *supra* note 6, at 15.

• What are commenters' views on the proposed requirement that end-of-day security token balances must be reported to BSTX each business day when the securities depository is also open for business, after such time as the securities depository has completed its end-of-day settlement process? Do commenters agree with ''BSTX's belie[f] that the proposed end-of-day security token balance reporting requirement would be consistent with authority that the Commission has already approved regarding furnishment of records by members of exchanges''? [65] Why or why not? What are commenters' view on how the Exchange will enforce compliance with the end-of-day ownership reporting requirement on BSTX Participants?

• What are commenters' views on the Exchange's proposal to require each BSTX Participant to, either directly or through its carrying firm, establish a whitelisted wallet address to which its end-of-day security token ownership balances may be recorded by contacting BSTX or a Wallet Manager? [66] What are commenters' views on the function and activities of the Exchange Wallet Manager and how the Wallet Manager will assist a BSTX Participant with establishing a wallet address? What are commenters' views on the standard the Exchange will use to select a Wallet Manager, the standard that the Wallet Manager will use to approve or deny applications to establish a wallet address, Exchange's oversight of the Wallet Manager's activities, including the Wallet Manager's approval or denial of applications to establish a wallet address, and the Exchange's rules and procedures to ensure that a Wallet Manager does not act in an unfair or discriminatory manner in performing its function?

• What are commenters' views on whether it would be feasible for third parties not affiliated with BSTX to serve as a Wallet Manager? What are commenters' views on the Exchange's representation that the BSTX Security Token Protocol is based on open source code, that the Exchange would not require the use of a particular version of Wallet Manager software, and that anyone would be eligible to serve or operate as a Wallet Manager provided they are capable of facilitating effective updates to the Ethereum blockchain to reflect changes in security token ownership? [67] What are commenters' views on competition to be a Wallet Manager and any potential for conflicts of interest that may arise between or among national securities exchange and Wallet Managers for trading BSTX-listed security tokens?

• While the Exchange proposes that the Exchange and Wallet Manager will not charge a fee for obtaining a wallet address, what are commenters' views on the costs that may be incurred because of the end-of-day security token balance reporting process to investors, issuers, broker-dealers, including BSTX Participants and non-BSTX Participants, Wallet Managers, and trading centers, such as national securities exchanges and alternative trading systems? [68]

• Do commenters agree with the Exchange's assertion that ''[o]wnership of security tokens would be able to be transferred without regard to the blockchain-based ancillary recordkeeping functionality''? [69] Why or why not? What are commenters' views on whether or not having a security token attributed to a wallet address could mean that the holder of the wallet address has a shareholder equity interest in the issuer? What are commenters' views on how disputes over ownership of security token would be enforced by the Exchange or any other party?

• The proposed trading rules include provisions providing for primary distributions of securities be made through the Exchange, including using an auction process.[70] Do commenters agree with the Exchange's assertion that the proposed method of opening trading in securities, including with respect to initial security token offerings, ''provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest''? [71] Why are why not? Do commenters understand from the Exchange's proposal how primary offerings of security tokens could be made through the Exchange in compliance with the Securities Act, including the registration and prospective delivery provisions, and the related rules thereunder? If not, what information would be helpful? Do commenters understand from the Exchange's proposal how broker-dealers using the Exchange to engage in primary offerings of securities would be able to comply with their obligations under the Securities Act and the Exchange Act, and the respective rules thereunder? If so, please describe how a broker-dealer could comply.

• The Exchange states that ''NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis.'' [72] What are commenters' views on the NSCC process for clearing security tokens? Do commenters believe that the Exchange has adequately explained why BSTX Participants may agree to shorter or longer settlement cycles than T+1,[73] and the potential effects of such shorter or longer settlement cycles?

• What are commenters' views on the rules the Exchange is proposing for short sales of security tokens? Do commenters believe that the proposed short selling rules are appropriately designed for the ancillary recordkeeping on the Ethereum blockchain and the T+1 reporting? Why or why not?

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–BOX–2019–19 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.

[65] Notice, *supra* note 3, 84 FR at 56028.

[66] *See id.* at 56027.

[67] *See id.* at 56055.

[68] *See id.* at 56046 n.286.

[69] *Id.* at 56023.

[70] *See id.* at 56035–36.

[71] *Id.* at 56037.

[72] *Id.* at 56025.

[73] *See id.* at 56024–25, 56039.

All submissions should refer to File Number SR–BOX–2019–19. 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–BOX–2019–19 and should be submitted by February 13, 2020. Rebuttal comments should be submitted by February 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01041 Filed 1–22–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87998; File No. SR–ISE–2020–01]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

January 16, 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 January 2, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7. Each change is described below.

Priority Customer Complex Legging Rebate

Currently, the Exchange provides rebates to Priority Customer[3] complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book. This program is designed to encourage Members to bring complex volume to the Exchange, including incentivizing Members to bring Priority Customer complex orders specifically to earn the associated rebates. Rebates are tiered based on a percentage of total industry volume.[4] There are currently nine Priority Customer Complex Tiers as follows:[5]

Priority customer complex tier	Complex order volume percentage	Rebate for select symbols[6]	Rebate for non-select symbols[7]
Tier 1	0.000–0.200	($0.25)	($0.40)
Tier 2	Above 0.200–0.400	(0.30)	(0.55)
Tier 3	Above 0.400–0.600	(0.35)	(0.70)
Tier 4	Above 0.600–0.750	(0.40)	(0.75)
Tier 5	Above 0.750–1.000	(0.45)	(0.80)

[74] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(36).

[4] The Priority Customer Complex Tiers are based on total Affiliated Member or Affiliated Entity complex order volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options for that month (hereinafter, ''Complex Order Volume Percentage''). All complex order volume executed on the Exchange, including volume executed by Affiliated Members, is included in the volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders. Affiliated Entities may also aggregate their complex order volume for purposes of calculating Priority Customer rebates. The Appointed OFP would receive the rebate associated with the qualifying volume tier based on aggregated volume.

[5] The rebate for the highest tier volume achieved is applied retroactively to all eligible Priority Customer complex volume once the threshold has been reached. Members will not receive rebates for net zero complex orders. For purposes of determining which complex orders qualify as ''net zero'' the Exchange will count all complex orders that leg into the regular order book and are executed at a net price per contract that is within a range of $0.01 credit and $0.01 debit.

Priority customer complex tier	Complex order volume percentage	Rebate for select symbols [6]	Rebate for non-select symbols [7]
Tier 6	Above 1.000–1.500	(0.46)	(0.80)
Tier 7	Above 1.500–2.000	(0.48)	(0.80)
Tier 8	Above 2.000–3.250	(0.50)	(0.85)
Tier 9	Above 3.250	(0.50)	(0.85)

Going forward, the Exchange proposes to eliminate these rebates for Priority Customer complex orders that trade with quotes and orders on the regular order book if any leg of the order is fifty contracts or more. The Exchange will continue to provide the rebate if the largest leg of such order is under fifty contracts. Rebates for Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book will also remain unchanged with this proposal, and the Exchange will continue to provide such rebates to qualifying Members, regardless of size.

The proposed changes are designed to limit Members from entering larger sized complex orders (*i.e.,* 50 or more contracts for the largest leg) to recover Priority Customer complex order rebates, and to reduce disincentives for Market Makers [8] to provide liquidity on the Exchange. Recently, the Exchange has observed that several market participants have been entering larger sized Priority Customer complex orders with a leg of fifty or more contracts to earn a rebate. When these complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.[9] As a result, the Market Maker's ability to provide liquidity on the Exchange is adversely affected as they are charged to trade against these larger complex orders when they leg into the regular market and execute against their quotes.

The Exchange believes that it is in the interest of a fair and orderly market to provide appropriate incentives for Market Makers to maintain quality markets. As a result, the Exchange has instituted pricing programs that are aimed at incentivizing Market Makers to provide liquidity, including, for example, the Market Maker Plus program, which rewards Market Makers for routinely quoting at the national best bid or offer.[10] By eliminating the rebate for larger sized Priority Customer complex orders that leg into the regular order book, the Exchange seeks to bolster liquidity by incentivizing Market Makers to post tighter and more liquid markets on ISE, to the benefit of all market participants. At the same time, smaller, more typically ''retail'' sized Priority Customer complex orders with less than fifty contracts for the largest leg that trade with interest on the regular order book, and Priority Customer complex orders of any size trading with non-Priority Customer orders in the complex order book, will continue to receive rebates based on the Priority Customer Complex Tier achieved, thereby continuing to incentivize Members to bring complex order flow to the Exchange to earn the rebate on their Priority Customer complex volume.

In addition, the Exchange proposes to eliminate the $0.05 per contract surcharge it currently imposes on Priority Customer complex orders in SPY that leg into the regular order book, which is applied in addition to the applicable Priority Customer complex order rebate.[11] This SPY surcharge was originally adopted to offset the costs of providing the Priority Customer complex order rebates. With the changes described above to eliminate the rebates for larger-sized Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to revisit this surcharge, and now proposes to eliminate this fee. By no longer assessing this surcharge, the Exchange seeks to fortify Member participation in the Priority Customer complex order rebate program and incentivize increased complex order volume on the Exchange.

Priority Customer Complex Rebate Tiers

As discussed above, the Exchange currently provides rebates to Priority Customer complex orders based on nine volume tiers. In particular, a Member must execute a Complex Order Volume Percentage of above 1% to 1.5% to qualify for the $0.46 per contract Priority Customer Complex Tier 6 rebate. In addition, a Member must execute a Complex Order Volume Percentage of above 3.25% to qualify for the $0.50 per contract Priority Customer Complex Tier 9 rebate. Going forward, the Exchange proposes to increase the Tier 6 rebate from $0.46 to $0.47 per contract, with no changes to the corresponding Complex Order Volume Percentage. The Exchange also proposes to reduce the Tier 9 Complex Order Volume Percentage requirement from above 3.25% to above 2.75% and increase the corresponding rebate from $0.50 to $0.52 per contract. There will also be a corresponding change to Tier 8 to reduce the upper limit of the Complex Order Volume Percentage from 3.25% to 2.75%.

The Exchange notes that all Members may elect to qualify for the Priority Customer complex rebates by submitting complex order flow to the Exchange and earn a rebate on their Priority Customer complex volume. Accordingly, the proposed changes are designed to increase the amount of complex order flow Members bring to the Exchange, particularly Priority Customer complex volume, and further encourage them to contribute to a deeper, more liquid market to the benefit of all market participants.

PIM Response Fees

Today, for regular orders in Select Symbols and Non-Select Symbols, the Exchange charges all market participant orders a fee for Responses to Price Improvement Mechanism (''PIM'') orders that is $0.25 per contract. For

[6] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program.

[7] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. For Non-Select Symbols, no Priority Customer complex order rebates are paid for orders in NDX, NQX, and MNX.

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[9] For example, a Market Maker providing liquidity on the individual leg would typically pay a maker fee of only $0.10 per contract for trading with orders originating from the regular order book, or in the case of Market Makers that achieve Market Maker Plus status, would earn certain maker rebates instead of paying the $0.10 per contract maker fee. *See* Options 7, Section 3, note 5. When trading against a Priority Customer complex order that legs in from the complex order book, however, that same Market Maker is instead charged a maker fee of $0.15 per contract. *See* Options 7, Section 3, note 11.

[10] *See* Options 7, Section 3, note 5.

[11] For example, if a Member qualifies for Priority Customer Complex Tier 1, the Member's Priority Customer complex orders in SPY that leg into the regular order book for non-net zero activity will earn $0.20 per contract (*i.e.,* $0.25 per contract rebate for Select Symbols minus the $0.05 per contract SPY surcharge).

complex orders in both Select and Non-Select Symbols, the PIM Response fee is likewise $0.25 per contract for all market participant orders. The Exchange now proposes to increase the aforementioned fees to $0.35 per contract for all market participant orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission* [14] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [15]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Overall, the Exchange believes that the Priority Customer complex rebate program, as modified, is reasonable because the program is optional and all Members can choose to participate or not. In addition, the Exchange believes that it is reasonable to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into the regular order book. As explained above, Priority Customer complex orders, including these larger orders that access liquidity on the regular order book, are currently paid significant rebates by the Exchange, which are funded in part by charging higher fees to the market participants who trade against these orders. As discussed above, when these larger complex orders do not find a counterparty in the complex order book, they may leg into the regular order book where they are typically executed by Market Makers on the individual legs who pay a fee to trade with this order flow.

Market Makers may be impeded in providing liquidity when doing so may result in trading against these large Priority Customer complex orders that leg into the regular market. The Exchange believes that it is important that Market Makers be properly incentivized to maintain quality markets, and is therefore proposing to take steps to reduce the incentives for market participants to enter larger sized Priority Customer complex orders that leg into the regular market to access liquidity, and to limit this rebate to smaller sized orders that leg in. By continuing to provide this rebate to smaller Priority Customer complex orders that trade with interest on the regular order book, and Priority Customer complex orders of any size that trade with non-Priority Customer orders on the complex order book, the Exchange believes that the rebate program will remain attractive and continue to attract complex order flow, which liquidity will benefit all market participants, including Market Makers, who may trade with this volume. The Exchange believes that the proposed threshold of under fifty contracts per leg is set at an appropriate level that would allow Market Makers to more easily manage and react to these smaller, more typically retail sized orders that leg in to trade against their quotes in the regular order book.[16] The Exchange notes that fifty contracts is the threshold for ''block-sized orders'' entered through the Exchange's Block Order Mechanism and Facilitation Mechanism, and normally denotes the cutoff between orders of retail and institutional size on ISE.[17] With the proposed changes, the Exchange believes that Market Makers will be aided in their role of providing liquidity and maintaining quality markets to the benefit of all market participants that trade on the Exchange.

The Exchange also believes that it is reasonable to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. With the changes described above to eliminate rebates for larger Priority Customer complex orders that leg into the regular order book, the Exchange believes that it is appropriate to also discontinue the SPY surcharge applied to legged in complex orders. In addition, the Exchange believes that eliminating this surcharge will increase incentives for Members to bring additional complex order flow to the Exchange, which increased liquidity will benefit all market participants that trade on the Exchange.

Furthermore, the Exchange believes that the proposed changes to the Priority Customer complex order rebate program to lower the various Complex Order Volume Percentage thresholds and increase rebates in the manner described above represent a reasonable attempt by the Exchange to fortify participation in the Priority Customer complex order rebate program. In particular, the Exchange's proposal to increase the rebate for Priority Customer Complex Tier 6 from $0.46 per contract to $0.47 per contract is intended to encourage Members to submit additional amounts of complex order volume to obtain the higher rebate on their Priority Customer complex orders. The Exchange believes that the higher rebate will further incentivize Members to bring additional complex order flow, including Priority Customer complex order flow, to the Exchange. Similarly, the Exchange's proposal to lower the volume requirements for Priority Customer Complex Tiers 8 and 9, and increase the Tier 9 rebate is reasonable because this change is designed to make

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[15] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] The Exchange notes that Cboe Options (''Cboe'') has a similar concept of limiting certain fee incentives in its Fees Schedule for smaller sized customer orders. *See, e.g.,* Cboe Fees Schedule, fn. 9 (waiving transaction fees for customer orders removing liquidity that are of 99 contracts or less in ETF and ETN options).

[17] *See* Options 3, Section 11(a) and (b) for a description of the Block Order Mechanism and the Facilitation Mechanism.

it easier for Members to achieve these tiers to earn the higher rebate. The proposed changes are designed to make the rebates more achievable and attractive to existing and potential program participants. As noted above, the Priority Customer complex rebate program is optional and available to all Members that choose to send complex order flow to the Exchange to earn a rebate on their Priority Customer complex volume. To the extent the program, as modified, continue to attract complex volume to the Exchange, the Exchange believes that the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

The Exchange believes that it is reasonable to increase the regular and complex PIM Response fees from $0.25 to $0.35 per contract for all market participant orders. With the proposed changes, the PIM Response fees will remain significantly lower than those charged for other Responses to Crossing Order [18] on ISE.[19] Accordingly, the Exchange believes that the proposed fees will remain attractive to market participants and continue to encourage them to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders.

The Proposal Is an Equitable Allocation of Fees and Rebates

The Exchange believes that its proposal is an equitable allocation of its fees and rebates among its market participants.

The Exchange believes that its proposal to eliminate the rebate for Priority Customer complex orders with any leg of 50 or more contracts where such order legs into the regular order book is an equitable allocation of the Priority Customer complex rebates. As discussed above, this change is designed to limit market participants from entering larger Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its Members, and incentivizing Market Makers to maintain quality markets on the Exchange. All Members may continue to qualify for these rebates, provided that their Priority Customer complex orders that trade with interest on the regular market remain under a certain size.

The Exchange believes that its proposal to discontinue the SPY surcharge for Priority Customer complex orders that leg into the regular order book is an equitable allocation of fees. With the proposed change, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market.

Furthermore, the proposed changes to the Priority Customer complex order rebate program to lower the volume threshold requirements and increase the rebates in the manner described above are equitable because any Member who brings complex order flow to the Exchange may qualify for the rebates. The Exchange believes that the proposed changes to Tier 6 and higher are an equitable allocation of rebates because the Exchange seeks to further incentivize all Members to bring a significant amount of complex volume to the Exchange in order to earn the highest range of Priority Customer complex rebates offered under this program. The Exchange anticipates all Members that currently qualify for these rebates will continue to do so under this proposal. To the extent the proposed changes encourage additional Members to strive for the modified tiers and thus attract more complex volume to the Exchange, this increased order flow would improve the overall quality and attractiveness of the Exchange. The Exchange notes that all market participants stand to benefit from increased liquidity as such increase promotes market depth, facilitates tighter spreads and enhances price discovery. Accordingly, the Exchange believes that the changes to Tier 6 and higher, as discussed above, are reasonably designed to provide further incentives for all Members interested in meeting the tier criteria to submit additional Priority Customer complex volume to achieve the higher rebates.

The Exchange believes that its proposal to increase the regular and complex PIM Response fees is equitable because the proposed increase will apply to all market participant orders. As discussed above, all market participant orders are currently charged a $0.25 per contract PIM Response fee, and will uniformly be charged $0.35 per contract under this proposal.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposed changes are not unfairly discriminatory. As it relates to the proposal to discontinue the Priority Customer complex rebate for larger sized orders (*i.e.,* with a leg of 50 or more contracts) that leg into the regular order book, this change is intended to improve market quality by discouraging market participants from entering large sized Priority Customer complex orders for the purpose of earning the rebate, thereby reducing the cost of these trades to the Exchange and its Members, and incentivizing Market Makers to maintain quality markets on the Exchange. The Exchange does not believe that it is unfairly discriminatory to continue to offer rebates to firms that do not hit the proposed fifty contract threshold as all market participants may modify their behavior by entering smaller sized complex orders to earn the rebate, and such smaller, more retail sized orders would allow Market Makers to more easily manage and react to these orders that trade against their quotes on the regular order book. In addition, all Priority Customer complex orders that trade with non-Priority Customer orders in the complex market will continue to receive the rebates. The Exchange does not believe that it is unfairly discriminatory to provide rebates only to Priority Customer complex orders as this type of order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow. As noted above, any Member may choose to qualify for the Priority Customer complex rebates by sending the requisite volume of complex orders to earn the rebate on their Priority Customer complex orders. Thus the proposed changes will apply uniformly to all Members that bring complex order flow to the Exchange.

In addition, the Exchange believes that it is not unfairly discriminatory to eliminate the SPY surcharge for Priority Customer complex orders that leg into the regular order book. As discussed above, no market participant will be assessed the SPY surcharge on their Priority Customer complex orders that execute with interest on the regular market under the Exchange's proposal. Accordingly, the proposed change will apply uniformly to all market participants.

The Exchange also believes that the proposed changes to Priority Customer

[18] ''Responses to Crossing Order'' is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

[19] For regular orders, the Exchange charges all market participants a $0.50 per contract Response fee for all other Crossing Orders. For complex orders, this Response fee is $0.50 per contract in Select Symbols for all market participants and in Non-Select Symbols, $0.91 per contract (Market Makers) and $0.96 per contract (all other market participants). *See* Options 7, Sections 3 and 4.

Complex Tier 6 and higher are not unfairly discriminatory. Any Member may choose to qualify for the rebate program by sending complex order flow to the Exchange. By encouraging all Members to bring significant amounts of complex order flow (*i.e.,* to qualify for the higher tiers) in order to earn a rebate on their Priority Customer complex orders, the Exchange seeks to provide more trading opportunities for all market participants, promote price discovery, and improve the overall market quality of the Exchange.

Lastly, the Exchange does not believe that the proposed increase in PIM Response fees is unfairly discriminatory because they will apply uniformly to all market participant orders that respond to PIM auctions. As discussed above, the Exchange believes that the proposed fees will remain attractive to market participants as they are lower than the Response fees for other Crossing Orders, and will continue to encourage market participants to respond to PIM auctions, thereby increasing price improvement opportunities for PIM orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. All of the proposed changes are designed to attract additional liquidity to the Exchange. The Exchange believes that the proposed enhancements to the Priority Customer complex rebate program and proposed PIM Response fees will continue to incentivize market participants to direct liquidity to the Exchange. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates. The proposed fees and rebates will apply uniformly to all similarly situated participants as discussed above, and as such, the proposed changes will not impose an undue burden on competition among Exchange participants.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[20] and Rule 19b–4(f)(2)[21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–ISE–2020–01 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–ISE–2020–01. 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–ISE–2020–01 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01040 Filed 1–22–20; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87993; File No. SR–NYSEAMER–2020–04]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Add to the Rules of the Exchange the Thirteenth Amended and Restated Operating Agreement of the New York Stock Exchange LLC

January 16, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 10, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add to the rules of the Exchange the Thirteenth Amended and Restated Operating Agreement of the New York Stock Exchange LLC (''NYSE''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add to the rules of the Exchange the Thirteenth Amended and Restated Operating Agreement of the NYSE (the ''Thirteenth NYSE Operating Agreement'').

NYSE has a wholly-owned subsidiary, NYSE Market (DE), Inc. (''NYSE Market (DE), Inc.''), which owns a majority interest in NYSE Amex Options LLC (''NYSE Amex Options''), a facility of the Exchange. The Exchange and NYSE Market (DE) are the only members of NYSE Amex Options.[4] Because of NYSE's ownership of NYSE Market (DE), the Exchange filed the Twelfth Amended and Restated Operating Agreement of the NYSE (''Twelfth NYSE Operating Agreement'') as a ''rule of the Exchange'' under Section 3(a)(27) of the Exchange Act.[5]

On November 15, 2019, the NYSE filed to amend the Twelfth NYSE Operating Agreement to remove the independence requirement for the director elected by NYSE LLC membership organizations, and make additional conforming and non-substantive edits. The Commission approved the proposed change on January 8, 2020.[6] Consistent with that change, the Exchange is filing to remove the obsolete Twelfth NYSE Operating Agreement as a ''rule of the exchange'' under Section 3(a)(27) of the Act, and replace it with the Thirteenth NYSE Operating Agreement as a ''rule of the exchange'' under Section 3(a)(27) of the Act.[7]

The proposed rule change is a non-substantive administrative change that does not impact the governance or ownership of the Exchange, its facility NYSE Amex Options, or NYSE Amex Options' direct and indirect parent entities.

[4] *See* Exchange Act Release No. 75301 (June 25, 2015), 80 FR 37695 (July 1, 2015) (SR–NYSEMKT–2015–44) (notice of filing and immediate effectiveness of proposed rule change amending the members' schedule of the Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC).

[5] *See* 15 U.S.C. 78c(a)(27); and Securities Exchange Act Release No. 84641 (November 21, 2018) 83 FR 60935 (November 27, 2018) (SR–NYSEAmer–2018–52); *see also* Securities Exchange Act Release Nos. 82923 (March 22, 2018), 83 FR 13161 (March 27, 2018) (SR–NYSEAmer–2018–10); 79232 (November 3, 2016), 81 FR 78873 (November 9, 2016) (SR–NYSEMKT2016–96); and 75984 (September 25, 2015), 80 FR 59213, 59214 (October 1, 2015) (SR–NYSEMKT2015–71).

[6] *See* Securities Exchange Act Release No. 87914 (January 8, 2020) (SR–NYSE–2019–62).

[7] 15 U.S.C. 78c(a)(27).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [8] in general, and with Section 6(b)(1) [9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange because, by removing the obsolete Twelfth NYSE Operating Agreement and making the Thirteenth NYSE Operating Agreement a rule of the Exchange, the Exchange would be ensuring that its rules remain consistent with the NYSE operating agreement in effect.

The Exchange notes that, as with the Twelfth NYSE Operating Agreement, it would be required to file any changes to the Thirteenth NYSE Operating Agreement with the Commission as a proposed rule change.[10] In addition, the Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to NYSE Amex Options and its direct and indirect parent entities.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act [11] because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] The Exchange notes that any amendment to the Thirteenth NYSE Operating Agreement would require that NYSE file a proposed rule change with the Commission.

[11] 15 U.S.C. 78f(b)(5).

persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that replacing the obsolete Twelfth NYSE Operating Agreement with the Thirteenth NYSE Operating Agreement in its rules would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, by ensuring that its rules remain consistent with the NYSE operating agreement in effect, thereby avoiding any possible market participant confusion. The Exchange notes that, as with the Twelfth NYSE Operating Agreement, no amendment to the Thirteenth Amended NYSE Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Exchange Act with respect to NYSE Amex Options and its direct and indirect parent entities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(3) [13] thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–04 and should be submitted on or before February 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–01037 Filed 1–22–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(3).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88003; File No. SR–NYSE–2019–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Permit the Exchange To List and Trade Exchange Traded Products

January 17, 2020.

On October 3, 2019, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The proposed rule change was published for comment in the **Federal Register** on October 23, 2019.[3] On December 5, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87329 (Oct. 17, 2019), 84 FR 56864 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87671 (Dec. 5, 2019), 84 FR 67763 (Dec. 11, 2019). The Commission designated January 21, 2020, as the date by which it should approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

determine whether to approve or disapprove the proposed rule change.

I. Summary Description of the Proposal

The Exchange proposes to expand the Exchange Traded Products (''ETPs'') that would be eligible to list and trade on the Exchange to include ETPs that have a component NMS Stock [7] or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. To effectuate this change, the Exchange proposes to delete the preambles to NYSE Rules 5P and 8P currently providing that the Exchange will not list such ETPs.

The proposal would permit the Exchange to list and trade on the NYSE Trading Floor [8] both ETPs and one or more component NMS Stocks forming part of the underlying ETP index or portfolio (''side-by-side trading'' [9]). Because listed securities are assigned to a Designated Market Maker (''DMM''), the proposed elimination of the current restriction could result in DMMs being assigned ETPs that may have one or more component NMS Stocks forming part of the underlying ETP index or portfolio that are also assigned to the DMM (''integrated market making'').[10] The Commission has approved integrated market making and side-by-side trading for ''broad-based'' ETPs and related options.[11] According to the Exchange, the test for whether a product is ''broad-based'', and therefore is not readily susceptible to manipulation, is whether the individual components of the ETP are sufficiently liquid and well-capitalized and the product is not over-concentrated.[12] When an ETP meets both criteria, and therefore can be considered ''broad-based,'' the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETP and related options, with no requirement for information barriers or physical or organizational separation.[13]

In making a determination of whether an ETP is broad-based, the Commission has relied on an exchange's listing standards. According to the Exchange, in permitting integrated market making and side-by-side trading for two types of ETPs and their related options, the Commission looked to the American Stock Exchange LLC's listing standards that are very similar to the Exchange's current listing standards.

The Exchange notes that the relationship between an ETP and its underlying listed NMS Stock component or components is fundamentally different than that between an ETP and its related option. In the latter case, a small move in the price of the listed security can trigger a large move in the price of the related option, increasing the incentive for a market maker or specialist to manipulate the security or coordinate trading with the options market maker or specialist. Here, the Exchange asserts that there is no similar outsized correlation between a move in the price of a listed ETP and one or more of its underlying NMS Stock components. The potential for manipulation or coordinated trading is significantly attenuated for listed ETPs and their underlying NMS Stock components because the Exchange's generic listed standards are designed to ensure that the Exchange will only list ETPs that are ''broad-based''—that is, the ETP's underlying component securities must be sufficiently liquid and well-capitalized, and the ETP must not be unduly concentrated.

According to the Exchange, the listing standards for Units based on an index of both US Component Stocks and Non-US Component Stocks; [14] Equity-Index Linked securities (commonly referred to as Exchange Traded Notes or ''ETNs''); [15] Portfolio Depositary Receipts under NYSE Rule 8.100 with underlying component stocks consisting of an index or portfolio of US Component Stocks; [16] and actively managed funds under NYSE Rule 8.600 [17] are all broadly similar. The Exchange could not list an ETP that does not meet these generic listing requirements without a proposed rule change being filed with the Commission.

The Exchange believes that listed ETPs meeting these composition and concentration measures would be sufficiently broad-based to allow integrated market making and side-by-side trading in both the ETP and the component NMS securities with no requirement for information barriers or physical or organizational separation.

As noted by the Exchange, equity-based ETPs that do not meet the applicable generic listing standards would require a rule filing with the Commission prior to commencement of Exchange listing or trading. The rule filing would set forth the initial and continued listing requirements in order for such a product to be listed and traded on the Exchange. In order for a rule proposal to be consistent with the

[7] NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(48) as ''any NMS security other than an option.'' ''NMS Security'' means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' *See* 17 CFR 242.600(b)(47). ''NMS Security'' refers to ''exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan.'' *See* Question 1.1 in the ''Responses to Frequently Asked Questions Concerning Large Trader Reporting,'' available at: *https://www.sec.gov/divisions/marketreg/large-trader-faqs.htm.*

[8] The term ''Trading Floor'' is defined in NYSE Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ''Main Room'' and the ''Buttonwood Room.''

[9] ''Side-by-side trading'' refers to the trading of an equity security and its related derivative product at the same physical location, though ''not necessarily by the same specialist or specialist firm.'' Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR–Amex–2002–21) (''Release No. 46213'') (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); *see also* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n.7 (February 25, 2002) (SR–NYSE–2001–43) (''Release No. 45454'') (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

[10] ''Integrated market making'' refers to the practice of the same person or firm making markets in an equity security and its related option. *See* Release No. 45454, 67 FR at 8568 n.7.

[11] *See* Release No. 46213, 67 FR at 48232 (approving side-by-side trading and integrated market making for certain Exchange Traded Funds (''ETF'') and Trust Issued Receipts (''TIR'') and related options); *see also* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–Amex–2010–31) (''Release No. 62479'') (order approving side-by-side trading and integrated market making in the QQQ ETF and certain of its component securities where the QQQs met the composition and concentration measures to be classified as a broad-based ETF).

[12] *See* Release No. 62479, *id.,* 75 FR at 41272. The Commission has expressed its belief ''that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced.'' *See id. See generally* Securities Exchange Act Release Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR–ISE–2007–60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR–Amex–2006–78); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR–CBOE–2007–109) (order approving generic listing standards for ETFs based on international indices, noting they are ''sufficiently broad-based in scope to minimize potential manipulation.''); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR–Phlx–2007–20); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR–NASDAQ–2006–50).

[13] *See* note 11, *supra.*

[14] *See* NYSE Rule 5.2(j)(3), Supp. Material .01(a)(B)(1)–(5). The index or portfolio must include a minimum of 20 component stocks.

[15] *See* NYSE Rule 5.2(j)(6)(B)(I).

[16] *See* NYSE Rule 8.100.

[17] *See* NYSE Rule 8.600.

Act, it must, among other things, further the objectives of Section 6(b)(5) of the Act[18] in that it is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that equity-based ETPs whose underlying component composition varies greatly from the generic listing standards, *i.e.,* an ETP whose components are insufficiently liquid or well-capitalized or unduly concentrated, would be unlikely to meet this requirement. Accordingly, the Exchange believes that ETPs listed and traded via the rule filing process would also be sufficiently broad-based in order to minimize potential manipulation, thus justifying integrated market making and side-by-side trading in both the ETP and the component NMS securities.

While the ''broad-based'' nature of listed ETPs under either the generic listing standards or via a rule filing makes manipulation less likely, the Exchange also believes that the potential for manipulation of listed ETPs is minimal because ETP pricing is based on an ''arbitrage function'' performed by market participants that affects the supply of and demand for ETP shares and, thus, ETP prices. This ''arbitrage function'' is effectuated by creating new ETP shares and redeeming existing ETP shares based on investor demand; thus, ETP supply is open-ended. As the Commission has acknowledged, the arbitrage function helps to keep an ETP's price in line with the value of its underlying portfolio, *i.e.,* it minimizes deviation from NAV. Generally, the higher the liquidity and trading volume of an ETP, the more likely the ETP's price will not deviate from the value of its underlying portfolio. Market makers registered in ETPs play a key role in this arbitrage function and DMMs, along with other market participants, would perform this role for ETPs listed on the Exchange. In short, the Exchange believes that the arbitrage mechanism is an effective and efficient means of ensuring that intraday pricing in ETPs closely tracks the value of the underlying portfolio or reference assets.

The Exchange believes that the price regulating function played by the arbitrage mechanism renders attempts to influence or manipulate the price of an ETP more difficult and more susceptible to immediate detection and correction. The fact that an ETP and one or more of its underlying components are traded in the same physical space on the Exchange or by the same DMM on the Exchange does not alter this dynamic in the slightest, nor does it make price manipulation more likely. Rather, the Exchange believes the arbitrage mechanism would make price manipulation more difficult and, thus, less likely. Attempts by Floor-based market participants to influence the price of an ETP by, for instance, manipulating one or more component securities would be reflected in the deviation of the price from the NAV just as similar attempts today by upstairs traders would be reflected in the deviation of the price from the NAV. Moreover, the Exchange asserts that a broad-based ETP would, as shown above, be even less susceptible to price manipulation. The Exchange thus believes that the type of broad-based equity ETPs eligible for listing under the generic listing standards, coupled with the arbitrage mechanism, sufficiently minimize the potential for manipulation of ETPs listed and traded on the Trading Floor.

With respect to integrated market making, the Commission has approved changes to NYSE Rule 98 that permit a DMM unit to engage in integrated market making with off-Floor market making units in related products.[19] NYSE Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in related products, unless specifically permitted in Exchange rules. NYSE Rule 98(b)(7) defines ''related products'' as ''any derivative instrument that is related to a DMM security.''[20] Accordingly, consistent with the proposal, the Exchange proposes to amend NYSE Rule 98(b)(7) to specifically exclude ETPs from the definition of ''related products.'' The Exchange believes that ETPs are different from other types of related products such as single-stock options or futures and that, given the broad-based nature of listed ETPs, integrated market making and side-by-side trading in both the ETP and underlying NMS stock components is appropriate with no requirement for information barriers or physical or organizational separation.

According to the Exchange, trading on the Exchange is subject to a comprehensive regulatory program that includes a suite of surveillances and routine examinations that review trading by DMMs and other market participants on the Exchange's trading Floor. Market participants on the trading Floor, including DMMs, are also required to implement policies and procedures reasonably designed to detect and to deter inappropriate conduct and prevent the misuse of material, non-public information or disclosure of Floor-based non-public order information.[21]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2019–54 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[22] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[23] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.''[24]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[25] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views.

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR–NYSE–2008–45) (order approving amendments to NYSE Rule 98 that permit specialist firms to integrate with off-Floor trading desks that trade in ''related products,'' as that term is defined in NYSE Rule 98).

[20] Under NYSE Rule 98(b)(7), derivative instruments include options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or ''any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.''

[21] *See, e.g.,* NYSE Rule 98(c)(3) (setting forth restrictions on trading for member organizations operating a DMM unit).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Notice, *supra* note 3.

1. What are commenters' views generally on whether the Exchange's proposal to implement side-by-side trading and integrated market making for ETPs to be listed and traded on the Exchange is consistent with Section 6(b)(5) of the Act, which requires that the Exchange's rules be designed to, among other things, prevent fraudulent and manipulative acts and practices?

2. With respect to ETPs that meet their respective generic listing requirements, is the ''broad-based'' test as outlined by the Exchange the appropriate standard that should be equally applied to all ETPs, including ETFs, TIRs, and ETNs? Specifically, are the ETPs included in the proposal ''broadly similar'' as the Exchange asserts and therefore subject to the same analysis? If so, why? If not, what factors, if any, should the Commission consider in its review of side-by-side trading and integrated market making related to each category of ETPs, such as ETFs, TIRs, and ETNs?

3. What are commenters' views about whether, as a result of the proposal to implement side-by-side trading and integrated market making, certain Exchange members may acquire an informational advantage over other market participants with respect to trading in the ETP and the underlying securities? What are commenters' views on whether such informational advantage, if any, presents concerns regarding the potential for misuse of material, non-public information?

4. What are commenters' views on the Exchange's assertion that ETPs listed and traded via the rule filing process ''would also be sufficiently broad-based'' in order to minimize potential manipulation, thus justifying integrated market making and side-by-side trading in both the ETP and the component NMS securities? Specifically, what are commenters' views on whether the Exchange's application of the ''broad-based'' test to equity-based ETPs that do not comply with their respective generic listing requirements is appropriate? If not, why not? What are other factors, if any, that ought to be considered with respect to these types of equity-based ETPs, specifically? What are other factors, if any, that ought to be considered for all ETPs, including ETPs that are not primarily based on equity securities, but nevertheless include NMS stocks in their indexes or portfolios, that do not satisfy their respective generic listing requirements in some form or manner?

5. What are commenter's views on the Exchange's assertions that the potential for manipulation of listed ETPs would be minimal because ETP pricing is based on an ''arbitrage function'' performed by market participants that affects the supply of, and demand for, ETP shares and, thus, ETP prices?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[26]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 13, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 27, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–54 and should be submitted by February 13, 2020. Rebuttal comments should be submitted by February 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

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[26] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[27] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for leather holsters (M18 System) and accessories under NAICS code 316998/PSC 8465.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for leather holsters (M18 System) and accessories. According to the request, no

small business manufacturers can manufacture and supply a specific proprietary holster system to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item(s), regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted by February 24, 2020.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Carol Hulme, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Program Analyst, by telephone at 202–205–6347; or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b). require that recipients of Federal supply contracts (except those valued between $3,500 and $250,000) set aside for small business, service-disabled veteran-owned small business SDVOSB, WOSB, EDWOSB, HUBZone, or (BD) program participants provide the product of a small business manufacturer or processor if the recipient of the set-aside is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines ''class of products'' based on a combination of (1) the six digit North American Industry Classification System (NAICS) code, (2) the four digit Product Service Code (PSC), and (3) a description of the class of products.

The United States Air Force (USAF) has requested that SBA provide a class waiver for a specific holster system. Specifically, the USAF has requested a class waiver for a unique and propriety holster system that will be required following the receipt of M18 handguns. The details outlining why this particular holster will be required can be found in USAF's Small Arms and Weapons Accessories Approval List. The specific holster that is required per the USAF is the Safariland 7390 Modular Holster System with Automatic Locking System (ALS) and ALS Guard. This holster is the required duty holster and accessory authorized for use by Security Forces personnel. According to the USAF this specific holster system provides two levels of retention to reduce the chance of the weapon from being grabbed or falling from the holster during combat. The USAF has informed SBA that it is imperative for the safety and for risk mitigation to ensure all Security Force members are using a single standard holster for the M18, and that a standard holster with a standard retention system maximizes the ability of Security Force members to achieve their objectives.

The USAF's market research has found that the holster system that meets its needs is the Safariland 7390 Modular Holster System with Automatic Locking System (ALS) and ALS Guard, and that the system is patented by Safariland. As such, the USAF has found that there are no small business concerns that can provide this holster system to the Federal Government, and has requested a class waiver.

SBA invites the public to comment on this pending request to waive the NMR for leather holsters (M18 System) and accessories under NAICS code 316998/PSC 8465. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at *https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers.*

David Loines,

Director, Office of Government Contracting.

[FR Doc. 2020–01056 Filed 1–22–20; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36186; Docket No. FD 36186 (Sub-No. 1)]

Texas Railway Exchange LLC—Construction and Operation Exemption—Galveston County, Tex.; Petition of Texas Railway Exchange LLC for Issuance of a Crossing Order Pursuant to 49 U.S.C. 10901(D)

On November 21, 2018, Texas Railway Exchange LLC (TREX) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate approximately one-half mile of rail line in Galveston County, Tex. (the Line), to provide Texas International Terminals Ltd. (TI Terminals) with a connection to BNSF Railway Company (BNSF) (Petition for Exemption). TREX also requested that the Board conditionally grant its petition within 90 days, subject to the issuance of a final Board decision on the proposed construction after completion of the environmental review.

By decision served on February 15, 2019, the Board instituted a proceeding under 49 U.S.C. 10502(b). The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (EA) on February 22, 2019, examining the potential environmental impacts of TREX's proposal and requesting public comments, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370(f).[1] After considering the comments received in response to the Draft EA, OEA issued a Final EA on May 2, 2019. Based on its analysis, OEA recommended environmental conditions to avoid, minimize, or mitigate the potential environmental impacts of the proposed construction and operation.

On February 22, 2019, TREX filed a petition for issuance of a crossing order

[1] Because TREX would need to cross the UP line to implement the proposed construction project, OEA's environmental analysis assessed both the proposed construction and operation of the Line and the planned crossing of UP's tracks.

pursuant to 49 U.S.C. 10901(d) (Crossing Petition) to allow the proposed Line to cross tracks owned by Union Pacific Railroad Company (UP).

After considering both the rail transportation and environmental issues, the Board will grant the Petition for Exemption subject to the recommended environmental mitigation measures in the Final EA. Consequently, the Board will deny as moot TREX's request for a conditional grant of the exemption. The Board will also grant the Crossing Petition subject to the recommended environmental mitigation measures in the Final EA that pertain to the crossing, and require the parties to negotiate the compensation and any remaining terms for the crossing.

Background

TREX is a corporate affiliate of TI Terminals, which owns and operates a liquid and dry bulk terminal in Galveston, Tex. In its Petition for Exemption, TREX states that the purpose of the proposed Line is to provide direct and permanent railroad service between BNSF's Valley Yard and TI Terminals' loop track. (Pet. for Exemption 3 & Sullivan V.S. ¶¶ 38–39.) According to TREX, TI Terminals' customers currently rely on reciprocal switching service from UP for BNSF trains to access TI Terminals. TREX states that UP's reciprocal switching entails restrictive operating conditions and rules that require several unnecessary train movements that result in significant delays. (*Id.* at 3 & Sullivan V.S. ¶¶ 14, 16–31, 32.) TREX states that direct access to TI Terminals would eliminate the need for the existing reciprocal switching service and the associated difficulties arising from multiple train movements and car switching events between the BNSF Valley Yard, the UP Interchange Yard, and TI Terminals' industry and loop tracks. (*Id.* at 4.)

On March 14, 2019, UP filed its reply to TREX's Petition for Exemption. UP argues that this is not a routine construction case and opposes issuance of a conditional grant, because the proposed Line must cross UP's tracks and extend laterally over other property owned by UP. (UP Reply 2, Mar. 14, 2019.) UP objects to TREX's characterization of UP's current service to TI Terminals, although UP acknowledges that service issues are normally irrelevant in construction cases. (*Id.* at 3 (citing *Midwest Generation, LLC—Exemption from 49 U.S.C. 10901—for Constr. in Will Cty., Ill.,* FD 34060, slip op. at 4 (STB served Mar. 21, 2002)).) According to UP, TREX fundamentally misrepresents the physical constraints on UP's ability to switch cars delivered by BNSF into TI Terminals' facility. (UP Reply 3, Mar. 14, 2019.) UP further states that TREX misrepresents UP's responses to TI Terminals' requests for special switches. (*Id.* at 4.)

The Board has received letters in support of TREX's Petition for Exemption from United States Representative Randy Weber, Canadian Advantage Petroleum Corporation, and Archer Daniels Midland Company.

Pursuant to the procedural schedule for the Crossing Petition, set by the Board in a decision served April 4, 2019, UP filed its reply to the Crossing Petition on June 18, 2019. In its reply, UP consents to the issuance of the crossing order and states that it is prepared to negotiate with TREX the terms of operations and the amount of payment. On June 28, 2019, TREX filed its rebuttal, asserting that UP's consent establishes that TREX has fully satisfied the Board's section 10901(d) standards.

Subsequently, counsel for TREX indicated to OEA that TREX was considering modifying the type of crossing to be used in crossing UP's tracks. On August 5, 2019, the Board issued a decision directing TREX to file a report updating the Board on the status of discussions with UP regarding the possible modification of the proposed crossing configuration. TREX filed its report on August 15, 2019, stating that the parties had held discussions on the proposed routing, crossing, and operations, as well as related matters, and were engaged in further discussions. On November 7, 2019, following an October 11, 2019 Board order requesting an update on the parties' discussions, TREX submitted a status report stating that the parties' discussions have not resulted in an agreement to modify the type of crossing or routing specified in the Crossing Petition, and that TREX has elected to move forward with the proposed crossing configuration in its Crossing Petition.

On January 6, 2020, Representative Weber filed a letter requesting the Board promptly issue final decisions on TREX's Petition for Exemption and Crossing Petition. On January 7, 2020, TREX filed a request that the Board issue final decisions as soon as possible, and by no later than January 31, 2020.

Discussion and Conclusions

Petition for Exemption

Rail Transportation Analysis. The construction and operation of new railroad lines requires prior Board authorization, either through issuance of a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901. Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal ''inconsistent with the public convenience and necessity.'' *See Alaska R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Alaska,* FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival* v. *STB,* 705 F.3d 1073 (9th Cir. 2013).

Under section 10502(a), the Board must exempt a transaction or service from regulation when it finds that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) regulation is not needed to protect shippers from an abuse of market power.

Based on the record, the Board concludes that the proposed construction and operation of the Line qualifies for an exemption under section 10502 from the formal application procedures of section 10901.[2] The formal application procedures of 49 U.S.C. 10901 are not necessary in this case to carry out the rail transportation policy. The requested exemption would minimize unnecessary expense associated with the preparation and filing of a formal construction application, expedite regulatory decisions, and reduce regulatory barriers to entry for the Line. *See* 49 U.S.C. 10101(2), (7), (15). Moreover, construction and operation of the Line would allow more effective competition for business at TI Terminals, thereby advancing the development and continuation of a sound rail transportation system with effective competition among rail carriers. 49 U.S.C. 10101(1), (4). Other aspects of the rail transportation policy would not be adversely affected.

In addition, consideration of the proposed rail line under section 10901 is not needed to protect shippers from an abuse of market power. The construction and operation of the proposed Line by TREX would enhance competition by providing a new rail

[2] As TREX acknowledges, upon construction of the Line, TREX will have a common carrier obligation to provide service on the Line. (Pet. for Exemption 5.) TREX states that it expects to enter into overhead trackage rights arrangements for BNSF to operate over the Line to serve TI Terminals. Alternatively, if necessary, TREX would either contract with a short line railroad or provide its own service directly to any customers located on the Line, or enter into arrangements with TI Terminals to provide private switching of BNSF trains to TI Terminals. (*Id.*)

option for TI Terminals [3] and allowing more efficient movement of trains between BNSF's tracks and TI Terminals.[4]

UP's opposition to the Petition for Exemption is based on (1) TREX's characterization of UP's service to TI Terminals, and (2) TREX's request for a conditional grant of the exemption. These concerns do not warrant denying TREX's Petition for Exemption. First, the Board need not make, and is not making here, a determination as to the adequacy of UP's current service to TI Terminals. ''[T]he rail transportation policy of 49 U.S.C. [ ] 10101 contemplates competition as a means of ensuring that shippers receive reasonable service at reasonable rates. A showing that the incumbent railroad's service is inadequate is simply not necessary to obtain authority for construction of a competing line.'' *Midwest Generation,* FD 34060, slip op. at 9. Second, as noted above, the Board is denying as moot TREX's request for a conditional grant of the exemption.

For these reasons, the Board concludes that the evidence on the transportation-related aspects of this case demonstrates that the proposed construction and operation of the Line qualifies for an exemption from the prior approval requirements of section 10901. Given the statutory presumption favoring rail construction and the evidence presented, the requested exemption from section 10901 has met the standards of section 10502 on the transportation merits.

Environmental Analysis. NEPA requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. *See Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council,* 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize a railroad construction project as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *See Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350–51 (1989). Thus, once the adverse environmental effects have been adequately identified and evaluated, the agency may conclude that other values outweigh the environmental costs. *Id.*

The Environmental Review Process. On February 22, 2019, OEA issued for public review and comment a Draft EA, addressing the potential environmental impacts of the proposed project, including both the construction and operation of the Line and the proposed crossing of UP's line. The Draft EA considered three alternatives in detail: (1) The No-Action Alternative; (2) the Green Alternative (with two potential designs, Option A and Option B); and (3) the Blue Alternative (with two potential designs, Option A and Option B).[5] (Draft EA ES–11 to ES–12.)

The Draft EA concluded that the Green and Blue Alternatives, and Options A and B associated with each of those alternatives, would have similar, but not significant, environmental impacts if the mitigation measures set forth in the Draft EA were imposed. (Draft EA 6–1 to 6–2.) Accordingly, OEA determined that the Environmental Impact Statement (EIS) process is unnecessary. (*Id.* at 6–1 to 6–2.)

In response to the Draft EA, comments were received from TREX; the Texas Department of Transportation, Rail Division (TxDOT); the Texas General Land Office; and the Texas Parks and Wildlife Department (TPWD). (Final EA 1–11 to 1–12; 2–1 to 2–10.) On May 2, 2019, OEA issued a Final EA concluding the environmental review process. In response to the comments received, OEA revised certain mitigation measures preliminarily recommended in the Draft EA and added one new mitigation measure. OEA's final recommended mitigation measures also reflect TREX's proposed modifications to address the concerns raised by TxDOT and TWPD in those agencies' comments. (*See* Final EA 3–1 to 3–9.) Based on its review of the available information, OEA concluded that, if the recommended mitigation measures detailed in the Final EA are imposed, neither the Green Alternative nor the Blue Alternative (including the two design options for each alternative (Options A and B)) would result in any significant environmental impacts. (Final EA 3–1.) OEA recommended that the Board authorize both the Green and Blue Alternatives, although if TREX is able to obtain the access over UP's tracks needed to construct the Blue Alternative, OEA recommended that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. (Final EA 3–2.) In the event TREX is unable to obtain the access needed to construct and operate the Blue Alternative, then OEA recommended the Green Alternative. (Final EA 3–2.)

The Board's Analysis of the Environmental Issues. The Board will adopt the analysis and conclusions made by OEA. As such, the Board adopts the Draft EA (as modified by the Final EA) and Final EA, including the final recommended mitigation measures. The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the proposed construction and operation of the Line and properly determined that, with the recommended environmental mitigation in chapter 3 of the Final EA, the proposed project will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary.

Crossing Petition

Under 49 U.S.C. 10901(d)(1), a rail carrier may not block any construction or extension authorized by the Board under 49 U.S.C. 10901 by refusing to permit the crossing of its property if: (A) The construction does not unreasonably interfere with the operation of the crossed line, (B) the operation does not materially interfere with the operation of the crossed line, and (C) the owner of the crossing line compensates the owner of the crossed line.

UP consents to issuance of the crossing order requested by TREX, and the parties indicate that they are prepared to negotiate to reach an agreement on the compensation due to UP and terms for operations. (UP Reply 2, June 18, 2019; Crossing Petition 32–33.) If the parties are unable to agree on the amount of payment, or any remaining terms, either party may submit the matters in dispute to the Board for determination. 49 U.S.C. 10901(d)(2).

Conclusion

After considering the various rail transportation and environmental issues and the record as a whole, the Board finds that the petition for exemption to allow construction and operation of the

[3] UP argues that the Board should not credit TREX's claims that the proposed construction will improve BNSF's competitive position in relationship to UP, as such claims are inconsistent with TREX's claim that the project should not increase the total volume of traffic moving to TI Terminals. (UP Reply 6.) However, as TREX explains, the purpose of the proposed construction is to provide direct and permanent railroad service between BNSF's Valley Yard and TI Terminals' loop track to replace the existing reciprocal switching arrangement, not to increase the total volume of rail traffic moving to TI Terminals. (Pet. for Exemption 3, 6; *see also* UP Reply, Attachment D at 2–4.)

[4] Because regulation of the proposed construction and operation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a)(2).

[5] Each of the alternatives is also discussed in the Final EA. (*See* Final EA 1–2 to 1–3.)

Line should be granted, subject to compliance with the environmental mitigation set forth in the Final EA, for either the Green Alternative (Option A or B) or the Blue Alternative (Option A or B).[6] The Board will also grant the unopposed Crossing Petition.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TREX's petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate the Line is granted as discussed above.

2. TREX's request for a conditional grant of the petition is denied as moot.

3. The Board adopts the environmental mitigation measures set forth in the Final EA and imposes them as conditions to the exemption granted here.

4. TREX's petition for issuance of a crossing order pursuant to 49 U.S.C. 10901(d) is granted.

5. Notice will be published in the **Federal Register** on January 23, 2020.

6. Petitions for reconsideration must be filed by February 6, 2020.

7. This decision is effective on the date of service.

Decided: January 16, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–01095 Filed 1–22–20; 8:45 am]

BILLING CODE 4915–01–P

[6] The mitigation conditions apply both to the construction and operation of the Line and the proposed crossing over UP's tracks. As previously noted, OEA considered the potential impacts from both the Line and the possible crossing in the Draft and Final EA.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11213, Notice No. 24]

Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2020

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered employees and for maintenance-of-way (MOW) employees for calendar year 2020.

DATES: This determination takes effect January 23, 2020.

FOR FURTHER INFORMATION CONTACT: Gerald Powers, FRA Drug and Alcohol Program Manager, W33–310, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone 202–493–6313); or Sam Noe, FRA Drug and Alcohol Program Specialist, Federal Railroad Administration (telephone 615–719–2951).

SUPPLEMENTARY INFORMATION: FRA is announcing the 2020 minimum annual random drug and alcohol testing rates for covered service employees, and the 2020 minimum annual random drug and alcohol testing rates for MOW employees. For calendar year 2020, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will continue to be 50 percent for drugs and 25 percent for alcohol.

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). The rail industry's random drug testing positive rate for covered service employees (employees subject to the hours of service laws and regulations) remained below 1.0 percent for 2017 and 2018. The Administrator has therefore determined the minimum annual random drug testing rate for the period January 1, 2020, through December 31, 2020, will remain at 25 percent for covered service employees. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2017 and 2018. Therefore, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent for covered service employees for the period January 1, 2020, through December 31, 2020. Because these rates represent minimums, railroads may conduct FRA random testing at higher rates.

MOW employees became subject to FRA random drug and alcohol testing in June 2017. The Administrator has determined that the minimum annual random testing rates initially established for MOW employees will remain in effect because FRA does not have MIS data for two consecutive years that represents their industry-wide performance rates. Specifically, MOW employees became subject to FRA random testing effective June 12, 2017, and the resulting 2017 MIS data FRA received reflected industry-wide MOW random testing rates that were below the annual minimum rates of 50 percent (drugs) and 25 percent (alcohol) for MOW employees. Therefore, for the period January 1, 2020, through December 31, 2020, the minimum annual random drug testing rate will continue to be 50 percent for MOW employees, and the minimum annual random alcohol testing rate will continue to be 25 percent for MOW employees. As with covered service employees, because these rates represent minimums, railroads may conduct FRA random testing of MOW employees at higher rates.

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

[FR Doc. 2020–01011 Filed 1–22–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of calendar year 2020 random drug and alcohol testing rates.

SUMMARY: This notice announces the calendar year 2020 drug and alcohol random testing rates for employer's subject to 49 CFR part 655. The minimum random drug testing rate will remain at 50 percent and the random alcohol rate will remain at 10 percent.

DATES: Applicable Date: January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Drug and Alcohol Program Manager in the Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–366–2010 or email: *Iyon.Rosario@dot.gov*).

SUPPLEMENTARY INFORMATION: On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions, and submit annual reports by March 15 of each year beginning in 1996 pursuant to drug and alcohol regulations adopted by FTA at 49 CFR parts 653 and 654 in February 1994. The annual report includes the number of employees who had a verified positive for the use of

prohibited drugs, and the number of employees who tested positive for the misuse of alcohol during the reported year. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997.

The FTA updated the testing rules on August 1, 2001 (66 FR 42002) and maintained a random testing rate for prohibited drugs at 50 percent and the misuse of alcohol at 10 percent, which the Administrator may lower if the violation rates dropped below the thresholds set forth in 49 CFR 665.45 for 2 consecutive years. Accordingly, based on the recent violation rates, in 2007, FTA reduced the random drug testing rate from 50 percent to 25 percent (72 FR 1057, January 7, 2007). In 2018, however, FTA increased the random drug testing rate to 50 percent for calendar year 2019 based on verified industry data for calendar year 2017, which showed the rate had exceeded 1 percent (83 FR 63812, December 12, 2018).

Pursuant to 49 CFR 655.45, the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire public transportation industry. The information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by 49 CFR 655.72. In determining the reliability of the data, the Administrator considers the quality and completeness of the reported data, or may obtain additional information or reports from employers, and make appropriate modifications in calculating the industry's verified positive results and violation rates.

For calendar year 2020, the Administrator has determined the random drug testing rate for covered employees will remain at 50 percent based on a verified positive rate of 1.17 percent for calendar year 2018. Further, the Administrator has determined the random alcohol testing rate for calendar year 2020 will remain at 10 percent because the violation rate again was lower than 0.5 percent for calendar years 2016 and 2017. The random alcohol violation rates were 0.148 percent for 2016 and 0.160 for 2017. Detailed reports on FTA's drug and alcohol testing data collected from transit employers may be obtained from FTA, Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–2010 or at *https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/Default.aspx*.

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2020–01071 Filed 1–22–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA); DOT; U.S. Army Corps of Engineers (USACE).

ACTION: Notice of limitation on claims for judicial review of actions by the USACE.

SUMMARY: FTA is issuing this notice to announce action taken by the USACE that is final within the meaning of the United States Code. The action relates to the construction of the Potomac Yard Metrorail Station in the City of Alexandria, Virginia (the Project). The USACE granted a Department of the Army permit, pursuant to Section 404 of the Clean Water Act, as amended, authorizing the City of Alexandria to discharge dredged or fill material into Waters of the United States at specified locations related to the Project.

DATES: By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of the identified Federal agency action related to the Project will be barred unless the claim is filed on or before June 22, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FTA: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Juliet Bochicchio, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9348. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. For USACE: Department of the Army, Norfolk District, U.S. Army Corps of Engineers Regulatory Branch, Attn: Theresita Crockett-Augustine, 18139 Triangle Shopping Plaza, Suite 213, Dumfries, Virginia, 22026; telephone: (757) 201–7194.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the USACE has taken final agency action by issuing certain approval related to the Project. The actions on the Project, as well as the laws under which such actions were taken, are described in the Department of the Army Permit and related documents in the USACE administrative record for the permit action. Interested parties may contact the USACE Norfolk District for more information on the USACE's permit decision. Contact information for the appropriate USACE representative is above. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all USACE decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Water Act [33 U.S.C. 1251–1387]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register.** The project and action that is the subject of this notice follow:

Project name and location: Potomac Yard Metrorail Station, City of Alexandria, Virginia. *Project sponsor:* City of Alexandria. *Project description:* The project will construct the new Potomac Yard Metrorail Station, associated tracks, and additional auxiliary structures on an approximately 18-acre site in Alexandria, Virginia for use by the Washington Metropolitan Area Transit Authority. *Final agency action:* Department of the Army permit issued pursuant to Section 404 Clean Water Act, effective November 15, 2019. *Supporting documentation:* USACE Finding of No Significant Impact issued November 15, 2019. The USACE decision and permit No. NAO 2012–02012/19–V0170 are available by contacting USACE at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which the final action was taken.

Authority: 23 U.S.C. 139(l)(1).

Felicia L. James,

Associate Administrator for Planning and Environment.

[FR Doc. 2020–01004 Filed 1–22–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, 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 a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' The OCC also is giving notice that it sent the collection to OMB for review.

DATES: Comments must be submitted on or before February 24, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0248, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0248'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0248, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0248'' or ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. The term ''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. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control No.: 1557–0248.

Type of Review: Regular.

Affected Public: Businesses or individuals.

Frequency of Response: On occasion.

Burden Estimate:

Number of Respondents: 7,025.

Total Annual Burden: 2,850.

Description: This generic information collection request (ICR) provides a means to solicit qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal government's commitment to improving service delivery. Qualitative feedback is information that provides useful insights on perceptions and opinions but does not include statistical survey or quantitative results that can be attributed to the surveyed population. This qualitative feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; and/or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. It also enables ongoing, collaborative, and actionable communications between the OCC and its customers and stakeholders, while also utilizing feedback to improve program management.

The OCC's solicitations for feedback target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues related to service delivery. The OCC uses the responses to inform and plan efforts to improve or maintain the quality of service offered to the public. If the OCC does not collect this information, it will not have access to vital feedback from customers and stakeholders.

Under this generic ICR, the OCC will submit a specific information collection for approval only if the collection meets the following conditions:

- It is voluntary;
- It imposes a low burden on respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and a low cost on both respondents and the Federal government;

[1] On November 5, 2019, the OCC published a 60-day notice for this information collection, 84 FR 59674.

• It is non-controversial and does not raise issues of concern to other Federal agencies;

• It is targeted to solicit opinions from respondents who have experience with the program or will have experience with the program in the near future;

• It includes personally identifiable information (PII) only to the extent necessary, and the OCC does not retain the PII; [2]

• It gathers information intended to be used internally only for general service improvement and program management purposes and not intended for release outside of the OCC;

• It does not gather information to be used for the purpose of substantially informing influential policy decisions;

• It gathers information that will yield qualitative information and will not be designed or expected to yield statistically reliable results or used to reach general conclusions about the surveyed population; and

• Feedback collected provides useful information, but it does not yield data that can be attributed to the overall population.

If these conditions are not met, the OCC will submit an information collection request to OMB for approval through the normal PRA process.

The OCC will not use this type of generic clearance for the collection of qualitative feedback for any quantitative information collection.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature.

Comments: On November 5, 2019, the OCC issued a notice for 60 days of comment concerning this collection, 84 FR 59674. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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/or purchase of services expended to provide information.

Dated: January 16, 2020.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–01077 Filed 1–22–20; 8:45 am]

BILLING CODE 4810–33–P

[2] The OCC may retain PII only in limited circumstances and, if it does so, the OCC must comply with applicable requirements, restrictions, and prohibitions of the Privacy Act of 1974 and other privacy and confidentiality laws that govern the collection, retention, use, and/or disclosure of such PII.

DEPARTMENT OF VETERANS AFFAIRS

Reimbursement for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery or a VA-Funded State or Tribal Veterans' Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is updating the monetary reimbursement rates for caskets and urns purchased for the interment in a VA national cemetery or a VA-funded state or tribal veterans' cemetery of Veterans who die with no known next of kin and where there are insufficient resources for furnishing a burial container. The purpose of this notice is to notify interested parties of the rates that will apply to reimbursement claims that occur during calendar year (CY) 2020.

FOR FURTHER INFORMATION CONTACT: Jerry Sowders, National Cemetery Administration, Department of Veterans Affairs, 4850 Lemay Ferry Road, Saint Louis, MO 63129. Telephone: (314) 461–6216 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 2306(f) of title 38, United States Code, authorizes VA National Cemetery Administration (NCA) to furnish a casket or urn for interment in a VA national cemetery or a VA-funded state or tribal veterans' cemetery of the unclaimed remains of Veterans for whom VA cannot identify a next of kin and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not available. VA implemented regulations to administer this authority as a reimbursement benefit in section 38.628 of title 38, Code of Federal Regulations.

Reimbursement for a claim received in any CY will not exceed the average cost of a 20-gauge metal casket or a durable plastic urn during the fiscal year (FY) preceding the CY of the claim. Average costs are determined by market analysis for 20-gauge metal caskets, designed to contain human remains, with a gasketed seal, and external rails or handles. The same analysis is completed for durable plastic urns, designed to contain human remains, which include a secure closure to contain the cremated remains.

Using this method of computation, in FY 2019, the average costs for caskets were determined to be $1,903 for caskets and $149 for urns. Accordingly, the maximum reimbursement rates payable for qualifying interments occurring during CY 2020 are $1,903 for caskets and $149 for urns.

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 January 15, 2020, for publication.

Luvenia Potts,

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

[FR Doc. 2020–01005 Filed 1–22–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 15 January 23, 2020

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.

Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP); Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, and 226

[FNS–2019–0034]

RIN 0584–AE72

Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend the Summer Food Service Program (SFSP) regulations to strengthen program integrity by codifying in regulations changes that have been tested through policy guidance and by streamlining requirements among Child Nutrition Programs. These changes update important definitions, simplify the application process, enhance monitoring requirements, and provide more discretion at the State agency level to manage program operations. The intended effect of this rulemaking is to clarify, simplify, and streamline program administration in order to facilitate compliance with program requirements.

DATES: Written comments must be received on or before March 23, 2020 to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send comments to Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, USDA Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Summer Food Service Program (SFSP) is authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761. Its primary purpose is to provide free, nutritious meals to children from low-income areas during periods when schools are not in session.

Throughout the history of the SFSP, the United States Department of Agriculture (USDA) has striven to provide good customer service to children in need during the summer months while maintaining accountability and integrity in program operations. The SFSP is one of the USDA programs that collectively are known as the Child Nutrition Programs. For the purposes of this proposed rule, Child Nutrition Programs also include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), and Child and Adult Care Food Program (CACFP). Among Child Nutrition Programs, the SFSP is unique in many ways, including the seasonal nature of its operations, the diversity of organizations that participate in the program, and the range of sites at which meals are offered. State agencies, sponsors, and community organizations need flexibility to operate the SFSP in a manner that is responsive to local conditions. Such flexibility allows the SFSP to serve a diversity of communities efficiently and effectively. To that end, USDA is continually exploring options to increase administrative flexibility and reduce burden for SFSP sponsors and State agencies to facilitate compliance with program requirements.

To explore program options, USDA is dedicated to working collaboratively with State agencies, local level organizations, program operators, and the advocacy community to learn from their experiences administering and operating the SFSP. USDA has a strong history of soliciting feedback from stakeholders and participants in the SFSP through:

- Participation at multiple national conferences;
- Nationwide workgroups including stakeholders from State agencies, program operators, and advocacy groups to collect strategies to improve the delivery of nutrition assistance to low-income children in the summer months, boost participation, and reduce unnecessary barriers to participation;
- Listening sessions and webinars;
- Partnerships with other government agencies, national nonprofit organizations, and faith-based communities; and
- A 2004 notice in the **Federal Register** (69 FR 3874 Page 3874) soliciting public comments on how to improve the program.

In response to the feedback received, USDA issued nationwide flexibilities and nationwide waivers of program regulations to facilitate sponsor and site participation and decrease paperwork burdens on both State agencies and sponsors—see following table entitled *FNS Policy Memoranda Addressed in This Rule*. While nationwide waivers of program regulations have largely supported improved program operations, the USDA Office of the Inspector General (OIG) audit entitled ''FNS Controls Over the Summer Food Service Program'' (27601–0004–41) prompted USDA to assess whether nationwide waivers issued through policy memoranda complied with section 12(l) of the NSLA, which provides the Secretary with the authority to waive certain statutory and regulatory provisions. Through this assessment, USDA determined that the issuance of certain nationwide waivers through policy memoranda was not fully consistent with all requirements to waive program regulations as outlined in section 12(l). As a result, USDA rescinded several nationwide waivers through two memoranda:

- SFSP 06–2018, *Summer Food Service Program Memoranda Rescission: SFSP 01–2007 and SFSP 06–2015,* May 24, 2018; [1] and
- SFSP 01–2019, *Summer Food Service Program Memoranda Rescission,* October 11, 2018.[2]

For summer 2019, State agencies or eligible service providers were able to submit individual requests for waivers that they believed were in the best interest of the program in their State, following the requirements outlined in section 12(l) of the NSLA and policy memorandum SP 15–2018, CACFP 12–2018, SFSP 05–2018: *Child Nutrition Program Waiver Request Guidance and Protocol—Revised,* published May 24, 2018.[3]

[1] *https://www.fns.usda.gov/sfsp/summer-food-service-program-memoranda-rescission-sfsp-01-2007-and-sfsp-06-2015.*

[2] *https://www.fns.usda.gov/sfsp/summer-food-service-program-memoranda-rescission.*

[3] *https://www.fns.usda.gov/child-nutrition-program-waiver-request-guidance-and-protocol-revised.*

The aforementioned nationwide waivers were developed based on consistent input from stakeholders and have effectively supported improved program operations. The process of approving individual waiver requests for program year 2019 reaffirmed the continued value of these flexibilities. State agencies justified their 2019 waiver requests with goals of improved efficiency, reduced administrative cost, and commitment to program integrity—specifically, the ability of both program sponsors and State agencies to provide adequate and effective program oversight with limited resources. As such, USDA is proposing to codify many of the policies that were previously available as nationwide waivers, as well as a number of flexibilities that are currently available through policy guidance. In addition, USDA is seeking comments on several proposals for removing barriers to efficient program administration. Taken as a whole, the changes proposed in this rule would maintain program integrity. They would streamline SFSP requirements for sponsors that participate in other Child Nutrition Programs; facilitate compliance with program monitoring requirements; provide customer-friendly meal service; and clarify program requirements. The following table details FNS policy memoranda that are discussed in this rule, the specific provision(s) from each memorandum that is discussed, the status of the waiver or flexibility, and the section of the rule in which it is addressed.

FNS POLICY MEMORANDA ADDRESSED IN THIS RULE

Policy memorandum	Provision addressed in rule	Provision status	Section of rule
Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites, November 17, 2002 [1].	Determining Eligibility for Closed Enrolled Sites.	Rescinded in SFSP 01–2019.	VII. B
Field Trips in the Summer Food Service Program (SFSP) February 3, 2003 [2] & FNS Instruction 788–13: Sub-Sites in the Summer Food Service Program.	Reimbursement Claims for Meals Served Away from Approved Locations.	Active	VI. A
SFSP 12–2011, *Waiver of Site Monitoring Requirements in the Summer Food Service Program,* April 5, 2011 [3].	First Monitoring Site Visits for Returning Sites.	Rescinded in SFSP 01–2019.	IV. A
SFSP 05–2012, *Simplifying Application Procedures in the Summer Food Service Program,* October 31, 2011 [4].	Application Procedures for New CACFP Sponsors.	Active	III. A
	Demonstration of Financial and Administrative Capability for CACFP Institutions.	Active	III. B
SFSP 04–2013, *Summer Feeding Options for School Food Authorities,* November 23, 2012 [5].	Application Procedures for New SFA Sponsors.	Active	III. A
	Demonstration of Financial and Administrative Capability for SFAs.	Active	III. B
	First Monitoring Site Visits for SFA Sponsors.	Rescinded in SFSP 01–2019.	IV. A
SFSP 06–2014, *Available Flexibilities for CACFP At-Risk Sponsors and Centers Transitioning to SFSP,* November 12, 2013 [6].	First Monitoring Site Visits for CACFP or SFA sponsors.	Rescinded in SFSP 01–2019.	IV. A
SFSP 07–2014, *Expanding Awareness and Access to Summer Meals,* November 12, 2013 [7].	Requirements for Media Release	Active	VI. C
SFSP 16–2015, *Site Caps in the Summer Food Service Program—Revised,* April 21, 2015 [8].	Establishing the Initial Maximum Approved Level of Meals for Vended Sponsors.	Active	IV. B
SFSP 04–2017, *Automatic Revocation of Tax-Exempt Status—Revised,* December 1, 2016 [9].	Annual Verification of Tax-Exempt Status.	Active	VI. D
SFSP 06–2017, *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers—Revised,* December 05, 2016 [10].	Meal Service Times	Rescinded in SFSP 01–2019.	V. A
	Off-site Consumption of Food Items	Active	V. B
	Offer versus Serve	Rescinded in SFSP 01–2019.	V. C
SFSP 05–2018, *Child Nutrition Program Waiver Request Guidance and Protocol—Revised,* May 24, 2018 [11].	Overview of Statutory Waiver Authority Request Process.	Active	VIII. A

Endnotes:
[1] No longer available.
[2] *https://www.fns.usda.gov/sfsp-020303.*
[3] No longer available.
[4] *https://www.fns.usda.gov/simplifying-application-procedures-summer-food-service-program.*
[5] *https://www.fns.usda.gov/summer-feeding-options-school-food-authorities.*
[6] *https://www.fns.usda.gov/available-flexibilities-cacfp-risk-sponsors-and-centers-transitioning-summer-food-service-program.*
[7] *https://www.fns.usda.gov/expanding-awareness-and-access-summer-meals.*
[8] *https://www.fns.usda.gov/site-caps-summer-food-service-program-revised.*
[9] *https://www.fns.usda.gov/sfsp/automatic-revocation-tax-exempt-status%E2%80%93revised.*
[10] *https://www.fns.usda.gov/meal-service-requirements-summer-meal-programs-questions-and-answers-%E2%80%93-revised.*
[11] *https://www.fns.usda.gov/child-nutrition-program-waiver-request-guidance-and-protocol-revised.*

II. Reorganization of § 225.6

As stated in the summary and background, the purpose of this proposed rule is to streamline and clarify program requirements. In order to meet that goal, this rule proposes to reorganize and streamline § 225.6 to more clearly present existing State agency requirements.

The proposed changes reorganize requirements in § 225.6(c), *Content of sponsor application,* to more clearly outline the requirements for complete applications. Provisions found in § 225.6(c)(2) related to site information sheets would move to a new paragraph (g); provisions in § 225.6(c)(4) related to

the free meal policy statement would move to a new paragraph (f).

The proposed changes would also reorder current § 225.6(d) through (i). This reorganization is necessary in order to add new paragraphs related to performance standards for determining financial and administrative capability (new paragraph (d)), and sponsor submission of a management plan (new paragraph (e)), both of which are described in more detail in the next section of this preamble. The table below provides an outline of the proposed revisions:

Current outline	Proposed outline
a. General Responsibilities	a. General responsibilities.
b. Approval of sponsor applications	b. Approval of sponsor applications.
c. Content of sponsor application	c. Content of sponsor application.
1. Application forms	1. Application form.
2. Requirements for new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems in the prior year.	2. Application requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year.
3. Requirements for experienced sponsors and experienced sites.	3. Application requirements for experienced sponsors.
	4. Application requirements for School Food Authorities and Child and Adult Care Food Program Institutions.
	d. Performance standards
	1. Performance standard 1.
	2. Performance standard 2.
	3. Performance standard 3.
	e. Management plan.
4. Free meal policy statement	f. Free meal policy statement.
5. Hearing procedures statement	1. Nondiscrimination statement.
	2. Hearing procedures statement.
	g. Site information sheets
	1. New sites.
	2. Experienced sites.
d. Approval of sites	h. Approval of sites.
e. State-sponsor agreement	i. State-sponsor agreement.
f. Special account	j. Special account.
g. FSMC registration	k. Food Service Management Company registration.
h. Monitoring of FSMC procurements	l. Monitoring of Food Service Management Company procurements.
i. Meal pattern exceptions	m. Meal pattern exceptions.

III. Streamlining Program Requirements

USDA is committed to decreasing paperwork burden across Child Nutrition Programs. In conjunction with decreasing paperwork, USDA has also found that supporting SFSP program operators that successfully operate other Child Nutrition Programs ensures that taxpayer money is used most efficiently. Therefore, through policy guidance, USDA has identified several ways to streamline the application process for SFSP sponsors also participating in the NSLP and/or the CACFP that reduce administrative burden when applying to participate in the SFSP.

A. Application Procedures for New Sponsors

Current regulations in § 225.6(c) outline specific requirements for sponsors and sites applying to participate in the SFSP. The regulations in § 225.6(c)(2) require certain procedures for new sponsors, and sponsors that have experienced significant operational problems in the previous year, as determined by the State agency. For both new sponsors and those with operational problems, detailed information is required regarding site information, arrangements for meeting health and safety standards, and budgets, among other things. This information is necessary for State agencies to determine if new sponsors and sites, or those with previous operational problems, are capable of running the SFSP efficiently and effectively, and complying with all program requirements, thus maintaining program integrity.

For experienced sponsors that have already operated the SFSP without significant operational problems, applications must include condensed information that is more likely to change from year to year, as currently outlined in § 225.6(c)(3). Experienced sponsors are not required to submit the same level of detail with regard to organizational and operational information required of new sponsors and those with previous operational problems.

In an effort to recruit eligible organizations that have already proven capable of successfully running other Child Nutrition Programs, USDA outlined flexibilities in several policy memoranda for NSLP and CACFP sponsors in good standing (SFSP 05–2012, *Simplifying Application Procedures in the Summer Food Service Program,* October 31, 2011 and SFSP 04–2013, *Summer Feeding Options for School Food Authorities,* November 23, 2012). Through policy guidance, a sponsor is considered to be in ''good standing'' if it has been reviewed by the State agency in the last 12 months and had no major findings or program violations, or completed and implemented all corrective actions from the last compliance review. In addition, a sponsor may be considered in good standing if it has not been found to be seriously deficient by the State agency in the past two years and has never been terminated from another Child Nutrition Program.

The published guidance outlines flexibilities for school food authorities (SFAs) administering the NSLP or SBP and CACFP institutions in good standing that are applying to serve SFSP meals at the same sites where they provide meal services through the NSLP, SBP, or CACFP during the school year. Under this guidance, these institutions are permitted to follow the application requirements for experienced SFSP sponsors currently found in § 225.6(c)(3) instead of the application requirements for new sponsors and sites currently found in § 225.6(c)(2). While the guidance streamlines the requirements among programs, it also requires that NSLP or SBP SFAs and CACFP institutions using the experienced sponsor application procedures provide the following information:

• Whether the site is rural or non-rural;
• Whether the site's food service will be self-preparation or vended; and
• If a site will primarily serve the children of migrant families, certification from a migrant organization that the site serves children of migrant worker families and that it primarily serves migrant children if it also serves non-migrant children.

This additional site information is necessary for the State agency to make a determination about the approval of sites for experienced sponsors. Further, this rule proposes to provide State agencies the discretion to allow NSLP and SBP SFAs and CACFP institutions applying for participation in the SFSP for the first time to use this flexibility.

Accordingly, this rule proposes to codify under § 225.6(c)(4) the flexibilities extended through policy guidance for NSLP and SBP SFAs and CACFP institutions to use procedures for experienced sponsors.

B. Demonstration of Financial and Administrative Capability

Currently, SFSP regulations require sponsors applying to participate in the Program to demonstrate financial and administrative capability for program operations and accept financial responsibility for total program operations at all sites at which they propose to conduct a food service (§ 225.14(c)(1)). These two operational aspects underpin program integrity and promote effective use of taxpayer money. Demonstration of financial and administrative capability can include, but is not limited to, submission of budgets, financial records, documentation of organizational structure, and menu planning.

In order to streamline Child Nutrition Program requirements and encourage participation, USDA issued policy guidance that provided that NSLP and SBP SFAs and CACFP institutions in good standing applying to participate in the SFSP are not required to submit further evidence of financial and administrative capability, as required in § 225.14(c)(1) (SFSP 05–2012, *Simplifying Application Procedures in the Summer Food Service Program,* October 31, 2011 and SFSP 04–2013, *Summer Feeding Options for School Food Authorities,* November 23, 2012). NSLP and SBP SFAs and CACFP institutions already undergo a rigorous application process in order to participate in NSLP, SBP, and CACFP and have demonstrated that they have the financial and organizational viability, capability, and accountability necessary to operate a Child Nutrition Program; therefore, they have the capacity to operate the SFSP as well.

While the flexibility to not submit further evidence of financial and administrative capability is intended to decrease burden on both State agencies and sponsors applying for the program, State agencies must still be aware of the ways in which NSLP and SBP SFAs and, particularly, CACFP institutions have demonstrated their financial and administrative capabilities in the past. If the State agency has a reasonable belief that the operation of the SFSP would pose significant challenges for an NSLP or SBP SFA or CACFP sponsor applicant, the State agency may request additional evidence of financial and administrative capacity sufficient to ensure that the sponsor has the ability and resources to expand. For example, if an NSLP or SBP SFA or CACFP institution had a finding during a local review, the State agency may request additional evidence of financial and administrative capacity to demonstrate ability to administer the SFSP. Additionally, in certain instances, different State agencies are responsible for the administration of the SFSP and school meals or CACFP. In these instances, to protect the integrity of the SFSP and ensure that financially and administratively capable sponsors are approved to operate the program, State agencies must share relevant sponsor information, including, but not limited to:

• Demonstration of fiscal resources and financial history;
• Budget documents;
• Demonstration of appropriate and effective management practices; and
• Demonstration of adequate internal controls and other management systems in effect to ensure fiscal accountability.

As this proposed rule would require State agencies to develop a process for sharing information across agencies if the agency that administers the SFSP is not the same as the one administering school meals or the CACFP, USDA is specifically seeking comment on the challenges and benefits of this requirement. Specifically, USDA is interested in the following questions:

• Would the sharing of information help improve the integrity of the program?
• Would developing an information sharing process create undue burden on State agencies?
• What are the potential costs of developing an information sharing process?

Accordingly, this rule proposes to amend regulations found at § 225.14(c)(1) to include the flexibility outlined in previous guidance that SFAs and CACFP institutions in good standing applying to operate the SFSP do not have to provide further evidence of financial and administrative capabilities. In addition, this rule proposes to add a requirement that State agencies develop an information sharing process if programs are administered by separate agencies within the State.

C. Clarifying Performance Standards for Evaluating Sponsor Viability, Capability, and Accountability

Organizations applying to participate as sponsors in the SFSP must demonstrate ''financial and administrative capability for program operations'' (§ 225.14(c)(1)). It is critical for State agencies to determine if an applicant has the potential to be viable, capable, and accountable for operating the SFSP with program integrity, and will accept financial and administrative responsibility at all sites it intends to operate. While USDA has provided technical assistance for how State agencies should determine if a sponsor is financially and administratively capable, the regulations do not include specific metrics for assessing an applicant's capability for successful program participation. As a result, USDA has received requests from State agencies to provide additional clarity on the application requirements in § 225.14(c)(1).

In response to State agency requests regarding application requirements, and in an effort to streamline requirements across programs, this rule proposes to add performance standards for organizations applying to participate as SFSP sponsors that correspond to standards currently in place at § 226.6 for organizations applying to participate as CACFP sponsors. These detailed performance standards under § 226.6 assist State agencies in assessing an applicant's financial viability and financial management, administrative capability, and accountability. In addition, the rule clarifies that sponsors must demonstrate compliance with these performance standards as part of their management plan. USDA recognizes that program operations, requirements, and monitoring responsibilities differ between the CACFP and the SFSP. However, the proposed standards would ensure that an organization meets basic requirements for operating any Child Nutrition Program. These standards would apply equally to the CACFP and the SFSP, and would provide more clarity to State agencies responsible for evaluating sponsor applications in SFSP.

USDA recognizes that including these detailed performance standards in the management plan may require some State agencies and sponsors to modify current practices. Although USDA prioritizes flexibility for stakeholders to the greatest extent possible, these changes would bolster program integrity by supporting the ability of State agencies to more efficiently and consistently evaluate an applicant sponsor's financial and administrative capability. The proposed performance standards and management plan align with current regulations requiring sponsors to demonstrate financial and administrative capability for program operations.

The proposed standards are composed of three main performance elements. Performance standard 1 addresses financial viability and financial management, performance standard 2 addresses administrative capability, and performance standard 3 addresses internal controls and management systems that ensure program accountability. The proposed regulations include additional criteria for assessing each performance standard. It is important to note that these standards would not require anything new of SFSP operators. These standards are intended to clarify existing SFSP requirements and provide support and guidance to State agencies when evaluating sponsor applications.

Accordingly, this proposed rule would add performance standards for determining sponsor financial viability, administrative capability, and program accountability in a new § 225.6(d) against which State agencies must evaluate an applicant sponsor's financial and administrative capabilities. This rule also proposes to require in § 225.6(c)(2)(i) and new § 225.6(e) the submission of a management plan demonstrating compliance with the performance standards in the new § 225.6(d). Finally, this rule would amend §§ 225.14(a), 225.14(c)(1), and 225.14(c)(4) to reference application requirements, performance standards, and the management plan, respectively, in the reorganized § 225.6.

IV. Facilitating Compliance With Program Monitoring Requirements

A. First Week Site Visits

Section 225.15(d)(2) of the current regulations requires sponsors to visit each of their sites at least once during the first week of operation in the program. The purpose of conducting monitoring visits during the first week of site operation is for the sponsor to provide technical assistance to improve service delivery and to take action to promptly correct any deficiencies in program operations at the site level.

USDA has received consistent feedback from State agencies and sponsors, through a national stakeholder workgroup and other means, that some sponsors lack sufficient resources to conduct monitoring visits during the first week of operation at all site locations. Minimal staff to conduct visits, large distances between sites, particularly in rural areas, and insufficient funding were all cited as barriers to fulfilling this requirement. In order to provide sponsors the option to target their technical assistance and monitoring resources towards activities that will have the greatest impact on program integrity, USDA issued policy guidance that waived the requirement that sponsors visit sites during the first week of operation for the following:

- Sponsors in good standing in the NSLP or CACFP (SFSP 04–2013, *Summer Feeding Options for School Food Authorities,* November 23, 2012 and SFSP 06–2014, *Available Flexibilities for CACFP At-Risk Sponsors and Centers Transitioning to SFSP,* November 12, 2013, respectively); and
- Sites that had operated successfully the previous summer (or other most recent period of operation) and had no serious deficiency findings (SFSP 12–2011, *Waiver of Site Monitoring Requirements in the Summer Food Service Program,* April 5, 2011).

The waivers noted above were rescinded in 2018, as discussed in the background section of this proposed rule. Through implementation of these waivers for a number of years, USDA learned that waiving the first week site visit requirement eased burden for the sponsors and sites that met the requirements of the waiver. However, USDA also determined that site visits during the first weeks of operation are a crucial part of program monitoring and benefit sponsors and sites of all types. Early site visits facilitate good sponsor management at every site and ensure that site supervisors and staff are receiving the technical assistance needed to operate the SFSP in compliance with all program requirements, thereby maintaining program integrity.

As such, USDA is proposing to amend this site visit requirement in § 225.15(d)(2) to provide flexibility in the timeframe during which first monitoring visits must take place. This proposed rule would create a tiered framework, under which sponsors responsible for the management of 10 or fewer sites would be required to conduct the first site monitoring visit within the first week (seven calendar days) after the site begins program operations. Sponsors responsible for the management of more than 10 sites would be required to conduct the first site monitoring visits within the first two weeks (14 calendar days) after the site begins program operations. In cases where a site operates for one week or less, the site visit must be conducted during the period of operation. Based on currently available data from studies conducted by USDA and collected from State agencies, over 80 percent of sponsors participating in the program operate 10 sites or fewer. While this change would not impact the majority of sponsors, this flexibility would help alleviate logistical burdens for larger sponsors while strengthening monitoring practices.

In addition, the proposed rule includes changes to the current regulatory requirement that sponsors must conduct a review of the food service at each site during the first four weeks of program operations (§ 225.15(d)(3)). The proposed rule would allow these food service reviews to occur at the same time as the first monitoring visit. This would provide all sponsors with the opportunity to manage their resources in a way that best suits their program operations.

The intent of these changes is to allow sponsors of different sizes to adequately distribute their resources as necessary. USDA recognizes that through the waiver process conducted for summer 2019, many State agencies expressed the need for significant flexibilities related to first week site visits. USDA seeks to balance program integrity and administrative flexibilities and will consider all comments in drafting the final rule. To understand the full impact of these proposed changes, USDA is seeking specific comments on the:

- Number of sites that sponsors manage;
- Number of staff available to conduct site visits;
- Logistics of conducting site visits;
- Time and resources necessary, as well as any other factors, that impact the ability of sponsors to fulfill this requirement;
- Proposed tiers and whether this provides sufficient flexibilities for sponsors; and
- Benefits of requiring first monitoring visits at all sites versus those sites that are new to the program or experienced operational or administrative difficulties in the past.

While the data shows that the vast majority of sponsors are responsible for program operations at 10 sites or fewer,

USDA is interested in learning more about how the tiers, as proposed, would affect sponsors of different sizes and that operate under varying conditions.

Accordingly, this rule proposes to amend § 225.15(d)(2) of the regulations to create a tiered framework for first monitoring visits. This rule also proposes to amend § 225.15(d)(3) to allow sponsors to conduct a first monitoring visit and a food service review at the same time.

B. Establishing the Initial Maximum Approved Level of Meals for Sites of Vended Sponsors

Program regulations found at § 225.6(d) require that, when approving the application of a site, State agencies must establish for each meal service an approved level for the maximum number of children's meals which may be served under the program. This limit on the number of meals that may be served is commonly known as a ''site cap.'' For sites that prepare the meals that will be served and do not contract with a food service management company, this cap on the number of meals served may be no more than the number of children for which the facilities are adequate (§ 225.6(d)(1)(iii)). For sites that purchase meals from a food service management company, the regulations require that the initial maximum approved level be based on historical attendance, or by another procedure developed by the State agency if no accurate record from prior years is available. Once established, site caps may be increased or decreased based on information collected during site reviews or other documentation provided to the State agency by the sponsor demonstrating the need for an adjustment (§ 225.6(d)(2)). The regulations further require that State agencies disallow payment on any meals served over the site cap at vended sites (§ 225.11(e)(3)).

The purpose of a site cap is to encourage sponsors and State agencies to work closely together to develop reasonable estimates of anticipated site attendance. This ensures that a site does not purchase or produce meals outside of the capacity of the site and the needs of the community. Site caps are also an important tool for State agencies to monitor program management and determine if there is need for technical assistance or corrective action to ensure program integrity. As such, State agencies should work with sponsors to establish reasonable site caps that reflect the true capacity and capability of sites. However, USDA understands that State agencies and sponsors may have difficulty accurately assessing the capability of a site or the full needs of a community before operations begin. Circumstances may arise in which a site attracts more children than originally anticipated, such as an increase in the number of children coming for programs or activities offered at the same location. In other cases, a lack of historical data makes it difficult for State agencies and sponsors to accurately forecast participation levels.

In order to allow sponsors of vended sites to make timely adjustments to program operations, USDA issued policy guidance clarifying that sponsors may request an increase to existing site caps at any time prior to the submission of the meal claim forms for reimbursement that includes meals served in excess of the site cap (SFSP 16–2015, *Site Caps in the Summer Food Service Program—Revised,* April 21, 2015). As with any change to program operations, this guidance clarified that State agencies have the discretion to approve the request. Providing sponsors of vended sites the flexibility to adjust site caps prior to submitting a claim for reimbursement gives them the freedom to right-size their program operations in real time, be responsive to local conditions, and provide better customer service to their communities. For sites with no accurate historical information, USDA recommends the State agency consider participation at other similar sites located in the same area, documentation of programming taking place at the site, or statistics on the number of children residing in the area when determining initial site caps.

Accordingly, this rule proposes to amend § 225.6(h)(2)(iii) of the regulations, as re-designated through this rule, to clarify that sponsors of vended sites may request an adjustment to the maximum approved level of meal service at any time prior to submitting a claim for reimbursement. This rule would also amend § 225.6(h)(2)(i), as redesignated through this rule, to include further guidance for determining the maximum approved level of meal service for sites lacking accurate records from prior years.

C. Statistical Monitoring Procedures, Site Selection, and Meal Claim Validation for Site Reviews

State agencies are responsible for reviewing sponsors and sites to ensure compliance with program regulations. Current regulations in § 225.7(d)(2) discuss the frequency and number of required reviews, including the requirement in § 225.7(d)(2)(ii)(E) that a State agency conducting a sponsor review must review at least 10 percent of the sponsor's sites, or one site, whichever number is greater. USDA guidance also instructs State agencies to validate 100 percent of all meal claims from all sites under a sponsor that is being reviewed.

To provide flexibility to State agencies conducting sponsor and site reviews, § 225.7(d)(8) affords State agencies the option to use statistical monitoring procedures in lieu of the site monitoring requirements found in § 225.7(d)(2). However, USDA regulations and guidance do not provide clear instructions for how to develop and implement statistical monitoring procedures. In addition, USDA is not aware of any States that currently use statistical monitoring procedures. USDA reviewed feedback from State agencies, analyzed current State practices for selecting sites, and considered related sampling models that could be adapted as guidelines for statistical monitoring of sites in the SFSP. Through this process, USDA determined that it is not possible to create standard statistical monitoring procedures that will meet the needs of the program. As a result, USDA is proposing to remove the provision in § 225.7(d)(8) which currently allows the use of statistical monitoring for site reviews.

This rule will not change the current requirement that State agencies conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater. The rule proposes to increase the effectiveness of site reviews by providing guidance to assist State agencies and sponsors in selecting a sample of sites that is generally reflective of the variety of all a sponsor's sites. Through this guidance, site characteristics that will be reflected in a sponsor's sample include:

- The maximum number of meals approved to serve under §§ 225.6(h)(1)(iii) and 225.6(h)(2), as redesignated through this rule;
- Method of obtaining meals (*i.e.,* self-preparation, vended meal service);
- Time since last review by the State agency;
- Site type (*i.e.,* open, closed enrolled, camp);
- Type of physical location (*e.g.,* school, outdoor area, community center);
- Rural designation (*i.e.,* rural, as defined in § 225.2, non-rural); and
- Affiliation with the sponsor, as defined in § 225.2.

The State agency may use additional criteria to select sites including, but not limited to: Recommendations from the sponsoring organization, findings of other audits or reviews, or any indicators of potential error in daily meal counts (*e.g.,* identical or very

similar claiming patterns, or large changes in meal counts).

Additionally, this rule proposes a new method for conducting meal claim validations as a part of the sponsor review. USDA recognizes that conducting 100 percent meal claim validations for all sites under the sponsor being reviewed, instead of just the sampled sites, may be burdensome for some State agencies. In the case of large sponsors with many sites, this requirement often uses significant State agency resources and, based on feedback from State agencies, does not necessarily help improve the integrity of the program. For sponsors that run effective programs in compliance with program requirements, only a small portion of meal claims may need to be validated in order to confirm compliance. In recognition of this, the proposed changes would include a multi-step approach to site-based meal claim validation. State agencies would initially validate a small sample of claims and would only be required to validate additional claims if sufficient error is detected. The proposed method is shown in the table below.

MEAL CLAIM VALIDATION PROCESS

Step	Outcome	Result
Step 1: Validate 100 percent of meal claims only for the sites being reviewed to satisfy the requirement that State agencies must review 10 percent of sites, or one site, whichever is greater, operated by the sponsor being reviewed.	An average percent error of less than 5 percent is found. An average percent error of 5 percent or more is found.	• The review of meal claims for this sponsor is complete. • If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP. • The State agency must move to Step 2.
Step 2: Expand validation of meal claims to all meals for the review period for 25 percent of the sponsor's total sites.	An average percent error of less than 5 percent is found in the additional sites validated. An average percent error of 5 percent or more is found in the additional sites validated.	• The review of meal claims for this sponsor is complete. • If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP. • The State agency must move to Step 3.
Step 3: Expand validation of meal claims to all meals for the review period for 50 percent of the sponsor's sites.	An average percent error of less than 5 percent is found in the additional sites validated. An average percent error of 5 percent or more is found.	• The review of meal claims for this sponsor is complete. • If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP. • The State agency must move to Step 4.
Step 4: Expand validation of meal claims to all meals for the review period for 100 percent of the sponsor's total sites.	An average percent error of less than 5 percent is found in the additional sites validated. An average percent error of 5 percent or more is found.	• The review of meal claims for this sponsor is complete. • If necessary, the State agency must take fiscal action per the disregard threshold established for SFSP. • The review of meal claims for this sponsor is complete. • The State agency must take fiscal action, per the disregard threshold established for SFSP.

* Fractions must be rounded up (≥0.5) or down (<0.5) to the nearest whole number.

To calculate the percent error, subtract the total meals validated by the State agency for the reviewed sites from the total meals claimed by the sponsor for the reviewed sites, then divide by the total meals claimed by the sponsor for the reviewed sites and multiply by 100. By taking the absolute value, the percent error will be expressed as a positive number. An overclaim or an underclaim above the error threshold signals the need to expand the meal claim validation. Refer to the equations below for clarification.

Percent Error Formula:

$$\frac{M_R - MV_R}{M_R} * 100$$

Where:

M_R = total meals claimed by sponsor for reviewed sites

MV_R = total meals validated by State agency for reviewed sites

This incremental approach is intended to use State agency resources more efficiently and provide State agencies with a more targeted method for review. USDA is requesting specific comments on this process, including the anticipated impact on State agencies and burden, the accuracy of claim validations under this process, and the stepped increases and the percentage expanded at each step.

Accordingly, § 225.7(e)(5), as redesignated in this rule, includes site selection criteria. Section 225.7(e)(6), as redesignated in this rule, proposes a method for conducting meal claim validations. The proposed rule also removes the option for statistical monitoring currently found in § 225.6(d)(8). Finally the rule proposes to renumber and rephrase portions of § 225.7 to make the regulations easier to understand.

V. Providing a Customer-Service Friendly Meal Service

A. Meal Service Times

Section 225.16(c) of the current regulations sets forth restrictions on when meals can be served in the SFSP. Three hours are required to elapse between the beginning of one meal service, including snacks, and the beginning of another, with the exception that four hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. Further, the regulations state that the service of supper cannot begin later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances; however, in no case may the service of supper extend beyond 8 p.m. The duration of the meal service is limited to two hours for lunch or supper and one hour for all other meals. These restrictions do not apply to residential camps.

These strict requirements did not provide sufficient control at the State agency and sponsor level to allow for planned meal services that meet the needs of the community. Dating as far back as 1998, USDA has issued guidance that waives these requirements at certain sites where the requirements proved to create significant barriers to

efficient program operations and good customer service for the communities served. USDA heard consistent feedback from stakeholders that the restrictions presented challenges to aligning meal services with access to public transportation and community services. The waiver of meal time restrictions helped decrease administrative burden and provided more local level control to sponsors to plan the most effective meal services, thereby improving program operations. Therefore, in 2011, USDA published guidance that waived the meal service time restrictions for all SFSP sites while still requiring sponsors to submit meal service times to the State agency for approval (originating guidance has since been superseded and incorporated into SFSP 06–2017, *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers—Revised,* December 05, 2016). These waivers were rescinded in 2018, as discussed in the background section of this proposed rule. In 2019, 42 State agencies requested a waiver of meal time restrictions to allow them to continue implementation of what had previously been in effect through guidance. Of those 42 State agencies, 39 asserted that the waiver would result in improved program operations and, therefore, efficient use of resources.

USDA supports flexibilities that provide the best possible customer service without compromising program integrity. Through implementation of this waiver for many years, USDA learned that allowing sponsors and State agencies more latitude to schedule meal service times gives sponsors the ability to best meet the needs of their community. However, removing meal service time restrictions also allowed for meal services to be scheduled one right after another, without any time elapsing between the end of one meal service and the beginning of another. This is not in keeping with the intent of the SFSP to maintain service of distinct meals, and poses a potential risk to program integrity by making it more difficult for sites to keep accurate records of meals served and to monitor the meal service itself. Therefore, this rulemaking proposes to remove all existing meal service time restrictions, and would add a requirement that, at all sites except residential camps, a minimum of one hour must elapse between the end of one meal service and the beginning of another. While this rule is proposing to remove meal time restrictions, USDA encourages State agencies to work with sponsors to establish distinct meal times that not only meet the needs of the community, but also allow the State agency to conduct all necessary monitoring requirements. State agencies should only approve extended meal service times if they have the capability to properly monitor the sites.

Sponsors have also expressed the need for flexibilities to conduct meal services in the event of an unforeseen circumstance, such as a delayed delivery. Therefore, USDA also proposes to allow a State agency to approve for reimbursement meals served outside of the approved meal service time if an unanticipated event, outside of the sponsor's control, occurs. The State agency may request documentation to support approval of meals claimed when unanticipated events occur.

In recent years, it has come to USDA's attention that some sponsors have served a meal, which meets the meal pattern requirements for breakfast, in the afternoon after a lunch service was provided and claimed this meal as a reimbursable ''breakfast.'' The SFSP is statutorily designed to support ''programs providing food service similar to food service made available to children during the school year'' under the NSLP and SBP (42 U.S.C. 1761(a)(1)(D)). Currently, regulations governing the SBP define breakfast as a meal which is served to children in the morning hours and must be served ''at or close to the beginning of the child's day at school'' (7 CFR 220.2). As such, the service of a reimbursable, three component meal, or ''breakfast'', in the afternoon following the service of lunch is not supported by the statute. Therefore, a meal otherwise meeting the requirements for a breakfast meal is not eligible for reimbursement as a breakfast if it is served after any lunch or supper has been served and claimed for reimbursement.

This rule also proposes to amend § 225.16(c) to make it easier for users to locate and understand key information. Section 225.16(c)(1) will consolidate meal service time requirements currently referenced in other sections of part 225. This would specify that meal service times must be established by the sponsor for each site, be included in the sponsor's application, and be approved by the State agency. Current § 225.16(c)(6), which specifies that a sponsor may claim for reimbursement only the type(s) of meals for which it is approved to serve, would move to § 225.16(b). In addition, a reference to approved meal service times would be added to the State-sponsor agreement information in redesignated § 225.6(i)(7)(iv).

Accordingly, this proposed rule would amend § 225.16(c) to:

- Remove meal service time restrictions;
- Add a requirement that a minimum of one hour elapse between the end of one meal service and the beginning of another;
- Allow a State agency to approve for reimbursement meals served outside of the approved meal service time if an unanticipated event occurs;
- Clarify that meals claimed as a breakfast must be served at or close to the beginning of a child's day, and prohibit a three component meal from being claimed for reimbursement as a breakfast if it is served after a lunch or supper is served; and
- Reorganize § 225.16(c) to improve the clarity of the text.

This proposed rule would also amend §§ 225.16(b) and 225.6(i)(7)(iv) to improve the clarity of the regulations.

B. Off-Site Consumption of Food Items

Serving children in a supervised, safe, and congregate setting is a strength of the SFSP. Feeding children in a group setting has many benefits such as providing an opportunity for children to socialize, creating time for sites to offer activities, and allowing adults to monitor food safety and encourage healthy eating practices. The statutory requirement that children consume program meals onsite is found in the NSLA, which states that meal service in the SFSP is to be ''similar to food service made available to children during the school year'' under the NSLP and SBP (42 U.S.C. 1761). Current regulations provide that sponsors must agree to ''maintain children on site while meals are consumed'' (§ 225.6(e)(15)). USDA has heard from stakeholders that, in some cases, the congregate feeding requirement poses a barrier to participation and compliance with program requirements. Program operators have expressed that some children, particularly those who are younger, are unable to eat all of the meal components in one sitting and have suggested that they be allowed to take certain components off-site for later consumption. Further, sponsors and site supervisors have raised concerns about plate waste and the need to provide as much nutritious food as possible to children who receive a meal but may not be able to consume a complete meal in one sitting. As the SFSP operates in a wide variety of settings, including sites that do not offer activities or programming separate from the meal service, some sponsors report that keeping children on site for the entire consumption of the meal offered is challenging.

USDA initially issued guidance in 1998 that provided flexibilities for a fruit or vegetable item of the meal to be taken off-site for later consumption, with State agency approval, for sponsors with adequate staffing to administer this option (originating guidance has since been superseded and incorporated into SFSP 06–2017—*Meal Service Requirements in the Summer Meal Programs, with Questions and Answers—Revised,* December 5, 2016 [4]). USDA subsequently amended this flexibility in response to stakeholder feedback that it could be implemented in a way that maintained health and safety requirements. In 2013, USDA issued guidance that extended this option to all sponsors without the requirement for State agency approval, and expanded the eligible food items to include grains, allowing for a single item of fruit, vegetable, or grain to be taken off-site for later consumption (originating guidance has since been superseded and incorporated into SFSP 06–2017). However, the guidance maintained the State agencies' discretion to prohibit individual sponsors on a case-by-case basis from using the option if the State agency had concerns about adequate site monitoring, and provided that the State agency's decision to prohibit a sponsor from utilizing this option is not an appealable action. This flexibility is still in effect and is found in guidance issued in SFSP 06–2017.

In order to provide flexibilities that are responsive to stakeholder needs, USDA is seeking specific comments on State agencies' ability to monitor the effective implementation of this option. Additionally, USDA is interested in learning whether State agencies would use the discretion to prohibit certain sponsors from utilizing this option on a case-by-case basis.

Accordingly, this rule proposes to codify the flexibility for sponsors to allow children to take certain food items (*i.e.,* fruit, vegetable, or grain items) off-site for later consumption by amending § 225.6(i)(15), as redesignated through this rule, and adding a new § 225.16(h).

C. Offer Versus Serve

Current regulations in § 225.16(f)(1)(ii) allow SFAs that are program sponsors to ''permit a child to refuse one or more items that the child does not intend to eat.'' This concept is known as ''offer versus serve'' (OVS). The regulations also require that an SFA using the OVS option must follow the requirements for the NSLP set out in § 210.10. Finally, the regulations state that the sponsor's reimbursement must not be reduced if children do not take all required food components of the meal that is offered.

OVS is a useful tool that applies to menu planning and meal service, which allows children to decline some of the food offered in a reimbursable breakfast, lunch, or supper, excluding snacks. The goals of OVS are to simplify program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meal that is served. As the SFSP operates on a short timeframe, efficiently managing costs is a significant concern for sponsors. USDA has explored many options to help sponsors maintain effective practices that reduce costs while maintaining high quality meal service. The use of OVS was first extended to SFSP operations through the Personal Responsibility and Work Opportunity Act of 1996 (Pub. L. 104–193) which permitted SFAs sponsoring the SFSP to use OVS on school grounds. This change was made on the basis that since the option is regularly implemented during the school year, these sponsors could successfully implement the option during the summer. Recognizing that OVS was a useful tool to reduce food waste and food costs, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) extended the use of OVS to all SFSP sites sponsored by SFAs.

OVS has proved to be a popular method among both sponsors and participants.

After observing SFA sponsors successfully utilizing the option for many years and receiving significant feedback from stakeholders, including Congressional testimony about the positive effects of OVS on reducing food waste and containing program costs, USDA extended the option to use OVS to non-SFA sponsors (SFSP 11–2011, *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program,* October 31, 2011). USDA continued to clarify policies surrounding OVS, including guidelines for required meal service components under the SFSP meal pattern (SFSP 08–2014, *Meal Service Requirements,* November 12, 2013) and extending the use of the SFSP OVS meal pattern guidelines to SFA sponsors that had previously been required to follow the OVS requirements for the NSLP (SFSP 05–2015 (v.2), *Summer Meal Programs Meal Service Requirements Q&As—Revised,* January 12, 2015). This guidance took into account the distinguishing nature of the SFSP and NSLP, including variations in settings and resources, and adjusted the OVS requirements for use in the SFSP accordingly.

As mentioned in the background of this proposed rule, these waivers and extensions of statutory and regulatory requirements pertaining to OVS were rescinded in 2018. In 2019, 37 State agencies requested a waiver of programs requirements to allow them to continue utilizing OVS as had previously been permitted through guidance. State agencies that submitted OVS waiver requests for program year 2019 cited simplifying program administration, reductions in food waste, and efficient uses of program funds to maintain program integrity, to illustrate the importance of this waiver.

While USDA appreciates the positive benefits of the OVS option, the Department has some concerns about the effective implementation of OVS by non-SFA sponsors. Through on-site reviews, USDA has found meal pattern violations tied to the improper use of the OVS guidelines, specifically at sites sponsored by non-SFAs. The purpose of OVS is to decrease administrative burden and food costs while maintaining the nutritional integrity of meals served to children. In light of these findings, this rule proposes to retain the requirement that only SFA sponsors may utilize the OVS option; however, this rule also proposes to allow SFA sponsors electing to use the SFSP meal pattern to use SFSP OVS guidelines.

USDA is dedicated to providing effective flexibilities for sponsors to operate the program efficiently, which maintains program integrity without impacting the nutritional quality and service of meals provided to children. Understanding that OVS can be beneficial to sponsor operations if used properly, USDA is interested in learning more about the implementation of OVS by non-SFA sponsors, when allowed under a waiver. Specifically:

- What level of training do non-SFA sponsors receive in order to be able to properly implement OVS?
- Do non-SFA sponsors have the resources needed to properly implement OVS?
- What level of technical assistance do non-SFA sponsors receive?
- How would non-SFA sponsors be impacted if OVS were no longer an available option?
- What are the specific benefits to sponsors that use OVS?

Accordingly, this rule proposes to amend § 225.16(f)(1) of the regulations to clarify meal service requirements for

[4] *https://www.fns.usda.gov/meal-service-requirements-summer-meal-programs-questions-and-answers-%E2%80%93-revised.*

SFA sponsors electing to use OVS under the SFSP meal pattern.

VI. Clarification of Program Requirements

A. Reimbursement Claims for Meals Served Away From Approved Locations

As defined in § 225.2, a site is ''a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.'' Meals are reimbursable only when served at sites that have been approved by the State agency. Site approval applies only to the specific location that was approved, not to meals removed from that site for service at another location that has not been approved. The State agency must approve any changes in site service time or location after the initial site approval. However, USDA granted State agencies the flexibility to approve exceptions to this requirement for the operation of field trips under FNS Instruction 788–13: *Sub-Sites in the Summer Food Service Program* and policy guidance, *Field Trips in the Summer Food Service Program (SFSP),* February 3, 2003.[5]

USDA is proposing to amend § 225.6(i), as redesignated through this rule, and add a new § 225.16(g) to allow sponsors the option to receive reimbursement for meals served away from the approved site. In accordance with current guidance, sponsors would be required to notify the State agency in advance that meals will be served away from the site, but formal approval of the alternative meal service is not a requirement. Under these proposed changes, State agencies have the discretion to set time limits for how far in advance of the field trip sponsors would send notification to the administering agency. This procedure is similar to the notification requirements of field trips in the CACFP, where providers must notify either their sponsoring organization or the State agency in advance of a planned field trip. If the State agency is not notified prior to the SFSP field trip, meals served may be considered ''consumed off-site'' and the State agency has the discretion to not reimburse those meals. In addition, in order to operate field trips in the SFSP, the sponsor would have to be capable of meeting all Program requirements on field trip days, including applicable State and local health, safety, and sanitation standards, as determined by the State agency. When considering if sponsors are eligible to receive reimbursement for meals served away from approved sites, State agencies should determine that all program requirements, including all applicable State and local health, safety, and sanitation standards will be met while traveling and at the field trip meal service location.

The proposed rule would also require sponsors of open sites to continue operating at the approved open site location while the field trip occurs. If this is not possible (for example, if there is limited staff coverage), the sponsor must notify the community of the change in meal service and provide information about alternative open sites where community children can receive free summer meals. Accordingly, the proposed rule addresses meals served away from the approved site location during a field trip at redesignated § 225.6(i)(7)(v) and in a new § 225.16(g).

B. Timeline for Reimbursements to Sponsors

Current regulations in § 225.9(d)(4) require that State agencies must forward reimbursements to sponsors within 45 calendar days of receiving a valid claim. The regulations also require that if a sponsor submits a claim for reimbursement that is incomplete or invalid, the State agency must return the claim to the sponsor within 30 calendar days with an explanation of the reason for disapproval. If the sponsor submits a complete revised claim, the State agency must take final action within 45 calendar days of receipt. These requirements are necessary to ensure that sponsors receive reimbursement for meals served in a timely manner.

However, certain circumstances may arise that would require State agencies to conduct an extended review of a sponsor's claim for reimbursement to determine if it is incomplete or invalid, and if the claim should be denied. In recent years, USDA has received numerous inquiries and waiver requests to extend the timeline for taking final action on a claim for reimbursement within 45 calendar days of receiving a revised claim, as required in § 225.9(d)(4), due to concerns that the sponsor may have engaged in unlawful acts such as fraud. State agencies have stated that the 45 calendar day timeline to complete a final action is not sufficient to conduct a thorough review of all the sponsor's records and make a determination that the claim is valid.

After notifying the sponsor of disapproval of the claim within 30 calendar days of receipt, the State agency can expand the review and meal claims validations in order to prevent the potential payment of a suspected unlawful claim. While § 225.9(d)(10) of the regulations provides State agencies with the ability to use evidence found in audits, reviews, or investigations as the basis for nonpayment of a claim for reimbursement, the State agency may not be able to make this determination within the given timeframe. Therefore, this rule proposes to clarify that even if a State agency determines, in accordance with § 225.9(d)(10), that there is reason to believe the sponsor has engaged in unlawful acts, the State agency must still return the claim to the sponsor within 30 calendar days with an explanation of the reason for disapproval. Additionally, this rule proposes to exempt the State agency from requirements in § 225.9(d)(4) to take final action on a claim within 45 calendar days of receipt of a revised claim if the State agency has reason to believe that the sponsor has engaged in unlawful acts that would necessitate an expanded review. However, the State agency must still communicate its findings to the sponsor and allow the sponsor to submit a revised claim as allowed by § 225.9(d)(4). The State agency must complete final action on the revised claim once the review has concluded. Once final action is taken, the State agency must advise the sponsor of its rights to appeal consistent with the due process provided by the regulations in § 225.13(a).

Accordingly, this rule proposes to amend regulations found in § 225.9(d)(4) to include the clarification that if the claim is determined to be potentially unlawful based on § 225.9(d)(10), the State agency must still disapprove the claim within 30 calendar days with an explanation of the reason for disapproval. This rule also proposes to amend regulations in § 225.9(d)(10) to clarify that State agencies may be exempt from the 45 calendar day timeframe for final action in § 225.9(d)(4) if more time is needed to complete a thorough examination of the sponsor's claim.

C. Requirements for Media Release

An essential component to the successful operation of the SFSP is outreach and notification to the community about the availability of meals. Current regulations at § 225.15(e) require all sponsors operating the SFSP, including sponsors of open sites, camps, and closed enrolled sites, to annually announce the availability of free meals in the media serving the area from which the sponsor draws its attendance. The regulations specify that media releases issued by sponsors of camps or closed enrolled sites must include income eligibility standards, a statement about automatic eligibility to receive free meal benefits at eligible program

[5] *https://www.fns.usda.gov/sfsp-020303.*

sites, and a civil rights statement. However, the requirements of each type of sponsor are not clearly presented, leaving some State agencies and sponsors to make inadvertent errors in fulfilling requirements. Additionally, USDA has received questions from State agencies and has analyzed data from management evaluations that show that the current requirements are difficult to understand and implement correctly. To assist sponsors, USDA has issued guidance and resources encouraging State agencies to complete this requirement on behalf of all sponsors of open sites in their State through an all-inclusive Statewide media release (SFSP 07–2014, *Expanding Awareness and Access to Summer Meals,* November 12, 2013).

In order to make it easier for SFSP sponsors to satisfy community notification requirements, USDA is proposing to codify current guidance allowing State agencies the discretion to issue a media release on behalf of all sponsors operating SFSP sites, including camps, in the State. This rule would require State agencies using this option to ensure that all notification requirements for camps and other sites not eligible under § 225.2, paragraphs (a) through (c), in the definition of ''areas in which poor economic conditions exist'' are met. The proposed changes also clarify that, in the absence of a Statewide notification, sponsors of camps and other sites not eligible under § 225.2, paragraphs (a) through (c), in the definition of ''areas in which poor economic conditions exist'' are only required to notify participants or enrolled children of the availability of free meals, and do not need to issue a media release to the public at large. This would limit the sponsor's responsibility to notify only those who could potentially receive meals at the site. However, sponsors could still opt to issue public notification of their meal program if they determine it is appropriate. Finally, the section would be renamed ''Notification to the Community'' to more accurately describe the types of activities required of sponsors, including sponsors of camps and closed enrolled sites that will no longer be required to issue a media release.

Accordingly, this rule proposes to amend § 225.15(e) by renaming the subsection ''Notification to the Community,'' specifying that State agencies may issue a media release on behalf of all sponsors operating open SFSP sites in the State, and clarifying that sponsors of camps and other sites not eligible under the definition of ''areas in which poor economic conditions exist'' must *only* notify participants or enrolled children of the availability of free meals.

D. Annual Verification of Tax-Exempt Status

In order to be eligible to participate in the SFSP, sponsors must maintain their nonprofit status (§§ 225.2 and 225.14(b)(5)). In 2011, the Internal Revenue Service changed its filing requirements for some tax-exempt organizations. Failure to comply with these requirements could result in the automatic revocation of an organization's tax-exempt status. Due to this change, USDA released guidance for confirming sponsors' tax-exempt status, which requires that State agencies annually review a sponsor's tax-exempt status (SFSP 04–2017, *Automatic Revocation of Tax-Exempt Status—Revised,* December 1, 2016). Accordingly, this rule proposes to codify the requirement for annual confirmation of tax-exempt status at the time of application by amending § 225.14(b)(5).

VII. Important Definitions in the SFSP

A. Self-Preparation Versus Vended Sites

Current regulations in § 225.2 define the terms ''self-preparation sponsor'' and ''vended sponsor.'' These definitions are critical to the proper administration of the SFSP because reimbursement rates are determined, in part, based on the sponsor's classification as either self-preparation or vended. Per statutory requirements, reimbursement rates are calculated using operating and administrative costs (42 U.S.C. 1761(b)(1) and 42 U.S.C. 1761(b)(3)) to determine a reimbursement rate for each meal served. Rates are higher for sponsors of sites located in rural areas and for ''self-preparation'' sponsors that prepare their own meals at sites or at a central facility instead of purchasing from vendors. This is due to the higher administrative costs associated with program operation in rural areas and preparing meals rather than contracting with a food service management company. Therefore, correct classification of self-preparation or vended sponsors is necessary for proper program management and maintaining the fiscal integrity of the program.

In recent years, advances in technology have allowed State agencies and sponsors to develop increasingly sophisticated reporting systems that are capable of collecting detailed information on the number and type of meals being served. Some State agencies have systems that allow sponsors to report the number and type of meals served at each site, rather than aggregating and reporting this information at the sponsor level, which is the current requirement. Accordingly, some State agencies have developed the ability to classify individual sites as self-preparation or vended sites, rather than classifying a sponsor and all of its sites as one type or the other. USDA is aware that some State agencies that have these capabilities also provide reimbursements based on the classification of the individual sites. For example, if a sponsor operates some sites as self-preparation and some sites as vended, the State agency provides a mix of reimbursements. This is significant because individual sponsors may support a range of sites, including sites self-preparing meals, sites utilizing a vendor contract to receive meals, or sites that use both methods of obtaining meals (*e.g.,* offering a self-prepared breakfast and a vended lunch). Providing reimbursements to sponsors that operate a mix of sites based on the individual site classification is more accurate and helps protect the integrity of the SFSP.

In recognition of the advances being made at the State agency and local level, this rule proposes to add definitions for ''self-preparation site'' and ''vended site,'' and to require that sponsors and sites include in their application to participate in the SFSP information about how meals will be obtained for each site. While adding these definitions is an important first step, USDA is interested in learning more about current data collection practices. At this time, USDA does not have information on how many State agencies are capable of collecting meal claim information at the site level, how many State agencies currently collect information at the site level, how many State agencies provide reimbursement based on the individual site classification, and the potential impact of this practice on claiming and monitoring. To better understand the current state of claiming systems nationwide and the implications for policy development, including potential changes to regulatory requirements, USDA is gathering more information by soliciting specific feedback on this issue. Therefore, this proposed rule is requesting comments on the following questions:

- How many State agencies have systems that are capable of receiving claims at the site level? Are any State agencies currently receiving claims at the site level and providing reimbursement based on the individual site classification?

• What are the costs and benefits of implementing systems that can receive claims at the site level?

• How common or uncommon is it for a site to use two different methods of obtaining meals (*e.g.,* offering a self-prepared breakfast and a vended lunch)?

• Do any State agencies have systems that are able to account for different methods of obtaining meals within the same site?

• What would be the impact on claiming and monitoring of collecting and paying claims at the site level?

Accordingly, this rule proposes to add definitions to § 225.2 for ''self-preparation site'' (*i.e.,* a site which prepares the majority of meals that will be served at its site and does not contract with a food service management company for unitized meals, with or without milk, or for management services) and ''vended site'' (*i.e.,* a site which serves unitized meals, with or without milk, from a food service management company). In addition, this rule proposes to amend §§ 225.6(c)(2)(viii) and 225.6(c)(3)(v) to require a summary of how meals will be obtained at each site as part of the sponsor application.

B. Eligibility for Closed Enrolled Sites

The current definition of closed enrolled sites included in § 225.2 requires that at least 50 percent of the enrolled children at the site are eligible for free or reduced-price meals under the NSLP and the SBP, as determined by approval of applications in accordance with § 225.15(f). This section outlines the requirement to use income eligibility forms to ''determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of 'areas in which poor economic conditions exist' in § 225.2''. To reduce administrative burden on sponsors, USDA published guidance in 2002 that permitted closed enrolled sites to establish eligibility based on data of children eligible for free and reduced priced meals in the area where the site was located (*Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites,* November 17, 2002 [6]). After over 15 years of implementing this waiver, this flexibility has been shown to reduce administrative burden on sponsors of closed enrolled sites and eliminate barriers to participation for children and families enrolled at these sites. State agency waiver requests for Program year 2019 confirm that these remain the principal benefits of permitting closed enrolled cites to rely on area eligibility rather than applications. Requests from 36 out of 40 State agencies noted that the reduction in administrative costs can be more productively invested in technical assistance and oversight to improve the quality of services provided to participants and strengthen program integrity. Further, the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, amended the definition of ''areas in which poor economic conditions exist'' in the NSLA. This revised definition allows for enrolled sites to demonstrate eligibility through ''other means approved by the Secretary.''

Accordingly, this proposed rule would amend the definitions of ''areas in which poor economic conditions exist'' and ''closed enrolled site'' in § 225.2 to clarify eligibility requirements and include eligibility determination based on area data of children eligible for free and reduced-price meals. This proposed rule would also update redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to establish the frequency at which the site must re-establish eligibility, if based on area data. This rule would make a technical correction to § 225.15(f) to reflect changes made to the definition of ''areas in which poor economic conditions exist.''

C. Roles and Responsibilities of Site Supervisors

Currently, SFSP regulations do not have a singular definition outlining the roles and responsibilities of site supervisors. USDA does publish guidance specifically for site supervisors as a tool to facilitate program operations that are consistent with regulations. The role of the site supervisor is critically important to proper management of the SFSP. USDA has determined that clearly defining the role of the site supervisor, including requiring that the site supervisor must be on site during the meal service, would help sponsors comply with program requirements and improve program integrity.

Accordingly, this rule proposes to add the following definition in § 225.2 for ''site supervisor:'' the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including but not limited to: ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

D. Unaffiliated Sites

In the SFSP, many sponsors operate sites with which they have a legal affiliation. However, there are instances when a sponsor will provide meals to a site with which it has no legal affiliation other than an agreement to conduct a meal service. Section IV. C of this rule proposes to include this type of situation as a characteristic that should be taken into consideration when determining which sites a State agency should choose to review during a sponsor review in order to fulfill requirements set forth in § 225.7(e)(4)(v). The current regulations under § 225.2 do not include a definition for ''unaffiliated site.'' Therefore, this rule would add a definition for ''unaffiliated site'' to help State agencies determine which sites should be selected for review when conducting a sponsor review. Accordingly, this rule proposes to add the following definition in § 225.2 for ''unaffiliated site:'' a site that is legally distinct from the sponsor.

E. Unanticipated School Closure

The NSLA allows service institutions to provide meal services to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order, or similar cause. The statute further requires that the meal service must take place at non-school sites. The service of meals during these unanticipated school closures makes the SFSP a critical piece of the food safety net, especially in disaster situations. While the regulations currently provide requirements for approving sponsors to serve during unanticipated school closures, there is not a specific regulatory definition of unanticipated school closure. This rule proposes to add a definition of ''unanticipated school closure'' that aligns with statutory requirements outlined in section 13(c)(1) of the NSLA, 42 U.S.C. 1761(c)(1), and existing regulatory provisions related to unanticipated school closures. Including this definition would also allow regulatory text to be streamlined and remove duplicative and repetitive references throughout the regulations. Accordingly, this rule proposes to add a definition in § 225.2 for ''unanticipated school closure'' and revise all references to unanticipated school closures.

F. Nonprofit Food Service, Nonprofit Food Service Account, Net Cash Resources

Financial management in the SFSP is critical to the success of the Program, especially considering the short duration during which most summer programs operate. As such, it is

[6] No longer available.

important that key terms related to financial management are clearly defined. To create consistency across Child Nutrition Programs, this rule proposes to include definitions of ''nonprofit food service,'' ''nonprofit food service account,'' and ''net cash resources'' that would align with the terms already defined under the NSLP in 7 CFR 210.2. Accordingly, this rule proposes to add definitions in § 225.2 for ''nonprofit food service,'' ''nonprofit food service account,'' and ''net cash resources.''

VIII. Miscellaneous

This rule proposes four other miscellaneous provisions that will help clarify program requirements.

A. Authority To Waive Statute and Regulations

Section 12(l) of the NSLA, 42 U.S.C 1760(l), provides the Secretary with the authority to waive statutory requirements under the NSLA or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) and any regulations issued under either Act for State agencies and eligible service providers if certain conditions are met. The Secretary may only approve requests that facilitate the ability of the State agency or eligible service provider to carry out the purpose of the program and that do not increase the overall cost of the Federal Government program. The Secretary does not have the authority to waive certain requirements including, but not limited to, the nutritional content of the meals served, Federal reimbursement rates, or the enforcement of any statutory right of any individual. USDA has issued guidance on the process for requesting a waiver and data reporting requirements for approved waivers (SFSP 05–2018, *Child Nutrition Program Waiver Request Guidance and Protocol—Revised,* May 24, 2018).

USDA routinely works with State agencies to determine when and how waiver authority can best be applied to improve program operations. In 1996, USDA issued technical assistance that outlined the responsibilities of State agencies, especially when submitting a waiver request on behalf of eligible service providers. The State agency should act as both a facilitator and a collaborator, and as such, is expected to provide technical assistance to eligible service providers requesting a waiver. As State agencies have the ability to best assess sponsor operations and capability, State agencies should review waiver requests from eligible service providers and determine whether the requesting sponsor has the capacity to implement the waiver. This includes the eligible service provider's ability to maintain a high level of program integrity and to capture data on the impacts of the waiver. State input on the capabilities of the eligible service provider are critical to helping USDA make a determination about whether an approval of the waiver would benefit the program. USDA is not in a position to evaluate a sponsor's capability to implement a waiver while maintaining program integrity, and relies upon a State agency's assessment of the sponsor's ability to do so. This rule proposes to address this responsibility in regulatory text.

Further, State agencies are responsible for monitoring sponsor activities, including the implementation of waivers. State agencies and sponsors must work together in partnership to ensure that all monitoring requirements are met. The approval of a waiver of certain statutory or regulatory requirements does not alleviate the State agency or the eligible service provider of the responsibility to properly monitor program operations. If a State agency sends forward a waiver request, whether Statewide or for individual service providers, the State agency is agreeing that it can and will fulfill all other regulatory requirements, including monitoring and oversight. Additionally, by submitting a request, the State agency attests that the request meets all requirements for waiver requests outlined in section 12(l) of the NSLA.

Under the proposed changes in this rule, the State agency would also have the discretion to deny a waiver submitted by an eligible service provider. There are many reasons why a State agency may choose to deny a request from an eligible service provider. For example, if the request does not meet the criteria for approvable requests outlined in section 12(l) of the NSLA, the State agency should deny the request or work with the eligible service provider to ensure that all statutory requirements are met. Additionally, as mentioned previously in this section, the State agency plays an important role in evaluating and monitoring sponsor operations. The State agency could deny the request of a sponsor if the State agency does not have confidence that the sponsor has the capability to implement the waiver while maintaining a high level of program integrity. Further, if the State agency or the sponsor does not have the resources to properly implement, monitor, and evaluate the impacts of the waiver, the State agency could deny the request.

To ensure the waiver process is efficient and upholds a high level of program integrity, USDA is seeking comments on the process of requesting a waiver, monitoring implementation of the waiver, and reporting data on waivers issued through this authority.

Although regulations are not needed to continue implementing regulatory waivers, this rule proposes to clarify that USDA has the authority to issue waivers of statutory and regulatory requirements for all Child Nutrition Programs. Accordingly, this rule proposes to add the following new paragraphs to codify USDA's authority to waive statutory and regulatory requirements for all Child Nutrition Programs:

- § 210.3(d);
- § 215.3(e);
- § 220.3(d);
- § 225.3(d); and
- § 226.3(e).

B. Duration of Eligibility

Statutory requirements found in the NSLA at 42 U.S.C. 1761(a)(1)(A)(i)(I–II) authorize the use of school data and census data to establish area eligibility in the SFSP. The NSLA also establishes that area eligibility determinations made using school or census data must be redetermined every five years. This rule proposes to amend the duration of eligibility for open sites and restricted open sites based on school and census data from three years to five years, in accordance with the NSLA. Accordingly, this rule proposes to change the regulations in redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to require submission of eligibility documentation every five years.

C. Methods of Providing Training

As technology has advanced, sponsors and State agencies have the capability to provide mandatory trainings via the internet. Having a variety of training opportunities and formats can accommodate varying sponsor needs, while at the same time minimizing the time and expense incurred by the State agency. Accordingly, this rule proposes to amend regulations in § 225.7(a) to include the option for training to be conducted via the internet.

D. Meal Quality Facility Reviews

Current regulations require that part of any review of a vended sponsor must include a food service management company facility visit. Through management evaluations and technical assistance, USDA has learned that this requirement is unclear and places undue burden on State agencies. The purpose of the food service management company facility visit is to verify that meals being served are prepared, stored, and transported in such a manner that

complies with local health and safety standards. In order to clarify review requirements, this rule proposes to rename the section title from ''Food Service Management Company Visits'' in current § 225.7(d)(6) to ''Meal Quality Facility Review,'' to clarify that each facility should be reviewed at least one time during the program year, and redesignate as § 225.7(i).

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

Economic Summary for ''Strengthening Integrity in the Summer Food Service Program'' Proposed Rule

As described in the preamble to the proposed rule, changes made by the proposed rule ''update important definitions, simplify the application process, enhance monitoring requirements, and provide more discretion at the State agency level to manage program operations.''

The proposed rule codifies in regulation a number of waivers and policy guidance currently in place to ''streamlin[e] and clarify program requirements.''

Although not currently in regulation, a majority of the proposed changes have already been implemented in the operation of the SFSP through policy guidance and remain in effect. Other proposed changes were previously implemented through policy guidance, but were rescinded in October 2018. These rescinded policies are currently in effect through approved individual State waivers. The proposed changes that have already been implemented in the operation of the SFSP through policy guidance or waivers are as follows:

1. Streamlining Program Requirements
   a. Application Procedures for New Sponsors [7]
   b. Demonstration of Financial and Administrative Capability
2. Facilitating Compliance with Program Monitoring Requirements
   a. Establishing the Initial Maximum Approved Level of Meals for Sites of Vended Sponsors
3. Providing a Customer-Service Friendly Meal Service
   a. Meal Service Times
   b. Off-site Consumption of Food Items
   c. Offer versus Serve [8]
4. Clarification of Program Requirements
   a. Annual Verification of Tax-Exempt Status
5. Important Definitions in the SFSP
   a. Eligibility for Closed Enrolled Sites
   b. Unanticipated School Closure
6. Miscellaneous
   a. Authority to Waive Statute and Regulations

Since the above changes are currently in effect in program operations through policy guidance or State waivers, we estimate no change in participation, meal costs, or costs to State agencies, sponsors, or sites, beyond the savings generated by the decreased burden needed to fulfill program requirements under the proposed changes.

A table with all of the burden changes as outlined in the ICR is available in this document.

The proposed changes that are not currently implemented in program operations through policy guidance are as follows (each proposed change includes a description of the expected impact to the program, and an explanation for why we do not estimate additional costs associated with the proposed changes):

1. Streamlining Program Requirements

a. Clarifying Performance Standards for Evaluating Sponsor Viability, Capability, and Accountability

i. *Program Impact:* This rule proposes to add performance standards for organizations applying to participate as SFSP sponsors that correspond to standards currently in place at § 226.6 for organizations applying to participate as CACFP sponsoring organizations, in response to State agency requests regarding application requirements, and in an effort to streamline requirements across programs. These detailed performance standards under § 226.6 assist State agencies in assessing an applicant's financial viability and financial management, administrative capability, and accountability.

ii. *Cost Impact:* USDA recognizes that including these detailed performance standards in the management plan may require some State agencies and sponsors to modify current practices. Although USDA prioritizes flexibility for stakeholders to the greatest extent possible, these changes would bolster program integrity by supporting the ability of State agencies to more efficiently and consistently evaluate an applicant sponsor's financial and administrative capability. However, we do not estimate any cost or participation effects. It is possible that adopting these performance standards could generate program efficiencies and potential savings in the long-term, as applicants to sponsor the Program must demonstrate their ability to meet the performance standards for financial viability, administrative capability, and Program accountability to be able to operate the program. Cost impacts would be difficult to quantify because any savings directly tied to the performance standards would be challenging to isolate.

2. Clarification of Program Requirements

a. Reimbursement Claims for Meals Served Away From Approved Locations

i. *Program Impact:* SFSP meals are reimbursable only at approved sites. Via policy guidance, USDA granted State agencies the flexibility to approve exceptions to this requirement for the operation of field trips. This rule proposes to clarify the regulatory requirements that if an SFSP sponsor wishes to serve a meal away from the approved site location, they are required to notify the State agency, but formal approval of the alternative meal service is not a requirement.

ii. *Cost Impact:* This provision may reduce the burden on both State agencies and sponsors, if State agencies had interpreted previous guidance to mean that State agencies had to formally approve field trips, instead of simply receiving notification of the field trip. According to an internal USDA analysis, 76 percent of sponsors and 63 percent of sites reported serving program meals during off-site field trips at some point

[7] Although this flexibility is currently implemented in policy guidance (and therefore we do not estimate a separate savings for this provision), we note that this provision provides most of the burden hour savings as detailed in the ICR table on p. 76–77.

[8] As mentioned in the background of the proposed rule, the waivers and guidance that allowed non-SFA sponsors to implement offer versus serve were rescinded in 2018, effective for the 2019 summer meals program. The proposed rule keeps the requirement that only SFA providers may use offer versus serve; therefore, we estimate no change in costs or burden due to this provision, since it reflects existing requirements.

in time during the summer.[9] However, estimating any potential burden reduction is difficult because prior policy guidance on State approval for serving meals at an alternate location may have been inconsistently applied. As a result, this provision would provide a minimal reduction in burden for some States (*i.e.,* States that currently allow for service of field trip meals with just a notice to the State agency) and a larger impact for States that use a formal approval process. This provision is providing clarity on the requirement currently provided through policy guidance.

b. Timeline for Reimbursements to Sponsors

i. *Program Impact:* This provision clarifies a point of confusion for State agencies not addressed in current regulation. The proposed rule would state that if a sponsor's claim is determined to be potentially unlawful based on § 225.9(d)(10), the State agency must still disapprove the claim within 30 calendar days with an explanation of the reason for disapproval. This rule also proposes to amend regulations in § 225.9(d)(10) to clarify that State agencies may be exempt from the 45 calendar day timeframe for final action in § 225.9(d)(4) if more time is needed to complete a thorough examination of the sponsor's claim.

ii. *Cost Impact:* We estimate no change in cost associated with this provision.

c. Requirements for Media Release

i. *Program Impact:* Current regulations at § 225.15(e) outline the requirement for each sponsor operating the SFSP to annually announce the availability of free meals in the media serving the area from which it draws its attendance, but the current requirements are not clear about what is required to be included in the release and, therefore, cause significant confusion. The changes clarify that sponsors of camps and other sites not eligible under the definition of ''areas in which poor economic conditions exist'' must only notify participants or enrolled children of the availability of free meals. This rule also proposes to include a flexibility that provides State agencies the discretion to issue a media release for all sponsors operating SFSP sites in the State, as long as the notification meets the requirements outlined in the provision.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. It should be noted that this requirement will likely result in a burden reduction, especially for sponsors of closed sites, such as camps, and potentially on all sponsors in a State, if the State agency issues a compliant statewide notification.

3. Facilitating Compliance With Program Monitoring Requirements

a. First Week Site Visits

i. *Program Impact:* Existing regulatory requirements state that sponsors are required to visit each of their sites at least once during the first week of operation under the program and must promptly take such actions as are necessary to correct any deficiencies. Although USDA had previously waived some of these requirements, these waivers were rescinded in 2018. This proposed rule would create a tiered framework, under which sponsors responsible for the management of 10 or fewer sites would be required to conduct the first site monitoring visit within the first week (seven calendar days) after the site begins program operations. Sponsors responsible for the management of more than 10 sites would be required to conduct the first site monitoring visits within the first two weeks (14 calendar days) after the site begins program operations. In cases where a site operates for one week or less, the site visit must be conducted during the period of operation. Based on currently available data from studies conducted by USDA and collected from State agencies, over 80 percent of sponsors participating in the program operate 10 sites or fewer. While this change would not impact the majority of sponsors, this flexibility in the timeline during which the first monitoring visit must take place would help alleviate logistical burdens for larger sponsors while maintaining strong monitoring practices.

ii. *Cost Impact:* We estimate minimal change in costs due to this provision. This provision will not affect the regulatory and statutory requirements for most providers, and it provides additional flexibility to the sponsors it does affect. Therefore, this provision may create cost savings for some sponsors with more than 10 sites (in 2015, 18.4 percent of sponsors had more than 10 sites),[10] though we are not able to estimate any possible savings.

b. Statistical Monitoring Procedures, Site Selection, and Meal Claim Validation for Site Reviews

i. *Program Impact:* In order to provide flexibility to State agencies conducting sponsor and site reviews, current regulations at § 225.7(d)(8) provide State agencies with the flexibility to use statistical monitoring procedures in lieu of the site monitoring requirements found in § 225.7(d)(2). However, USDA regulations and guidance do not provide clear instructions for how to develop statistical monitoring procedures. After significant research and feedback from State agencies obtained through various workgroups, USDA has determined that any measure or formula that would be statistically significant and thus provide adequate monitoring of site meal claim forms is not feasible. Accordingly, USDA is proposing to remove the provision at § 225.7(d)(8) allowing the use of statistical monitoring during site reviews and validation of meal claims. Additionally, this rule proposes to codify a method for conducting meal claim validations. The Department recognizes that the guidance for conducting 100 percent meal claim validations may be burdensome for some State agencies. Therefore, this rule proposes a stepped increase for meal claim validations (*e.g.,* if the State agency reviews 10 percent of a sponsor's sites and finds a 5 percent or greater error rate, the State agency must take fiscal action and expand the meal validation review to 25 percent of the sponsor's sites; if a 5 percent or greater error rate is found, the State agency must then review 50 percent of the sponsor's sites; and if a 5 percent or greater rate continues to be found, then the State agency must review 100 percent of a sponsor's sites). This incremental approach will use State agency resources more efficiently and provide State agencies a more targeted method for review.

ii. *Cost Impact:* These changes remove an unused option for site monitoring (statistical monitoring procedures) and increase State flexibility in how to conduct meal validation reviews. Although it is likely these flexibilities will generate some savings for State agencies, the impacts are not included as potential savings in our savings estimates for this rule because USDA lacks sufficient information to develop sound estimates. This provision impacts sponsors with more than one site (in 2015, 57 percent of sponsors had one site, while 43 percent of sponsors had more than one site).[11] The impact of the

[9] 2015 USDA internal SFSP study. (In 2015, USDA collected information about SFSP operations, sponsors, and sites through a nationally representative survey administered to State agencies, SFSP sponsors, and SFSP sites.)

[10] 2015 USDA internal SFSP study.

[11] 2015 USDA internal SFSP study.

proposed meal claim validation process would depend on the average error rate, which determines how many claims the State will ultimately review. USDA does not know the distribution of meal claim error rates in SFSP and cannot estimate how many fewer claims would be reviewed under this proposed rule.

4. Important Definitions in the SFSP

a. Self-Preparation Versus Vended Sites

i. *Program Impact:* As sponsor sophistication and technology have developed, the operation of SFSP has shifted. State agencies have systems that allow for site based claiming, which provides more granular information about the number and types of meals being served at individual sites, rather than aggregating this information at the sponsor level. Additionally, as sponsors have grown, many used a mixed model of sponsorship, with some sites self-preparing meals and others utilizing a vendor contract to receive meals. In light of these changes, State agencies have the ability to classify sites as self-preparation or vended sites, rather than sponsors. As such, the regulations require updates that reflect the current nature of program operations. Accordingly, this rule proposes to add definitions to § 225.2 for ''self-preparation site'' and ''vended site''. Additionally, this rule proposes to clarify requirements at § 225.6(c)(2) to require a summary of how meals will be obtained at each site as part of the sponsor application.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

b. Roles and Responsibilities of Site Supervisors

i. *Program Impact:* Currently, SFSP regulations do not have a singular definition outlining the roles and responsibilities of site supervisors. USDA does publish guidance specifically for site supervisors as a tool to facilitate program operations that are in compliance with regulations. The role of the site supervisor is critically important to proper management of the SFSP. Using a variety of methods (including nationwide studies conducted by the department), USDA has received the feedback that clearly defining the role of the site supervisor, including requiring that the site supervisor must be on site during the meal service, would greatly facilitate sponsors' ability to comply with requirements and improve program integrity. Accordingly, this rule proposes to add a definition at § 225.2 for site supervisor, which outlines the role and responsibilities required of a site supervisor.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

c. Unaffiliated Sites

i. *Program Impact:* In the SFSP, many sponsors operate sites with which they have a legal affiliation. However, there are instances when a sponsor will provide meals to a site with which it has no legal affiliation other than an agreement to conduct a meal service. Section IV. C of this rule proposes to include this type of situation as a characteristic that should be taken into consideration when determining which sites a State agency should choose to review during a sponsor review in order to fulfill requirements set forth in § 225.7(e)(4)(v). The current regulations under § 225.2 do not include a definition for unaffiliated site. Therefore, this rule would add a definition for unaffiliated site to help State agencies determine which sites should be selected for review when conducting a sponsor review.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. This proposed change merely updates program definitions to align with the current nature of program operations.

d. Nonprofit Food Service, Nonprofit Food Service Account, Net Cash Resources

i. *Program Impact:* Financial management in the SFSP is critical to the success of the program, especially considering the short duration during which most summer programs operate. As such, it is important that key terms related to financial management are clearly defined. To create consistency across Child Nutrition Programs, this rule proposes to include definitions of nonprofit food service, nonprofit food service account, and net cash resources that would align with the terms already defined under the National School Lunch Program in part 210.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. This would just ensure consistency across the SFSP and NSLP.

5. Miscellaneous

a. Duration of Eligibility: Decreases Burden for Sites and Sponsors Using Area Eligibility and Aligns SFSP Regulations With NSLP Regulations

i. *Program Impact:* Statutory requirements found in the NSLA at 42 U.S.C. 1761(a)(1)(A)(i)(I–II) authorize the use of school data and census data to establish area eligibility in the SFSP. The NSLA also establishes that area eligibility determinations made using school or census data must be redetermined every five years. This rule proposes to amend the duration of eligibility for open sites and restricted open sites for school and census data from three years to five years, in accordance with the NSLA. Accordingly, this rule proposes to change the regulations in redesignated §§ 225.6(g)(1)(ix) and 225.6(g)(2)(iii) to require submission of eligibility documentation every five years.

ii. *Cost Impact:* We estimate no change in cost associated with this provision. The proposed change will decrease the burden on sponsors using school or census data for area eligibility determinations of sites. We are not able to estimate any potential participation effects, but we note that there is very little annual variation in the census data, so any participation or eligibility effects are likely to be minimal.

b. Methods of Providing Training

i. *Program Impact:* As technology has advanced, sponsors and State agencies have the capability to provide mandatory trainings via the internet. Accordingly, this rule proposes to update regulations at § 225.7(a) to include the option for training to be conducted via the internet.

ii. *Cost Impact:* The proposed change may decrease training costs for State agencies and sponsors who switch from in-person trainings to online trainings, though we are not able to estimate this potential savings.

c. Food Service Management Company Facility Visits

i. *Program Impact:* Current regulations require that part of any review of a vended sponsor must include a food service management company facility visit. In order to clarify review requirements, this rule proposes to rename the section titled 'Food Service Management Company Visits' in current § 225.7(d)(6) to 'Meal Quality Facility Review.' This rule would also reorganize the requirements in a more logical manner and amend to clarify that each facility should be reviewed at least

one time during the program year, and redesignate as § 225.7(i).

ii. *Cost Impact:* We estimate no change in cost associated with this provision. The proposed change clarifies current requirements; it makes no changes to current requirements.

We estimate that these new changes will not impact participation, meal costs, or costs to State agencies, sponsors, or sites, beyond accounting for the decreased burden needed to fulfill program requirements under the proposed changes, as the proposed changes streamline and/or decrease administrative requirements, increase flexibilities for State agencies and/or sponsors, and/or provide clarity where current program requirements are currently unclear.

More generally, this action streamlines SFSP operations for both State agencies and program operators. It codifies policies that have proven effective in improving efficiencies in the operation of the SFSP. These flexibilities have provided significant relief from some program administrative burdens and have reduced paperwork for those sponsors experienced in other Child Nutrition Programs that wish to become SFSP operators. These waivers and flexibilities have also proven to improve compliance with program regulations. We estimate that there are no increased costs to State agencies or SFSP operators and no Federal costs associated with implementation of this rule.

There may be some savings associated with this rule due to the reduction in burden associated with streamlining operations and reducing SFSP paperwork for experienced sponsors. Depending on the position of the staff person submitting the paperwork, this action is estimated to save approximately $0.13 million annually if performed by an administrative-level position, or about $0.23 million annually if performed by a director-level position. This would result in approximately $0.7 million to $1.2 million in savings over five years, depending on the position level of the person submitting the paperwork.[12]

[12] These ranges were calculated by taking the hourly total compensation from BLS for FY2017 (for all State and Local workers for the director-level position estimate, and for a private administrative assistant for the administrative-level estimate) and inflating that hourly total compensation figure according to the ECI wage increase in OMB's economic assumptions for the President's Budget for years FY2018–FY2022. That hourly compensation figure was then multiplied by the decrease in burden hours as estimated in the ICR to generate the yearly and 5-year savings estimate.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule would not have a significant impact on a substantial number of small entities. The totality of the proposed changes aim to decrease overall burden on the affected parties, which include the small entities covered by the proposed rule (*i.e.,* small sponsors and sites). However, the majority of the proposed provisions are currently in effect via policy guidance or State waivers. In addition, changes that would affect burden primarily impact State agencies and larger sponsors, such as the requirement that State agencies share information, the flexibility on first monitoring visits for sponsors with more than ten sites, and the multi-step approach for States conducting claim validations.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. If finalized as proposed, this rule would be an Executive Order 13771 deregulatory action. This rule codifies flexibilities that were previously extended via policy guidance. We estimate that this rule, if finalized as proposed, will save the affected parties at least $0.13–$0.23 million annually, or at least $0.7–$1.2 million over the next five years.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, USDA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SFSP is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.559 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications and either impose substantial direct compliance costs on State and local governments or preempt State law, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has determined that this rule does not have Federalism implications. This 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, nor does it impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race,

color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the SFSP.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. This regulation has possible Tribal implications, so consultation is required. FNS will seek consultation on this rule prior to implementing a final rule. If further consultation is requested, the Office of Tribal Relations (OTR) will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires that the OMB approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule is revising existing information collection requirements which are subject to review and approval by OMB. These existing requirements are currently approved under OMB Control Number 0584–0280 7 CFR part 225, SFSP. The proposals outlined in this rule are expected to reduce the burden for some of the information requirements approved in that collection.

Comments on this proposed rule and changes in the information collection burden must be received by March 23, 2020.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR part 225, Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program.

OMB Control Number: 0584–0280.

Expiration Date: 12/31/2022.

Type of Request: Revision.

Abstract: This is a revision of requirements in the information collection under OMB Control Number 0584–0280 that are being impacted by this rulemaking. USDA proposes to modify regulatory requirements for sponsors and State agencies in the SFSP to streamline program requirements for participation. This proposed rule impacts information reporting at the sponsor level, monitoring requirements for State agencies, and public disclosure.

Under this rule, USDA is proposing to codify current guidance allowing State agencies the discretion to issue a media release on behalf of all sponsors operating SFSP sites, including camps, in the State. This burden is reflected in OMB Control Number 0584–0280. USDA does not expect that the proposals outlined in this rule will have any impact on either the requirements or the burden related to the media releases; therefore, they will not be included as part of the rulemaking submission.

Additionally, USDA is proposing a change in the meal claim validation process that State agencies must follow during sponsor monitoring reviews. Currently, meal claims have to be validated for 100 percent of a sponsor's sites. This rule proposes to reduce the initial validation requirement to 10 percent of a sponsor's sites, then establishes a stepped meal claim validation process for sponsors that exceed a 5 percent error rate. The burden for validating meal claims of 100 percent of a sponsor's sites for 53 State agencies is estimated at 2,055 hours annually. The proposed claim validation process is expected to result in an overall reduction of burden, from an estimated 2,055 hours annually to an estimated 287.58 hours annually (a decrease of 1,767.42 hours). This stepped validation process is included as a line item in the ICR associated with this rulemaking.

For experienced sponsors and sites that have already operated the SFSP without significant operational problems, applications must include condensed information that is more likely to change from year to year, as currently outlined in § 225.6(c)(3). Experienced sponsors are not required to submit the same level of detail with regard to the organizational and operational information that is required of new sponsors.

This rule proposes to permit sponsors in good standing in other Child Nutrition Programs (NSLP, CACFP, etc.) to follow the application requirements for experienced sponsors and sites when applying to SFSP, instead of the application requirements for new sponsors and sites found at § 225.6(c)(2). Through policy guidance, a sponsor is considered to be in ''good standing'' if it has been reviewed by the State agency in the last 12 months and had no major findings or program violations, or has completed and implemented all corrective actions from the last compliance review. In addition, a sponsor may be considered in good standing if it has not been found to be seriously deficient by the State agency in the past two years and has never been terminated from another Child Nutrition Program.

This proposed rule change would eliminate duplicative documentation and paperwork, which saves time for SFSP's 5,524 sponsors (3,314 local/tribal government sponsors and 2,210 businesses). The amount of time needed for a sponsor to complete a SFSP application would decrease from 39.5 hours to 38.74 hours. FNS currently estimates a total of 218,198 burden hours for completing these applications. As a result of this change, FNS estimates a total of 213,999.76 hours for these applications. Additionally, these proposals will decrease the time needed for sponsors to submit site information from 1 hour to 0.89 hours. FNS currently estimates a total of 5,524 hours to submit site information (for 640 new and 2,675 experienced local/tribal government sponsors, and 426 new and 1,783 experienced business sponsors). As a result of this proposed rule, FNS estimates a total of 4916.36 burden hours for submitting this site information.

Currently, SFSP regulations require sponsors applying to participate in the

Program to demonstrate financial and administrative capability for program operations and accept financial responsibility for total program operations at all sites at which they propose to conduct a food service (§ 225.14(c)(1)). SFAs and CACFP institutions already undergo a rigorous application process in order to participate in NSLP and CACFP and have demonstrated that they have the financial and organizational viability, capability, and accountability necessary to operate a Child Nutrition Program, and therefore have the potential to operate the SFSP as well.

In order to streamline requirements between Child Nutrition Programs and encourage participation, this rule proposes to modify the requirement for SFAs and CACFP institutions applying to participate in the SFSP to submit further evidence of financial and administrative capability, as detailed in § 225.14(c)(1). Roughly 10 percent (553) of sponsors (332 local/tribal government and 221 business sponsors) are asked to produce this information annually. It currently takes SFAs and CACFP institutions 7.2 minutes (0.12 hours) to supply the required information, for an estimated total of 67.836 burden hours. As a result of these proposals, FNS estimates that it will take 5.6 minutes (.093 hours) to provide the required information, for an estimated total of 51.429 burden hours.

The current approved burden for OMB Control #0584–0280 is 338,411 hours. This rule is expected to reduce the total burden by 6,590 hours, resulting in a revised burden of 331,821 hours.

Respondents: SFSP Sponsors.

§§ 225.6(c)(1) and (4), 225.14(a)

Estimated Number of Respondents: 5,524.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 5,524.

Estimated Time per Response: 38.74.

Estimated Burden Hours: 213,999.76.

§ 225.6(c)(2) and (3)

Estimated Number of Respondents: 5,524.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 5,524.

Estimated Time per Response: 0.89.

Estimated Burden Hours: 4,916.

§§ 225.6(e), 225.14(c)(7)

Estimated Number of Respondents: 553.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 553.

Estimated Time per Response: 0.093.

Estimated Burden Hours: 51.

Respondents: State Agencies.

§ 225.7(e)(6)

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 65.38.

Estimated Total Annual Responses: 3,465.

Estimated Time per Response: 0.083.

Estimated Burden Hours: 287.58.

Estimated Total Annual Responses: 15,066.

Estimated Total Annual Burden on Respondents: 219,255.

REPORTING

CFR citation	Description	Estimated number of respondents	Estimated frequency of responses	Total annual records	Estimated avg. number of hours per response	Estimated total hours	Current OMB approved burden hours in 0584–0280	Difference due to program changes in 0584–0280	Differences due to adjustments	Total difference in 0584–0280
State Agency Level										
225.7(e)(6)	State agencies utilize a multi-step process for meal claim validation based on amount of error detected.	53	65.38	3,465	.083	287.58	2,055	−1,767.42	0	−1,767.42
State Agency Level Total Change										−1,767.42

CFR citation	Affected public/ description	Estimated number of respondents	Estimated frequency of responses	Total annual records	Estimated avg. number of hours per response	Estimated total hours	Current OMB approved burden hours in 0584–0280	Difference due to program changes	Differences due to adjustments	Total difference
Sponsor Level										
225.6(c)(1) and (4), 225.14(a).	Sponsors submit written application to SAs for participation in SFSP.	3,314 local or tribal government.	1	3,314	38.74	128,384.36	130,903.00	−2,518.64	0	−2,518.64
225.6(c)(1) and (4), 225.14(a).	Sponsors submit written application to SAs for participation in SFSP.	2,210 business sponsors.	1	2,210	38.74	85,615.40	87,295.00	−1,679.6000		−1,679.6000
Total for sponsor applications		5,524	1	5,524	38.74	213,999.76	218,198	−4,198.24	0	−4,198.24
225.6(c)(2) and (3).	Sponsors submit site information for each site where a food service operation is proposed.	640 new local or tribal government sponsors.	1	640	0.89	569.60	640	−70.40	0	−70.40
225.6(c)(2) and (3).	Sponsors submit site information for each site where a food service operation is proposed.	2,675 experienced local or tribal government sponsors.	1	2,675	0.89	2,380.75	2,675	−294.25	0	−294.25
225.6(c)(2) and (3).	Sponsors submit site information for each site where a food service operation is proposed.	426 new business sponsors.	1	426	0.89	379	426	−46.8600	0	−46.8600
225.6(c)(2) and (3).	Sponsors submit site information for each site where a food service operation is proposed.	1,783 experienced business sponsors.	1	1,783	0.89	1,587	1,783	−196.1300	0	−196.1300
Total for sponsors' site information		5,524	1	5,524	0.89	4,916	5,524	−608	0	−608

CFR citation	Affected public/ description	Estimated number of respondents	Estimated frequency of responses	Total annual records	Estimated avg. number of hours per response	Estimated total hours	Current OMB approved burden hours in 0584–0280	Difference due to program changes	Differences due to adjustments	Total difference
225.6(e), 225.14(c)(7).	Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements.	332 local/tribal government sponsors.	1	332	0.093	30.88	40.84	−9.96	0	−9.96
225.6(e), 225.14(c)(7).	Sponsors approved for participation in SFSP enter into written agreements with SAs to operate program in accordance with regulatory requirements.	221 business sponsors	1	221	0.093	21	27	−6.4470	0	−6.4470
Total for sponsor written agreements		553	1	553	0.09	51	68	−16	0	−16
Sponsor Level Total Change		5,524	2.1	11,601	18.874	218,967.549	223,789.836	−4,822.3		−4,822.3

*Numbers presented based on the percentage of sites reviewed under the multi-tiered process.
**Totals may differ due to rounding.

	Estimated number respondents	Number of responses per respondent	Total annual responses (col. B × C)	Estimated avg. number of hours per response	Estimated total hours (col. D × E)	Current approved burden in #0584–0280	Difference due to program changes
Reporting							
State Agency Level	53	65.38	3,465	0.08	287.61	2,055	−1,767.42
Sponsor Level	5,524	2.1	11,601	18.875	218,968	223,790	−4,822.3
Total Reporting	5,577	2.7	15,066	14.552	219,255	225,845	−6,590

*Some totals may not add due to rounding.

E-Government Act Compliance

USDA 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.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210, 220, 215, 225, and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.3, add paragraph (e) to read as follows:

§ 210.3 Administration.

* * * * *

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with: The provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the

request. The State agency response is final and may not be appealed to FNS.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 3. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 4. In § 215.3, add paragraph (e) to read as follows:

§ 215.3 Administration.

* * * * *

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 5. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 6. In § 220.3, add paragraph (f) to read as follows:

§ 203.3 Administration.

* * * * *

(f) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (f)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (f)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 7. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 8. In § 225.2:

■ a. Revise the definitions of ''Areas in which poor economic conditions exist'' and ''Closed enrolled site'';

■ b. In the definition of ''Documentation'', redesignate paragraphs (a)(1) through (4) as paragraphs (1)(i) through (iv), respectively and redesignate paragraphs (b)(1) and (2) as paragraphs (2)(i) and (ii), respectively;

■ c. In the definition of ''Private nonprofit'', redesignate paragraphs (a) through (e) as paragraph (1) through (5), respectively;

■ d. Add in alphabetical order definitions for ''Net cash resources'', ''Nonprofit food service'', and ''Nonprofit food service account'',;

■ e. In the definition of ''Rural'', redesignate paragraphs (a) and (b) as paragraph (1) and (2), respectively; and

■ f. Add in alphabetical order definitions for ''Self-preparation site'', ''Site supervisor'', ''Unaffiliated site'' and ''Vended site''.

The revisions and additions read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

(1) The attendance area of a school in which at least 50 percent of the enrolled children have been determined eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(2) A geographic area where, based on the most recent census data available or information provided from a department of welfare or zoning commission, at least 50 percent of the children residing in that area are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program;

(3) A geographic area where a site demonstrates, based on other approved sources, that at least 50 percent of the children enrolled at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program; or

(4) A closed enrolled site in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the

National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

* * * * *

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f), or on the basis of documentation that the site meets sub-sections (1) through (3) of the definition of ''areas in which poor economic conditions exist'' as provided in this section.

* * * * *

Net cash resources means all monies, as determined in accordance with the State agency's established accounting system that are available to or have accrued to a sponsor's nonprofit food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

* * * * *

Nonprofit food service means all food service operations conducted by the sponsor principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

Nonprofit food service account means the restricted account in which all of the revenue from all food service operations conducted by the sponsor principally for the benefit of children is retained and used only for the operation or improvement of the nonprofit food service. This account shall include, as appropriate, non-Federal funds used to support program operations, and proceeds from non-program foods.

* * * * *

Self-preparation site means a site that prepares the majority of meals that will be served at its site and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

* * * * *

Site supervisor means the individual on site for the duration of the meal service, who has been trained by the sponsor, and is responsible for all administrative and management activities at a site including, but not limited to: Ordering meals, maintaining documentation of meal deliveries, ensuring that all meals served are safe, and maintaining accurate point of service meal counts.

* * * * *

Unaffiliated site means a site that is legally distinct from the sponsor.

* * * * *

Unanticipated school closure means any period from October through April (or any time of the year in an area with a continuous school calendar) during which children who are not in school due to a natural disaster, building repair, court order, labor-management disputes, or, when approved by the State agency, similar cause, may be served meals at non-school sites through the Summer Food Service Program.

* * * * *

Vended site means a site that serves unitized meals, with or without milk, from a food service management company.

* * * * *

■ 9. In § 225.3, add paragraph (d) to read as follows:

§ 225.3 Administration.

* * * * *

(d) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such Acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (d)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (d)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

§ 225.4 [Amended]

■ 10. In § 225.4, amend paragraph (d)(7) by removing ''§ 225.6(h)'' and adding ''§ 225.6(l)'' in its place.

■ 11. In § 225.6:

■ a. In the last sentence of paragraph (b)(1), remove ''during the period from October through April (or at any time of the year in an area with a continuous school calendar)'';

■ b. In the second sentence of paragraph (b)(4), remove ''during the period from October through April (or at any time of the year in an area with a continuous school calendar)'';

■ c. Revise paragraph (c);

■ d. Redesignate paragraphs (d) through (i) as paragraphs (h) through (m), respectively, and add new paragraphs (d) through (g);

■ e. Add a sentence to the end of newly redesignated paragraphs (h)(2)(i) and (iii);

■ f. Revise newly redesignated paragraphs (i)(7) and (15);

■ g. In newly designated paragraph (l)(2)(i), remove ''(h)(3)'' add ''(l)(3)'' in its place;

■ h. In newly designated paragraph (l)(2)(iii), remove ''§ 225.6(d)(2)'' and add ''§ 225.6(h)(2)'' in its place; and

■ i. In newly designated paragraph (l)(2)(xiv), remove ''§ 225.6(f)'' and add ''§ 225.6(j)'' in its place.

The additions and revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(c) *Content of sponsor application*—(1) *Application form.* (i) The sponsor must submit a written application to the State agency for participation in the Program. The State agency may use the application form developed by FNS, or develop its own application form. Application to sponsor the Program must be made on a timely basis within the deadlines established under § 225.6(b)(1).

(ii) At the discretion of the State agency, sponsors proposing to serve an

area affected by an unanticipated school closure may be exempt from submitting a new application if they have participated in the Program at any time during the current year or in either of the prior two calendar years.

(iii) Requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year, as determined by the State agency, are found under paragraph (c)(2) of this section.

(iv) Requirements for experienced sponsors are found under paragraph (c)(3) of this section.

(2) *Application requirements for new sponsors and sponsors that have experienced significant operational problems in the prior year.* New sponsors and sponsors that have experienced significant operational problems in the prior year, as determined by the State agency, must include the following information in their applications:

(i) A complete management plan, as described in paragraph (e) of this section;

(ii) A free meal policy statement, as described in paragraph (f) of this section;

(iii) A site information sheet for each site where a food service operation is proposed, as described in paragraph (g)(1) of this section;

(iv) Information in sufficient detail to enable the State agency to determine that the sponsor meets the criteria for participation in the Program, as described in § 225.14;

(v) Information on the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable;

(vi) A staffing and monitoring plan;

(vii) A complete administrative budget for State agency review and approval, which includes:

(A) The projected administrative expenses that the sponsor expects to incur during the operation of the Program; and

(B) Information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement.

(viii) A summary of how meals will be obtained at each site (*e.g.,* self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company);

(ix) If an invitation for bid is required under § 225.15(m), a schedule for bid dates and a copy of the invitation for bid; and

(x) For each sponsor which seeks approval as a unit of local, municipal, county or State government under § 225.14(b)(3) or as a private nonprofit organization under § 225.14(b)(5), certification that the sponsor has administrative oversight, as required under § 225.14(d)(3).

(3) *Application requirements for experienced sponsors.* The following information must be included in the applications of experienced sponsors:

(i) A site information sheet for each site where a food service operation is proposed, as described under paragraph (g)(2) of this section;

(ii) Information on the extent of Program payments needed, including a request for advance payments and start-up payments, if it is applicable;

(iii) A staffing and monitoring plan;

(iv) A complete administrative budget for State agency review and approval, which includes:

(A) The projected administrative expenses which a sponsor expects to incur during the operation of the Program; and

(B) Information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement.

(v) If the method of obtaining meals is changed, a summary of how meals will be obtained at each site (*e.g.,* self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company); and

(vi) If an invitation for bid is required under § 225.15(m), a schedule for bid dates, and a copy of the invitation for bid, if it is changed from the previous year.

(4) *Applications for school food authorities and Child and Adult Care Food Program institutions.* At the discretion of the State agency, school food authorities in good standing in the National School Lunch Program or School Breakfast Program, as applicable, and institutions in good standing in the Child and Adult Care Food Program may apply to operate the Program at the same sites where they provide meals through the aforementioned Programs by following the procedures for experienced sponsors outlined in paragraph (c)(3) of this section.

(d) *Performance Standards.* The State agency may only approve the applications of those sponsors that meet the three performance standards outlined in this section: Financial viability, administrative capability, and Program accountability. The State agency must deny applications that do not meet all of these standards. The State agency must consider past performance in the SFSP or another Child Nutrition Program, and any other factors it deems relevant when determining whether the sponsor's application meets the following standards:

(1) *Performance Standard 1.* The sponsor must be financially viable. The sponsor must expend and account for Program funds, consistent with this part; FNS Instruction 796–4, *Financial Management in the Summer Food Service Program;* 2 CFR part 200, subpart D; and USDA regulations 2 CFR parts 400 and 415. To demonstrate financial viability and financial management, the sponsor's management plan must:

(i) Describe the community's need for summer meals and the sponsor's recruitment strategy:

(A) Explain how the sponsor's participation will help ensure the delivery of Program benefits to otherwise unserved sites or children; and

(B) Describe how the sponsor will recruit sites, consistent with any State agency requirements.

(ii) Describe the sponsor's financial resources and financial history:

(A) Show that the sponsor has adequate sources of funds available to operate the Program, pay employees and suppliers during periods of temporary interruptions in Program payments, and pay debts if fiscal claims are assessed against the sponsor; and

(B) Provide audit documents, financial statements, and other documentation that demonstrate financial viability.

(iii) Ensure that all costs in the sponsor's budget are necessary, reasonable, allowable, and appropriately documented.

(2) *Performance Standard 2.* The sponsor must be administratively capable. Appropriate and effective management practices must be in effect to ensure that Program operations meet the requirements of this part. To demonstrate administrative capability, the sponsor must:

(i) Have an adequate number and type of qualified staff to ensure the operation of the Program, consistent with this part; and

(ii) Have written policies and procedures that assign Program responsibilities and duties and ensure compliance with civil rights requirements.

(3) *Performance Standard 3.* The sponsor must have internal controls and other management systems in place to ensure fiscal accountability and operation of the Program, consistent with this part. To demonstrate Program accountability, the sponsor must:

(i) Demonstrate that the sponsor has a financial system with management controls specified in written operational policies that will ensure that:

(A) All funds and property received are handled with fiscal integrity and accountability;

(B) All expenses are incurred with integrity and accountability;

(C) Claims will be processed accurately, and in a timely manner;

(D) Funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(E) A system of safeguards and controls is in place to prevent and detect improper financial activities by employees.

(ii) Maintain appropriate records to document compliance with Program requirements, including budgets, approved budget amendments, accounting records, management plans, and site operations.

(e) *Management plan*—(1) *Compliance.* The State agency must require the submission of a management plan to determine compliance with performance standards established under paragraph (d) of this section.

(2) *Contents.* Sponsors must submit a complete management plan that includes:

(i) Detailed information on the sponsor's management and administrative structure, including information that demonstrates the sponsor's financial viability and financial management described under paragraph (d)(1) of this section;

(ii) Information that demonstrates compliance with each of the performance standards outlined under paragraph (d) of this section;

(iii) A list or description of the staff assigned to perform Program monitoring required under § 225.15(d)(2) and (3) of this part;

(iv) An administrative budget that includes projected SFSP administrative earnings and expenses, in order for the State agency to fulfill responsibilities under paragraph (b)(7) of this section; and

(v) For each sponsor which submits an application under paragraph (c)(1) of this section, information in sufficient detail to demonstrate that the sponsor will:

(A) Provide adequate and not less than annual training of sponsor's staff and sponsored sites, as required under § 225.15(d)(1);

(B) Perform monitoring consistent with § 225.15(d)(2) and (3), to ensure that all site operations are accountable and appropriate;

(C) Accurately classify sites consistent with § 225.6(g)(1) and (2);

(D) Demonstrate the sponsor's compliance with meal service, recordkeeping, and other operational requirements of this part;

(E) Provide meals that meet the meal patterns set forth in § 225.16;

(F) Have a food service that complies with applicable State and local health and sanitation requirements;

(G) Comply with civil rights requirements;

(H) Maintain complete and appropriate records on file; and

(I) Claim reimbursement only for eligible meals.

(f) *Free meal policy statement*—(1) *Nondiscrimination statement.* (i) Each sponsor must submit a nondiscrimination statement of its policy for serving meals to children. The statement must consist of:

(A) An assurance that all children are served the same meals and that there is no discrimination in the course of the food service; and

(B) Except for camps, a statement that the meals served are free at all sites.

(ii) A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced-price policy, a revised policy statement must be provided at the State agency's request.

(iii) In addition to the information described in paragraph (i) of this section, the policy statement of all camps that charge separately for meals must also include:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced-price school meals;

(B) A description of the method to be used in accepting applications from families for Program meals that ensures that households are permitted to apply on behalf of children who are members of households receiving SNAP, FDPIR, or TANF benefits using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method to be used by camps for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the camp will establish hearing procedures for families requesting to appeal a denial of an application for free meals. These procedures must meet the requirements set forth in paragraph (f)(2) of this section;

(E) An assurance that, if a family requests a hearing, the child will continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or disability.

(2) *Hearing procedures statement.* Each camp must submit a copy of its hearing procedures with its application. At a minimum, the camp's procedures must provide that:

(i) A simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) The family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) The family will have an opportunity to examine the documents and records supporting the decision being appealed, both before and during the hearing;

(iv) The hearing will be reasonably prompt and convenient for the family;

(v) Adequate notice will be given to the family of the time and place of the hearing;

(vi) The family will have an opportunity to present oral or documented evidence and arguments supporting its position;

(vii) The family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) The hearing will be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) The decision will be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) The family and any designated representative will be notified in writing of the decision;

(xi) A written record will be prepared for each hearing, which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family; and

(xii) The written record will be maintained for a period of three years following the conclusion of the hearing and will be available for examination by the family or its representatives at any reasonable time and place.

(g) *Site information sheet.* The State agency must develop a site information sheet for sponsors.

(1) *New sites.* The application submitted by sponsors must include a

site information sheet for each site where a food service operation is proposed. At a minimum, the site information sheet must demonstrate or describe the following:

(i) An organized and supervised system for serving meals to children who come to the site;

(ii) The estimated number of meals to be served, types of meals to be served, and meal service times;

(iii) Whether the site is rural, as defined in § 225.2, or non-rural;

(iv) Whether the site's food service will be self-prepared or vended, as defined in § 225.2;

(v) Arrangements for delivery and holding of meals until meal service times and storing and refrigerating any leftover meals until the next day, within standards prescribed by State or local health authorities;

(vi) Access to a means of communication to make necessary adjustments in the number of meals delivered, based on changes in the number of children in attendance at each site;

(vii) Arrangements for food service during periods of inclement weather; and

(viii) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every five years;

(C) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census; and

(D) At the discretion of the State agency, sponsors proposing to serve an area affected by an unanticipated school closure may be exempt from submitting new site documentation if the sponsor has participated in the Program at any time during the current year or in either of the prior two calendar years.

(ix) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced-price school meals for each of these sites; or

(B) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(C) When school data are used, new documentation is required every five years;

(D) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census.

(x) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP.

(xi) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the camp's claim for reimbursement for each session;

(xii) For sites that will serve children of migrant workers:

(A) Certification from a migrant organization, which attests that the site serves children of migrant workers; and

(B) Certification from the sponsor that the site primarily serves children of migrant workers, if non-migrant children are also served.

(2) *Experienced sites.* The application submitted by sponsors must include a site information sheet for each site where a food service operation is proposed. The State agency may require sponsors of experienced sites to provide information described in paragraph (g)(1) of this section. At a minimum, the site information sheet must demonstrate or describe the following:

(i) The estimated number of meals, types of meals to be served, and meal service times; and

(ii) For open sites and restricted open sites:

(A) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(B) When school data are used, new documentation is required every five years;

(C) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census; and

(D) Any site that a sponsor proposes to serve during an unanticipated school closure, which has participated in the Program at any time during the current year or in either of the prior two calendar years, is considered eligible without new documentation.

(iii) For closed enrolled sites:

(A) The projected number of children enrolled and the projected number of children eligible for free and reduced-price school meals for each of these sites; or

(B) Documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist;

(C) When school data are used, new documentation is required every five years;

(D) When census data are used, new documentation is required every five years, or earlier, if the State agency believes that an area's socioeconomic status has changed significantly since the last census.

(iv) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP.

(v) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, this information must be submitted as soon as possible thereafter, and in no case later than the filing of the camp's claim for reimbursement for each session.

* * * * *

(h) * * *

(2) * * *

(i) * * * The State agency may consider participation at other similar sites located in the area, documentation of programming taking place at the site, or statistics on the number of children residing in the area.

* * * * *

(iii) * * * The sponsor may request an upward adjustment at any point prior to submitting the claim for the impacted reimbursement period.

* * * * *

(i) * * *

(7) Claim reimbursement only for the types of meals specified in the agreement that are served:

(i) Without charge to children at approved sites, except camps, during the approved meal service time;

(ii) Without charge, in camps, to children who meet the Program's income standards;

(iii) Within the approved level for the maximum number of children's meals that may be served, if a maximum approved level is required under § 225.6(h)(2);

(iv) At the approved meal service time, unless a change is approved by the State agency, as required under § 225.16(c); and

(v) At the approved site, unless the requirements in § 225.16(g) are met.

* * * * *

(15) Maintain children on site while meals are consumed. Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption if the requirements in § 225.16(h) are met; and

* * * * *

■ 12. In § 225.7:
■ a. In paragraph (a), add the words ''or via the internet'' at the end of the fifth sentence and remove the words ''during the period from October through April (or at any time of the year in an area with a continuous school calendar)'' in the sixth sentence;
■ b. Revise paragraph (d);
■ c. Redesignate paragraphs (e), (f), and (g) as paragraphs (l), (m), and (n), respectively; and
■ d. Add new paragraphs (e) through (k).

The revision and additions read as follows:

§ 225.7 Program monitoring and assistance.

* * * * *

(d) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(1) All applicant sponsors that did not participate in the program in the prior year. However, if a sponsor is a school food authority, was reviewed by the State agency under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency. In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures may be conducted at the discretion of the State agency;

(2) All applicant sponsors that had operational problems noted in the prior year; and

(3) All sites that the State agency has determined need a pre-approval visit.

(e) *Sponsor and site reviews*—(1) *General.* The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15), and any other applicable instructions issued by the Department.

(2) *Sample selection.* In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews.

(3) *School Food Authorities.* When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the NSLP operations have been reviewed and determined to be satisfactory.

(4) *Frequency and number of required reviews.* State agencies must:

(i) Conduct a review of every new sponsor at least once during the first year of operation;

(ii) Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

(iii) Annually review every sponsor that experienced significant operational problems in the prior year;

(iv) Review each sponsor at least once every three years; and

(v) As part of each sponsor review, conduct reviews of at least 10 percent of each reviewed sponsor's sites, or one site, whichever number is greater.

(5) *Site selection criteria.* (i) When selecting sites to meet the minimum number of sites required under paragraph (e)(4)(v) of this section, State agencies should, to the maximum extent possible, select sites that reflect the sponsor's entire population of sites. Site characteristics that should be reflected in the sites selected include:

(A) The maximum number of meals approved to serve under § 225.6(h)(1) and (2);

(B) Method of obtaining meals (*i.e.,* self-preparation, vended meal service);

(C) Time since last site review by State agency;

(D) Site type (*i.e.,* open, closed, camp);

(E) Type of physical location (*e.g.,* school, outdoor area, community center);

(F) Rural designation (*i.e.,* rural, as defined in § 225.2, or non-rural); and

(G) Affiliation with the sponsor, as defined in § 225.2.

(ii) The State agency may use additional criteria to select sites including, but not limited to: Recommendations from the sponsoring organization, findings of other audits or reviews, or any indicators of potential error in daily meal counts (*e.g.,* identical or very similar claiming patterns, or large changes in free meal counts).

(6) *Meal claim validation.* As part of every sponsor review, the State agency must validate the sponsor's meal claim utilizing a record review process developed by the State agency that must include, at a minimum, reconciling delivery receipts, daily meal counts from sites, and the sponsor's claim consolidation spreadsheet against the meals claimed for reimbursement by the sponsor for the period under review. For the purposes of this section, the average percent error includes both overclaims and underclaims. Claims against sponsors as a result of meal claim validation should be assessed after the conclusion of the meal claim validation process in accordance with § 225.12. State agencies must follow the process identified below to conduct the meal claim validation:

(i) The State agency must complete an initial validation of 100 percent of meal claims within the review period for the sites under review to satisfy the requirements outlined in paragraph (e)(4)(v) of this section. In determining the percentage of error, fractions must be rounded up (≥0.5) or down (<0.5) to the nearest whole number.

(ii) If the initial validation yields an average percent error of five percent or more, the State agency must expand validation of all meal claims within the review period for 25 percent of the sponsor's total sites. If the initial validation yields an average percent error of five percent or less, the State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(iii) If the second round of validation yields an average percent error of five percent or more, the State agency must expand validation of all meal claims within the review period for 50 percent of the sponsor's total sites. If the second round of validation yields an average percent error of five percent or less, the State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(iv) If the third round of validation yields an average percent error of five percent or more, the State agency must expand validation of meal claims to all meal claims within the review period for 100 percent of the sponsor's total sites. The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable in accordance with § 225.12.

(7) *Review of sponsor operations.* State agencies should determine if:

(i) Expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the food service are properly identified and recorded as food service revenue;

(ii) Expenditures are consistent with budgeted costs, and the previous year's expenditures taking into consideration any changes in circumstances;

(iii) Reimbursements have not resulted in accumulation of net cash resources as defined in paragraph (m) of this section; and

(iv) The level of administrative spending is reasonable and does not affect the sponsor's ability to operate a nonprofit food service and provide a quality meal service.

(f) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(g) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the sponsor's food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(h) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency three years after submission in accordance with § 225.8(a).

(i) *Meal quality facility reviews.* As part of the review of any food service management company or vended sponsor that contracts for the preparation of meals, the State agency must review the food service management company or vendor's meal production facility and meal production documentation for compliance with program requirements.

(1) Each State agency must establish an order of priority for visiting facilities at which food is prepared for the Program. Each facility should be reviewed at least one time during a Program year.

(2) The State agency must respond promptly to complaints concerning facilities. If the food service management company or vendor fails to correct violations noted by the State agency during a review, the State agency must notify the sponsor and the food service management company or vendor that reimbursement must not be paid for meals prepared by the food service management company or vendor after a date specified in the notification.

(3) Funds provided in § 225.5(f) may be used for conducting food service management company or vendor meal quality facility reviews.

(j) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, the time of the reviewer's arrival and departure, the site supervisor's printed name and signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions.

(k) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.11. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

* * * * *

■ 13. In § 225.9,

■ a. Revise paragraphs (d)(4) and (10); and

■ b. In paragraph (f), remove ''§ 225.6(d)(2)'' and add ''§ 225.6(h)(2)'' in its place.

The revisions read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(d) * * *

(4) The State agency must forward reimbursements within 45 calendar days of receiving valid claims. If a claim is incomplete, invalid, or potentially unlawful per paragraph (d)(10) of this section, the State agency must return the claim to the sponsor within 30 calendar days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action must be completed within 45 calendar days of receipt unless the State agency has reason to believe the claim is unlawful per paragraph (d)(10) in this section.

* * * * *

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement. The State agency may be exempt from the requirement stated in paragraph (d)(4) of this section that final action on a claim must be complete within 45 calendar days of receipt of a revised claim if the State agency determines that a thorough examination of potentially unlawful acts would not be possible in the required timeframe.

* * * * *

§ 225.11 [Amended]

■ 14. In § 225.11, in paragraph (e)(3), remove ''§ 225.6(d)(2)'' and add ''§ 225.6(h)(2)'' in its place.

§ 225.13 [Amended]

■ 15. In § 225.13, in paragraph (c), remove ''§ 225.6(g)'' and add ''§ 225.6(k)'' in its place.

■ 16. In § 225.14:

■ a. Revise paragraph (a);

■ b. At the end of paragraph (b)(5), add the words '', as determined annually'';

■ c. Revise paragraphs (c)(1) and (4); and

■ d. In paragraph (c)(7), remove ''§ 225.6(e)'' and add ''§ 225.6(i)'' in its place.

The revisions read as follows:

§ 225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors must make written application to the State agency to participate in the Program which must include all content required under § 225.6(c). Such application shall be made on a timely basis in accordance with the requirements of § 225.6(b)(1). Sponsors proposing to operate a site during an unanticipated school closure may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

(c) * * *

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service in accordance with the performance standards described under § 225.6(d) of this part.

(i) If the applicant sponsor is a school food authority in good standing in the National School Lunch Program or an institution in good standing in the Child and Adult Care Food Program, no further demonstration of financial and administrative capability for Program operations is required unless requested by the State agency. The State agency may request additional evidence of financial and administrative capability sufficient to ensure that the school food authority or institution has the ability and resources to operate the Program if the State agency has reason to believe that this would pose significant challenges for the applicant.

(ii) If the State agency approving the application for the Program is not responsible for the administration of the National School Lunch Program or the Child and Adult Care Food Program, the State agency must develop a process for sharing information with the agency responsible for approving these programs in order to receive documentation of the applicant sponsor's financial and administrative capability.

* * * * *

(4) Has adequate supervisory and operational personnel for overall

monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in § 225.15(d)(2) and (3), as demonstrated in the Management Plan submitted with the program application described under § 225.6(e);

* * * * *

■ 17. In § 225.15:

■ a. Remove ''§ 225.6(d)(2)'' and add ''§ 225.6(h)(2)'' in its place in paragraphs (b)(2) and (3);

■ b. In paragraph (d)(1), remove the words ''during the period from October through April (or at any time of the year in an area with a continuous school calendar)'' from the second sentence;

■ c. Revise paragraphs (d)(2) and (3) and (e);

■ d. Revise the first sentence in paragraph (f)(1); and

■ e. In paragraph (m)(2), remove ''§ 225.6(h)(3)'' and add ''§ 225.6(l)(3)'' in its place.

The revisions read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(2) Sponsors responsible for meal service at 10 or fewer meal sites must conduct the first monitoring visit within the first seven calendar days after the site begins operations under the Program and must promptly take such actions as are necessary to correct any deficiencies. Sponsors responsible for meal service at more than 10 meal sites must conduct the first monitoring visits within the first 14 calendar days after the site begins operations under the Program and must promptly take such actions as are necessary to correct any deficiencies. In cases where the site operates for seven calendar days or fewer, the first monitoring visit must be conducted during the period of operation.

(3) Sponsors must conduct a full review of food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews. Sponsors have the option to conduct a full review of food service operations at the same time as the first monitoring visit.

(e) *Notification to the community.* Each sponsor must annually announce in the media serving the area from which it draws its attendance the availability of free meals. Sponsors of camps and other sites not eligible under § 225.2—''areas in which poor economic conditions exist'' sub-sections (a) through (c)—must notify participants of the availability of free meals for those enrolled children that meet income eligibility guidelines, as outlined in § 225.15(f). Notification to enrolled children must include: The Secretary's family-size and income standards for reduced price school meals labeled ''SFSP Income Eligibility Standards;'' a statement that a foster child and children who are members of households receiving SNAP, FDPIR, or TANF benefits are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or disability. State agencies have the discretion to issue a media release for all sponsors operating SFSP sites in the State as long as the notification meets the requirements in this section.

* * * * *

(f) * * *

(1) * * * The application is used to determine the eligibility of children attending camps and the eligibility of sites that do not meet the requirements in paragraphs (a) through (c) of the definition of ''areas in which poor economic conditions exist'' in § 225.2. * * *

* * * * *

■ 18. In § 225.16:

■ a. Add a new third sentence in paragraph (b) introductory text;

■ b. Revise paragraphs (c) and (f)(1)(ii); and

■ c. Add paragraphs (g) and (h).

The additions and revisions read as follows.

§ 225.16 Meal service requirements.

* * * * *

(b) * * * A sponsor may claim reimbursement only for the types of meals for which it is approved under its agreement with the State agency. * * *

* * * * *

(c) *Meal service times.* (1) Meal service times must be:

(i) Established by sponsors for each site;

(ii) Included in the sponsor's application; and

(iii) Approved by the State agency.

(2) Breakfast meals must be served at or close to the beginning of a child's day. Three component meals served after a lunch or supper meal service are not eligible for reimbursement as a breakfast.

(3) At all sites except residential camps, meal services must start at least one hour after the end of the previous meal or snack.

(4) Meals served outside the approved meal service time:

(i) Are not eligible for reimbursement; and

(ii) May be approved for reimbursement by the State agency only if an unanticipated event, outside of the sponsor's control, occurs. The State agency may request documentation to support approval of meals claimed when unanticipated events occur.

(5) The State agency must approve any permanent or planned changes in meal service time.

(6) If meals are not prepared on site:

(i) Meal deliveries must arrive before the approved meal service time; and

(ii) Meals must be delivered within one hour of the start of the meal service if the site does not have adequate storage to hold hot or cold meals at the temperatures required by State or local health regulations.

* * * * *

(f) * * *

(1) * * *

(ii) *Offer versus serve.* School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The reimbursements to school food authorities for Program meals served under this ''offer versus serve'' option must not be reduced because children choose not to take all components of the meals that are offered. The school food authority may use the following options for meal service:

(A) The school food authority can elect to provide meal service under the rules followed for the National School Lunch Program, as described in part 210 of this chapter.

(B) The school food authority can elect to provide meal service under the following guidelines for the Program described in paragraph (d) of this section:

(*1*) *Breakfast meals.* Sponsoring organizations must offer four items from all three components specified in the meal pattern in paragraph (d)(1) of this section. Children may be permitted to decline one item.

(*2*) *Lunch and supper meals.* Sponsoring organizations must offer five food items from all four components specified in the meal pattern in paragraph (d)(2) of this section. Children may be permitted to decline two components.

* * * * *

(g) *Meals served away from approved locations.* (1) Sponsors may be reimbursed for meals served away from the approved site location if the following conditions are met:

(i) The sponsor notifies the State agency in advance that meals will be served away from the approved site;

(ii) The State agency has determined that all Program requirements in this part will be met, including applicable State and local health, safety, and sanitation standards;

(iii) The meals are served at the approved meal service time, unless a change is approved by the State agency, as required under paragraph (c) of this section; and

(iv) Sponsors of open sites continue operating at the approved location if feasible, or notify the community of the change in meal service and provide information about alternative open sites.

(2) The State agency may determine that meals served away from the approved site location are not reimbursable if the sponsor did not provide notification in advance of the meal service. The State agency may establish guidelines for the amount of advance notice needed.

(h) *Off-site consumption of food items.* Sponsors may allow a child to take one fruit, vegetable, or grain item off-site for later consumption without prior State agency approval provided that all applicable State and local health, safety, and sanitation standards will be met. Sponsors should only allow an item to be taken off-site if it has adequate staffing to properly administer and monitor the site. State agencies may prohibit individual sponsors on a case-by-case basis from using this option if the sponsor's ability to provide adequate oversight is in question. The State agency's decision to prohibit a sponsor from utilizing this option is not an appealable action.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 19. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 20. In § 226.3, add new paragraph (e) to read as follows:

§ 226.3 Administration.

* * * * *

(e) *Authority to waive statute and regulations.* (1) If authorized under the National School Lunch Act or the Child Nutrition Act of 1966, as amended, FNS may waive provisions of such acts and the provisions of this part with respect to a State agency or eligible service provider.

(2) A State agency may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part. A State agency may also submit a request to waive specific statutory or regulatory requirements on behalf of eligible service providers that operate in the State. Any waiver must be submitted to the appropriate FNS Regional office.

(3)(i) An eligible service provider may submit a request for a waiver under paragraph (e)(1) of this section in accordance with the provisions of this part and any informational instructions issued by FNS under this part and in accordance with any applicable instructions issued by a State agency. Any waiver submitted by an eligible service provider must be sent to the State agency for review. A State agency may deny requests from eligible service providers or it may concur with the request.

(ii) If the State agency concurs with the request, within 15 calendar days of receipt of the request, the State agency must forward to the FNS Regional office the request and a rationale supporting the request. By forwarding the request to the FNS Regional office, the State agency affirms:

(A) The request meets all requirements for waiver submissions; and

(B) The State agency will conduct all monitoring requirements related to normal program operations and the implementation of the waiver.

(iii) If the State agency denies the request, it must notify the requesting eligible service provider in writing within 30 calendar days of receipt of the request. The State agency response is final and may not be appealed to FNS.

Dated: January 8, 2020.

Stephen L. Censky,

Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2020–00919 Filed 1–17–20; 4:15 pm]

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.

Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 226, and 235

[FNS–2019–0007]

RIN 0584–AE67

Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes changes to simplify meal pattern and monitoring requirements in the National School Lunch and School Breakfast Programs. The proposed changes, including optional flexibilities, are customer-focused and intended to help State and local Program operators overcome operational challenges that limit their ability to manage these Programs efficiently. In the National School Lunch Program, the proposed rule would add flexibility to the existing vegetable subgroups requirement. In the School Breakfast Program, the proposed rule would make it easier for menu planners to offer meats/meat alternates and grains interchangeably (without offering a minimum grains requirement daily), and would allow schools to offer ½ cup of fruit in breakfasts served outside the cafeteria to reduce food waste. Other proposed changes would make it easier for local Program operators to plan menus for different age/grade groups, and expand the entrée exemption service timeframe for competitive foods. To improve efficiency in Program monitoring, the proposed rule also would ease several administrative review requirements, including the review cycle. The monitoring changes aim to decrease the burden associated with administrative reviews while rewarding program integrity initiatives at the State and local levels. This rule also proposes to make updates, clarifications, and technical corrections throughout other parts of its regulations. Implementation of the wide range of proposed changes and flexibilities is expected to simplify operational requirements, increase efficiency, and make it easier for State and local Program operators to feed children.

DATES:

Comment date: Online comments submitted through the Federal eRulemaking Portal on this proposed rule must be received on or before March 23, 2020. Mailed comments on this rule must be postmarked on or before March 23, 2020.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by March 23, 2020.

ADDRESSES: The USDA, Food and Nutrition Service (FNS) invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Regular U.S. Mail:* School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, P.O. Box 2885, Fairfax, Virginia 22031.
- *Overnight, Courier, or Hand Delivery:* School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 1320 Braddock Place, 4th Floor, Alexandria, Virginia 22314.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tina Namian, Chief, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) provide nutritious, well-balanced meals to millions of children each school day. Section 9(f)(1) of the Richard B. Russell National School Lunch Act (NSLA), as amended, 42 U.S.C. 1758(f)(1), requires that school meals are consistent with the goals of the latest Dietary Guidelines for Americans (Dietary Guidelines). USDA regulations at 7 CFR 210.10 and 220.8 detail the nutrition standards for the NSLP and SBP, respectively.

Section 201 of Public Law 111–296 (the Healthy, Hunger-Free Kids Act of 2010, HHFKA) amended Section 4(b) of the NSLA (42 U.S.C. 1753(b)), to require USDA to update the meal patterns and nutrition standards for school meals based on recommendations in a report issued by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine (formerly, the Institute of Medicine). In response, the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088, published January 26, 2012), updated the school meal requirements consistent with the 2010 Dietary Guidelines, as recommended in the report *School Meals: Building Blocks for Healthy Children.*[1] In part, the 2012 final rule: (1) Established weekly vegetable subgroup requirements in the NSLP; (2) codified NSLP and SBP meal patterns for three distinct age/grade groups (K–5, 6–8, and 9–12); (3) permitted meats/meat alternates to be offered in place of grains in the SBP, provided that minimum daily grain requirements were met; (4) increased the amount of fruit offered in the SBP to one cup for all age/grade groups; (5) allowed only flavored and unflavored fat-free and unflavored low-fat milk; (6) established calorie and sodium limits, and prohibited *trans* fats in the NSLP and the SBP; and (7) increased the frequency of State agency administrative reviews of school food authorities (SFAs) to once every 3 years (from 5 years).

In Section 4(b)(3)(B) of the NSLA (42 U.S.C. 1753(b)(3)(B)), schools were incentivized to adopt the new meal pattern requirements through a performance-based reimbursement. SFAs certified as compliant with the lunch meal pattern receive an additional reimbursement of seven cents per lunch (increased by inflation from six cents on July 1, 2019) (7 CFR 210.7(d)).[2] To facilitate the transition to the 2012 meal pattern, per Section 22(a) of the NSLA, USDA also established a 3-year administrative review cycle, combining the nutritional assessment of school meals with the operations review for stronger Program accountability (7 CFR 210.18).

As part of a holistic effort to improve school nutrition environments, Section 208 of HHFKA amended Section 10 of the Child Nutrition Act of 1966 (42. U.S.C. 1779) to require that USDA establish standards for foods sold to students on campus during the school

[1] Institute of Medicine. 2010. *School Meals: Building Blocks for Healthy Children.* Washington, DC: The National Academies Press. Available at: *https://www.fns.usda.gov/sites/default/files/SchoolMealsIOM.pdf.*

[2] Notice. *National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates* (84 FR 38590, published August 7, 2019). Available at: *https://www.govinfo.gov/content/pkg/FR-2019-08-07/pdf/2019-16903.pdf.*

day outside of the school meal programs. These nutrition standards are commonly referred to as the Smart Snacks in School (SSIS) standards. These requirements, codified in 7 CFR 210.11, established minimum nutrition standards for foods and beverages sold to students on campus during the school day and permit the sale of calorie-free, flavored water to grades 9–12 only (§ 210.11(m)). To help manage leftovers and prevent food waste, the rule also exempted entrées offered in the SBP and NSLP from the SSIS nutrition standards on the day offered in the SBP or NSLP menu and the day after (7 CFR 210.11(c)).

Since implementation of these regulatory actions, some Program operators have experienced challenges, such as lower student participation and increased food waste. To assist operators, in May 2017, the Secretary committed to giving schools more control over food service decisions, and greater ability to offer wholesome, nutritious, and appealing meals to students. This commitment resulted in this proposed rule, and two previous rulemaking actions intended to increase operational flexibilities in the NSLP and SBP,[3] as described in the following section.

Ensuring that the school meal programs are carried out as prescribed in statute and regulations is a key administrative responsibility at every level. Federal, State, and local Program staff share the responsibility to ensure that all aspects of the Child Nutrition Programs are conducted with integrity and that taxpayer dollars are used as intended. Prior to School Year (SY) 2013–2014, two separate processes were used to assess compliance with Program regulations; the Coordinated Review Effort was conducted on a 5-year cycle and the School Meals Initiative, a nutritional assessment of meals, was done separately on a 3-year cycle. Section 207 of HHFKA amended section 22(a) of the NSLA (42 U.S.C. 1769c), and directed USDA to create a unified accountability system under which States would ''conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary.'' USDA developed a simplified, unified monitoring process intended to strengthen Program integrity through more robust, effective, and frequent monitoring using a 3-year cycle. In 2016, USDA published a final rule establishing the current administrative review process at 7 CFR 210.18.[4] The process is a comprehensive review of Program requirements, such as eligibility and operational processes (previously covered in the Coordinated Review Effort) and the nutritional assessment of school meals (previously covered in the School Meals Initiative). The administrative review also provides opportunities for States and SFAs to collaborate to ensure that students are offered wholesome, nutritious, and appealing meals and Programs are successfully operated.

Some State agencies and SFAs have experienced challenges with parts of the new administrative review requirements, particularly the requirement to review SFAs more frequently, on a 3-year review cycle. In response, USDA allowed States experiencing significant challenges meeting the 3-year review cycle requirement to submit waiver requests to extend their administrative review cycle.[5] In the first two months after issuing this flexibility, USDA received waiver requests from more than 30 State agencies. State agencies that received review cycle waivers often faced staffing and operational challenges that negatively impacted their ability to fulfill Program administration and oversight responsibilities. The waivers give State agencies additional time to complete oversight activities and, in some cases, provide technical assistance to SFAs to enhance Program operations.

The transition to the 3-year administrative review cycle coincided with a more robust review of the school meal programs, which included a review of an SFA's financial practices through the Resource Management Module. The Resource Management Module includes an overall assessment of risk and comprehensive review of SFAs that are at risk for noncompliance in the resource management areas. The transition also took place as States put a renewed emphasis on improving State oversight of procurement practices. USDA sought extensive input from State agencies on how to streamline the review process while maintaining effective oversight. Through this engagement, USDA has learned more about the unique circumstances and challenges faced by States, as well as best practices and potential flexibilities to help State agencies fulfill oversight responsibilities.

This proposed rule builds on operational flexibilities recently provided to NSLP and SBP operators, including the administrative review waivers. It proposes targeted flexibilities and regulatory changes to simplify Program oversight and operations. Most of the operational flexibilities proposed in this rule would be optional and primarily intended for States or local operators experiencing challenges with specific requirements. The intent of this proposed rule is to give the public an opportunity to provide comments that will inform USDA's development of a final rule on operational flexibilities for meal pattern and monitoring requirements.

II. Need for Action

In the seven years following the 2012 rulemaking, some Program operators have experienced challenges with specific requirements. In May 2017, Secretary of Agriculture Sonny Perdue issued a proclamation emphasizing USDA's commitment to provide operational flexibilities to help schools offer wholesome and appealing meals that students want to eat.

The proclamation precipitated an interim final rule that provided short-term operational flexibilities for flavored low-fat milk, sodium, and whole grains for School Year (SY) 2018–2019. These flexibilities were codified in the final rule *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (published December 12, 2018, 83 FR 63775), and adopted permanently for SY 2019–2020 and beyond. The 2018 revisions affirm USDA's commitment to giving schools more control over food service decisions and greater ability to offer wholesome, nutritious, and appealing meals to children that reflect local preferences and reduce food waste.

Some Program operators have successfully implemented the 2012 meal pattern requirements in a way that encourages student participation and healthy eating; other Program operators require additional flexibility. As part of ongoing efforts to support State and local Program operators, USDA held seven listening sessions and roundtable discussions with school food service staff and school district administrators, industry representatives, and State agency staff in 2018 (on July 11, September 20, October 2, October 23, and December 6) and 2019 (on February 25 and July 15) to solicit additional information about Program challenges

[3] The final rule, *Hiring Flexibility Under Professional Standards* (84 FR 6953, published March 1, 2019) provides flexibilities to professional standards requirements. The final rule, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (83 FR 63775, published December 12, 2018), provides flexibilities related to sodium, whole grains, and flavored milk.

[4] Final rule. *Administrative Reviews in the School Nutrition Programs* (81 FR 50170, published July 29, 2016).

[5] Policy memo SP 12–2019. *Flexibility for the Administrative Review Cycle Requirement,* published February 22, 2019. Available at: *https://fns-prod.azureedge.net/sites/default/files/cn/SP12-2019os.pdf.*

and suggestions for improvement. This feedback was consistent with feedback that senior Child Nutrition Program policy officials receive from stakeholders during in-person meetings and conferences. Some Program operators describe persistent challenges with complex requirements that limit their ability to feed children. Administrative challenges identified by State and local Program operators include:

- Completing more comprehensive administrative reviews in a shorter, 3-year cycle;
- Submitting reports required by FNS;
- Preventing food waste;
- Meeting the weekly vegetable requirements; and
- Serving meals that meet the requirements for various age/grade groups.

Program operators also suggested improvements to competitive food and beverage requirements that would permit schools to reduce food waste and offer more appealing foods and beverages to students.

Additionally, language included in House Report No. 114–531 (2016) led USDA to examine administrative and reporting challenges faced by State agencies and SFAs. Through discussions and representative surveys, USDA identified requirements that are most burdensome for Program operators.[6] The *Child Nutrition Reporting Burden Study* resulted in a set of considerations for reducing burden at the State and local levels.[7]

One recommendation from the *Child Nutrition Reporting Burden Study* is for USDA to implement a risk-based administrative review cycle. About two-thirds of State agency participants identified the 3-year cycle as a major burden. State agency and SFA participants suggested that a risk-based approach could balance the need to maintain Program integrity and the amount of staff time and resources required to complete administrative reviews. Study participants suggested that lower-risk SFAs could be reviewed less frequently to alleviate burden, which would free up more resources for State agencies to provide technical assistance to SFAs. High-risk SFAs could be reviewed more frequently, focusing limited State agency resources more effectively.

FNS is committed to listening to our stakeholders and maximizing Program efficiency, local control, and customer service in the Child Nutrition Programs. To that end, this rule proposes additional flexibilities that support State, Tribal, and local Program operators. The proposed flexibilities aim to: (1) Facilitate the service of wholesome meals within the operational constraints of schools across the Nation, (2) support foodservice efficiency, and (3) ease monitoring burden for SFAs and States. USDA strives to decrease administrative burden so Program operators have more time to focus on the core mission of Child Nutrition Programs: feeding children.

III. Discussion of Proposed Changes & Optional Flexibilities

This preamble groups the proposed changes and flexibilities into three broad categories: (1) Proposals to Simplify Monitoring, (2) Proposals to Simplify Meal Service, and (3) Proposals to Simplify Competitive Foods (*i.e.,* foods sold à la carte). USDA is also seeking public input on multiple items, for which no changes are proposed in this rule.

Proposals To Simplify Monitoring

Establish 5-Year Administrative Review Cycle & Targeted, Follow-Up Reviews of High-Risk SFAs

Current Requirements

Section 22 of the NSLA (42 U.S.C. 1769c(b)(1)(C)(i)), requires that State agencies ''conduct audits and reviews during a 3-year cycle or other period prescribed by the Secretary.'' Current regulatory provisions at 7 CFR 210.18(c) require State agencies to conduct an administrative review of each SFA participating in the NSLP and SBP at least once during a 3-year review cycle. This comprehensive administrative review, outlined at 7 CFR 210.18, monitors compliance with eligibility, meal counting and claiming, and meal pattern requirements.

The transition to the new, more comprehensive administrative review process and shorter 3-year review cycle occurred at the same time as States and SFAs were implementing several other Program changes required by HHFKA, including implementing new meal pattern requirements, paid lunch equity, local wellness policies, direct certification improvements, and a new performance-based reimbursement. Concurrently, State agencies were devoting significant resources to additional oversight responsibilities, such as the review of procurement practices and procedures, to better ensure compliance with Federal regulations.

Since the transition to a 3-year review cycle and the introduction of the unified administrative review in SY 2013–2014, some State agencies and SFAs have struggled to complete reviews and corresponding oversight activities. USDA received feedback about difficulties associated with administrative reviews—both from State agencies conducting reviews and from SFAs preparing for, and responding to, reviews. States and SFAs have noted that, in some instances, the shorter review cycle reduced time available for technical assistance and training, and unduly emphasized compliance over Program improvement.

Proposed Changes to the Administrative Review Cycle

Pursuant to the authority of section 22 of the NSLA, this rule proposes changes to the administrative review cycle to ease administrative burden for State agencies and SFAs, while continuing to promote Program integrity. This rule proposes to allow State agencies the option to transition from the current 3-year review cycle back to a 5-year review cycle. State agencies opting for a 5-year review cycle would conduct a comprehensive administrative review of each SFA participating in NSLP and SBP at least once during a 5-year cycle and identify high-risk SFAs for additional oversight. High-risk SFAs would receive a targeted follow-up review within two years of being designated high-risk. State agencies would continue to have the option to review SFAs more frequently.

Upon implementation, State agencies would be required to review SFAs with significant noncompliance in the areas of meal pattern/nutrition requirements, certification determinations, and claims earlier in the review cycle. In the initial 5-year review cycle, State agencies would be required to review SFAs known to be noncompliant in the first three years, and rely heavily on the most recent administrative review to identify these SFAs. This would ensure that SFAs known to be noncompliant are appropriately monitored earlier in the review cycle and minimize the time between reviews for these SFAs.

Targeted follow-up reviews would be less comprehensive than a full administrative review and at this time USDA anticipates the scope will include areas identified as high-risk for the SFA, along with other critical Program areas that include Performance Standard 1

[6] House Report No. 114–531 (2016) available at: *https://www.congress.gov/114/crpt/hrpt531/CROT-114hrpt531.pdf.*

[7] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Child Nutrition Reporting Burden Analysis Study* by Steven Garasky, Linda Piccinino, Kevin Conway, Allison Magness, and Elizabeth Gearan. Project Officer: Jinee Burdg. Alexandria, VA: July 2019.

and 2 violations and Resource Management findings. Performance Standard 1 includes eligibility, certification, and meal counting/claiming requirements. Performance Standard 2 includes meal pattern and nutrition requirements. Resource Management areas include the areas outlined in 7 CFR 210.14. Prior to July 1, 2012, USDA required follow-up reviews of SFAs found to have critical area violations in excess of certain review thresholds. Since July 1, 2012, follow-up reviews have been conducted at State agency discretion, per 7 CFR 210.18(c)(2). This rule proposes to reinstate required, targeted follow-up reviews; however, based on public input, requirements for follow-up reviews implemented in a final rule may be different than follow-up review requirements prior to July 1, 2012.

USDA intends to provide both the high-risk criteria and the scope of the targeted follow-up review in regulation. USDA proposes to use findings from previous administrative reviews and findings regarding any known noncompliance with Federal procurement regulations to determine high-risk. USDA seeks comment on which particular administrative review findings should be included in the high-risk criteria. USDA is also considering using additional risk factors (*e.g.,* staff experience and/or staff turnover) and SFA characteristics (*e.g.,* enrollment size, funding level, type of meal counting and/or claiming system, and/or point-of-service system) to determine high-risk. USDA seeks public comment on additional characteristics to be included in defining high-risk and the scope of targeted follow-up reviews. USDA would allow State agencies to add other risk criteria as they see fit, and to designate an SFA as high-risk based on other information on a case-by-case basis.

In developing this proposal, USDA considered two other options, as described below. USDA welcomes public comments on these options, even though a different approach is proposed in this rulemaking.

(1) USDA considered establishing two review cycles: A 5-year cycle for low-risk SFAs and a 3-year cycle for high-risk SFAs, as some stakeholders suggested, but concluded that multiple cycles could create additional administrative burden and confusion. USDA believes that transitioning to a 5-year cycle, with the requirement to conduct targeted, follow-up reviews of high-risk SFAs more often, would achieve the same outcome and provide States with flexibility on the timing of such reviews.

(2) USDA also considered a different approach that would return all SFAs to a 5-year review cycle. Under that approach, State agencies would be required to randomly select a portion of SFAs, using a statistically valid sample, which would receive comprehensive reviews using all administrative review modules. In addition, for each cycle USDA would identify the Program areas of highest risk and impact to the Programs, and only those modules would be reviewed for the remaining SFAs. USDA explored this option to allow State agencies to review all SFAs thoroughly in the areas of highest risk or impact to the Programs, while also alleviating burden by not requiring all review modules for some SFAs. USDA concluded that this approach could present significant risks to Program integrity since not all areas would be reviewed. In addition, USDA would likely need to require additional administrative reviews of SFAs deemed high-risk for administrative error to fulfill statutory requirements, which would negate the burden reduction.

Therefore, the proposal to return to a 5-year administrative review cycle, with targeted, follow-up reviews of high-risk SFAs, responds to feedback from some stakeholders who report that the 3-year review cycle is too burdensome for both State agencies and SFAs, and limits a State's ability to conduct other valuable oversight activities, such as providing technical assistance. Giving State agencies discretion to add other risk criteria to the risk assessment would allow States to tailor monitoring activities to their unique needs, and move away from a ''one size fits all'' approach. Allowing State agencies the option to return to a 5-year administrative review cycle aims to alleviate burden on State agencies by providing more time to complete required reviews and devote more resources to technical assistance. Focusing additional resources on high-risk SFAs would allow State agencies to target limited resources to those SFAs most in need of monitoring and technical assistance.

Based on public input and at the Secretary's discretion, USDA may implement and/or modify the proposed operational flexibility in a final rule.

What would stay the same?

State agency reviewers would continue to follow procedures outlined in the FNS Administrative Review Manual, as required, to monitor general and critical areas of review.

Specific Public Input Requested

USDA is seeking public comment on:

- The 5-year review cycle models (the model proposed, and the two models considered, but not proposed);
- How to determine an SFA's risk of noncompliance, including the risk factors to consider;
- The scope of the targeted follow-up review; and
- How risk factors should apply if a State agency opts to review SFAs more frequently than on a 5-year cycle.

The proposed changes to the administrative review cycle are in 7 CFR 210.18(c) of the regulatory text.

Align Administrative Review and Food Service Management Company Review Cycles

Current Requirements

Regulations at 7 CFR 210.19(a)(5) require that ''each State agency shall perform a review of each SFA contracting with a food service management company, at least once during each 3-year period.'' The 3-year review cycle for food service management companies aligns with the current 3-year administrative review cycle. This allows States to coordinate and streamline review and oversight activities.

Allowing a 5-year review cycle for administrative reviews while maintaining a 3-year review cycle for food service management company reviews could present challenges to State agencies' oversight activities.

Proposed Changes to the Food Service Management Companies Review Cycle

This rule proposes to change the food service management company review cycle to at least once during a 5-year period, so State agencies can align oversight activities. State agencies may opt to review SFAs with food service management companies more frequently. This proposal would allow State agencies to align and streamline administrative reviews and food service management company reviews. This proposal is consistent with USDA's focus on Program efficiency.

What would stay the same?

This proposed rule only changes the minimum time-frame of the review cycle and does not make any other changes to the oversight of food service management companies, including the requirement for State agencies to review each contract between an SFA and food service management company annually.

The proposed changes to the food service management review cycle are in 7 CFR 210.19(a)(5) of the regulatory text.

Address Significant Performance Standard 1 Noncompliance Early in Review Cycle

Current Requirements

If the State agency determines that an SFA demonstrates significant noncompliance with the meal pattern and nutrition requirements set forth in 7 CFR 210.10 and 220.8, the State agency must select the SFA for an administrative review earlier in the review cycle (7 CFR 210.18(e)(5)). If significant noncompliance is found in other areas, including Performance Standard 1, the State agency is not required to select the SFA for an administrative review earlier in the review cycle.

Performance Standard 1 includes important eligibility, certification, and meal counting/claiming requirements. These include the requirements that all free, reduced price, and paid meals claimed for reimbursement are served only to children eligible for free, reduced price, and paid meals, respectively; and that the meals are counted, recorded, consolidated, and reported through a system which consistently yields correct claims (7 CFR 210.18(g)). Compliance with Performance Standard 1 areas is critical to ensure Program integrity. It is inconsistent to require State agencies to review SFAs early in the review cycle only when there is significant noncompliance with the Performance Standard 2 meal pattern and nutrition requirements, and not for Performance Standard 1 requirements.

Proposed Changes to the Early Review of School Food Authorities

This rule proposes requiring that State agencies also select SFAs with significant noncompliance in Performance Standard 1 areas for an administrative review earlier in the review cycle. While ''significant noncompliance'' has not been formally defined, USDA interprets it to mean findings from previous reviews that warrant fiscal action and any knowledge that a State agency may have regarding an SFA's noncompliance. These areas, including certification determinations, are set forth in 7 CFR 210.8 and 245.6.

It is important for State agencies to prioritize reviewing SFAs with significant noncompliance not only in meal pattern and nutrition requirements, but also in certification determinations and claims. Reviewing these SFAs early allows State agencies to provide prompt technical assistance to bring SFAs into compliance with Program requirements, rather than allowing noncompliance to continue. Addressing these issues early could also limit the fiscal implications that SFAs face for errors.

What would stay the same?

A State agency that determines that an SFA has significant noncompliance with meal pattern and nutritional requirements set forth in 7 CFR 210.10 and 220.8 must still be reviewed earlier in the review cycle. SFAs that are not determined to have significant noncompliance would be reviewed in line with State agency procedures and regulations outlined in 7 CFR 210.18.

The proposed changes to require SFAs with significant noncompliance in Performance Standard 1 areas to be reviewed earlier in the administrative review cycle are in 7 CFR 210.18(e)(5) of the regulatory text.

Specific Public Input Requested

''Significant noncompliance'' is a term used in Federal regulations that USDA has not defined previously. USDA proposes to define this term and seeks public input on the definition of ''significant noncompliance.''

Allow Expanded Use of Third-Party Audits

Current Requirements

To prevent duplication of effort, regulations allow State agencies to use recent and applicable findings from Federal- or State-required audits in lieu of reviewing the same information in an administrative review (7 CFR 210.18(f)(3)). When Federal or State audit results are used for the administrative review, the State agency must document the source and date of the audit. Some State agencies are using this option to substitute for parts of the administrative review that require or would benefit from specialized financial or accounting expertise. USDA encourages States to consider this practice to prevent duplicative efforts and minimize burden on review staff.

Proposed Change

Maintaining State agency staff with the specialized training and experience needed can be challenging in some States. This proposed rule would allow State agencies to use recent and applicable findings from supplementary audit activities, requirements added to Federal or State audits by local operators, or other third-party audits initiated by SFAs or other local entities. In all cases, the audit activity would have to comply with the same standards and principals that govern the Federal single audit. These are in addition to the audit information that is already allowed to substitute for parts of the administrative review.

This change would provide an additional opportunity for State agencies and SFAs to substitute third-party audits for comparable sections of the administrative review. The intent is to offer options to reduce burden and/or the cost of maintaining qualified State agency staff to conduct specialized sections of the administrative review. This proposal stems from USDA's focus on increasing operational efficiency and is in line with the current provision on audit information.

What would stay the same?

The flexibility that State and local Program operators currently have to use results from Federal- or State-required audits in lieu of completing parts of the administrative review would continue to be available. State agency reviewers would also continue to follow administrative review procedures to monitor all other general and critical areas of review.

The proposed changes to expand the use of third-party audits are in 7 CFR 210.18(f)(3) of the regulatory text.

Allow Completion of Review Requirements Outside of the Administrative Review

Current Requirements

In addition to Federal- or State-required audits, State agencies conduct additional monitoring and oversight activities outside of the formal administrative review process. Existing administrative review requirements do not allow for State agencies that conduct these additional oversight or monitoring processes to use that information in the formal review process.

Some State agencies have developed monitoring practices that review information identical or similar to certain aspects of the administrative review in order to proactively review all SFAs in areas that are critical to successful Program operations and may identify issues of noncompliance annually, rather than waiting for an administrative review. States currently are not able to use some of this information from activities outside of the formal administrative review, requiring them to duplicate work for no additional gain.

Proposed Change

This proposed rule would allow State agencies to satisfy sections of the administrative review through equivalent State monitoring or oversight activities outside of the formal administrative review process. For example, State agencies may already

annually review SFAs' financial documentation, such as reviewing a ''Statement of Revenues and Expenses'' or similar documentation, in order to monitor impacted Program areas, such as allowable costs, throughout the year. These documents may then also be reviewed on the administrative review, for example, as part of the Resource Management Module. This proposal would allow State agencies to omit specific redundant areas of the review if States conduct sufficient oversight elsewhere. USDA would continue to monitor States' oversight practices through the Management Evaluation process to ensure that State agencies are fulfilling their oversight responsibilities.

This proposed change acknowledges that State agencies may be conducting activity identical to certain sections of the administrative review in monitoring visits or other oversight activities outside of the formal administrative review process. Eliminating redundancies would allow State agencies to redirect limited resources to technical assistance or training.

What would stay the same?

State agencies that do not conduct additional oversight activities as described in this provision would continue to complete all sections of the formal administrative review process.

Specific Public Input Requested

The Department seeks public comment on this proposal and any specific oversight activities that States or SFAs are already conducting, or are considering, outside of and redundant to the formal administrative review, to inform the final rule.

The proposed changes to allow completion of review requirements outside of the administrative review are in 7 CFR 210.18(f), (g), and (h) of the regulatory text.

Provide Incentives To Invest in Integrity-Focused Process Improvements

Current Requirements

The administrative review is an evaluation of SFA compliance with procedures meant to ensure proper administration of the school meal programs, including the provision of nutritious meals. In many cases, the procedures reviewed provide direct and definitive checks on Program performance. These include, for example, State agency validation of SFA meal counts to ensure that USDA reimbursements match the number of meals served.

In some cases, however, the administrative review monitors SFA compliance with procedures that are indirect or incomplete measures of compliance with fundamental Program requirements. An example of this is SFA management of the application approval and verification processes. The administrative review ensures that SFAs process applications and verification documents correctly, but it cannot confirm the underlying accuracy or completeness of applicant reporting. The administrative review process is not designed to validate that all applicants are income eligible for Program benefits.

In other cases, the State agency reviewer is in a position to identify errors and provide immediate technical assistance. But neither the review, nor the technical assistance, may adequately address an underlying challenge that can continue to generate errors after the review ends. An example of this is the misidentification of meals as reimbursable or non-reimbursable at the point of sale. While the underlying challenge may be inadequate training, in which case technical assistance and corrective action may be an ideal remedy, the challenge may instead be an antiquated point of sale process that demands too much from the cashier.

Reducing improper Program payments in the school meal programs is an Agency priority. USDA, along with its State agency and SFA partners, have invested in process reforms, technology improvements, and training over the past several years to address improper payments. Some of these efforts seek to strengthen the administrative review process and the training of State agency reviewers, which is critical for effective Program management. Others have led to the development of process reforms such as real-time direct certification that can improve outcomes and reduce error in ways that monitoring cannot. To address the improper payment challenges facing the school meal programs, where much of the underlying Program error cannot be identified or addressed through monitoring reviews alone, additional effort must be directed to this kind of process reform.

Proposed Change

This rule proposes a framework for waiving or bypassing certain review requirements for State agencies or SFAs as an incentive to invest in one or more USDA-designated systems or process improvements that can reduce or eliminate Program errors. The administrative review is a resource-intensive process that generates real costs for State agencies and SFAs. The goal is to redirect some of those resources into process reforms to reduce overall error without increasing overall cost.

USDA will develop a series of optional process reforms that respond to the latest findings from USDA research, independent audits, and Agency analysis of administrative data. USDA will test potential reforms, in cooperation with State and local program administrators, to assess their feasibility and effectiveness. States or SFAs may then adopt these, at their option, in exchange for elimination, modification, or reduction of existing administrative review requirements. USDA anticipates that this package of optional reforms will grow over time in response to new research and changes in the nature of the integrity challenges facing the Programs.

These process reforms seek to reduce Program error, rather than simply maintain the current level of error with a less comprehensive review. For that reason, the ideal reforms are unlikely to be direct substitutes for the review requirements that they replace. As an example, State agencies may be approved to bypass their review of applications, or they may be able to select a smaller application sample, if the SFA adopts a broad package of certification and verification reforms that target both administrative processing error and underlying applicant error. Subject to an assessment of feasibility and effectiveness, this package could include SFA adoption of an online application system that meets USDA-specified integrity standards, high uptake of that online application by households, SFA adoption of specified direct certification best practices, and for-cause verification of applications that exhibit specified error-prone characteristics.

This proposed change seeks to encourage State and local investment in integrity-promoting initiatives in exchange for streamlined oversight activities. It is consistent with USDA's focus on more local control and operational efficiency.

Specific Public Input Requested

USDA seeks public comments on what specific process reforms might be considered for this incentive-based provision, and how the overall integrity of the school meal programs may be enhanced if States and SFAs were to implement such reforms.

The proposed changes to provide incentives to invest in integrity-focused process improvements are in paragraphs 7 CFR 210.18(f), (g), and (h) of the regulatory text.

Omit the On-Site Breakfast Review in Extenuating Circumstances

Current Requirements

Section 22(a) of the NSLA (42 U.S.C. 1769c(a)), directs USDA to create a unified accountability system that requires review of the SBP to ensure conformity with Federal requirements. Reviewing the SBP on-site during an administrative review allows State agencies to provide technical assistance and training when an SFA faces challenges administering the Program. The review also may result in corrective action, which can help improve operations by amending Program errors.

Program regulations at 7 CFR 210.18(g)(1)(ii) and (g)(2)(i)(B) require State agencies to review elements of Program requirements on-site. To limit the burden on State agencies, the current administrative review requires an on-site review of only half of the sites selected for review that operate the SBP as outlined in 7 CFR 210.18(e)(2)(iii)(B). Prior to 2012, SBP on-site reviews were not required. While most State agencies are successfully conducting on-site breakfast reviews, the Department recognizes that State agencies may face unique challenges in conducting SBP on-site reviews at some SFAs, especially those in remote locations with limited lodging options. The early morning start time of SBP on-site reviews adds to this difficulty, particularly when transportation is a barrier. USDA has already approved waivers of the on-site breakfast review requirement in cases where State agencies have faced extenuating circumstances, such as no available lodging within hours of a school or major travel challenges (*e.g.,* a helicopter is the only transportation available and the flight schedule does not allow reviewers to arrive in time for breakfast).

Proposed Changes to SBP On-Site Reviews

USDA proposes to allow State agencies facing extenuating travel circumstances the ability to omit the on-site SBP review and assess an SFA's breakfast operations using other existing measures. In addition, it may be possible for State agency staff to review some aspects of SBP when on-site for the NSLP review. USDA proposes that extenuating travel circumstances would be absence of lodging facilities within 50 miles of a reviewed school. State agencies in such circumstances would be required to notify FNS when omitting the on-site review of SBP due to the absence of lodging facilities.

Including the SBP in the administrative review is required by Section 22(a)(1)(B) of the NSLA to develop a unified accountability system. This proposed change addresses State agency feedback regarding challenges conducting an on-site SBP review. When necessary and warranted, this proposal would allow States to use methods other than the on-site breakfast review to ensure that SBP requirements are met. This proposal retains the State agency requirement to conduct an on-site review for lunch.

What would stay the same?

State agencies without extenuating circumstances would still be required to conduct on-site SBP reviews, as specified in Program regulations.

Specific Public Input Requested

USDA specifically seeks comments on:

- What extenuating travel or safety circumstances, in addition to absence of lodging within 50 miles of a reviewed school, could be included in the regulation;
- What parts of the on-site SBP review cannot be satisfied during an on-site review of the NSLP;
- Any potential risk to Program integrity posed by omitting an on-site SBP review;
- What challenges State agencies and SFAs encounter related to the on-site breakfast review, and whether any of those challenges would be prevented by conducting the SBP review during the on-site review of the NSLP; and
- What off-site processes and tools are, or could be, available to States to ensure SFAs are successfully operating the SBP.

Comments will inform USDA regulations on when and how to apply this flexibility and how to mitigate any risks to Program integrity.

The proposed changes to allow State agencies to omit the requirement to conduct an on-site SBP review in extenuating circumstances are in 7 CFR 210.18(g)(1)(ii) and (g)(2)(i)(B) of the regulatory text.

Add Flexibility to Completion of the Resource Management Module

Current Requirements

Regulations require State agencies conducting an administrative review to do an off-site assessment of an SFA's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements (7 CFR 210.18(h)(1)). This requirement helps State agencies identify which and how many SFAs need a comprehensive review, and helps State agencies acquire information that is vital to assess the SFA's financial management before a review begins. If this information is not received before the completion of the Resource Management Module review during an administrative review, a comprehensive review is required.

USDA received feedback from State agencies after implementation of the unified administrative review process. States indicated that assessing risk for noncompliance in resource management areas off-site can be challenging, depending on when and how the State reviews these areas. USDA allows States agencies to conduct comprehensive resource management reviews off-site, and separate from the on-site administrative review, so there is even more discretion available to States in adopting processes. Requiring an off-site assessment prior to further review may hinder the State's review process.

Proposed Changes to the Administrative Review Resource Management Process

Instead of requiring that any part of the Resource Management module review take place off-site, this proposed rule would allow State agencies to conduct the assessment of an SFA's nonprofit school food service account at any point in the review process that makes the most operational sense to the State agency. Similar to the on-site portion of the review, USDA intends this assessment to take place in the school year that the review began, but will no longer require this assessment to take place off-site. Completion of the Resource Management Module may occur before, during, or after the on-site portion of the administrative review.

Since the inclusion of resource management areas in the administrative review, State agencies have developed their own processes and procedures to review SFAs' financial management practices in preparation for an administrative review. This proposed change would provide State agencies the discretion and flexibility to set up a review process and staff work units in the manner that they see fit.

What would stay the same?

State agencies will still be required to conduct an assessment of the SFA's nonprofit school food service account to evaluate the risk of noncompliance with resource management requirements, following procedures specified in regulations. If risk indicators show that an SFA is at high-risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review.

The proposed changes to allow State agencies to complete the Resource Management Module of the

administrative review at any point in the review process are in 7 CFR 210.18(h)(1) of the regulatory text.

Set Consistent Fiscal Action for Repeated Meal Pattern Violations

Current Requirements

Fiscal action is the recovery of Federal funds provided for reimbursable meals when there is an overpayment due to noncompliance or ineligible meals served. Fiscal action plays a key role in maintaining the integrity of the NSLP and SBP. Reimbursement claims made by SFAs must accurately reflect the number of reimbursable meals served to eligible children, by type, for each day meals are served. When conducting an administrative review, State agencies must identify the SFA's correct Federal reimbursement and take fiscal action when an SFA claims or receives more Federal funds than warranted. Pursuant to 42 U.S.C. 1769c(b)(4), the Secretary may require the State agency to retain funds that would otherwise be paid to the local educational agency, under procedures prescribed by the Secretary, if the local educational agency fails to meet administrative performance criteria established by the Secretary. Currently, as specified in 7 CFR 210.18(l)(2), State agencies *must* take fiscal action for missing food components, and for repeated violations of milk type and vegetable subgroup requirements. State agencies *may* take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and dietary specifications.

State agencies and Program operators have expressed to USDA that inconsistency in fiscal action procedures for findings related to meal pattern noncompliance can be confusing during the fiscal action process. USDA initially directed the inconsistent treatment of repeat meal pattern violations during a time when State agencies were adapting to the meal pattern changes. Now that State agencies better understand meal pattern violations, USDA believes that State agencies are better equipped to make determinations on whether only technical assistance and training is needed, or if fiscal action is warranted.

Proposed Changes to Administrative Review Fiscal Action for Meal Pattern Noncompliance

This proposed rule would no longer require fiscal action for repeated violations of milk type and vegetable subgroup requirements. Instead, State agencies *would have discretion* to take fiscal action for repeated violations of milk type and vegetable subgroup requirements. This change would align with the existing State agency discretion to take fiscal action for repeated violations for food quantities, whole grain-rich foods, and dietary specifications.

Students would still receive vegetables and milk when there are administrative review findings related to milk type and vegetable subgroup requirements, just not the correct type specified in meal pattern requirements. Many SFAs are making a good faith effort to offer children a healthy meal, but may make a mistake or need additional assistance to fully understand the meal pattern requirements. In these instances, rather than requiring States to fiscally penalize SFAs, this rule would allow State agencies to determine the appropriate response: Whether only technical assistance and training is needed, or if fiscal action is the best course of action. USDA believes State agencies are best positioned to determine the appropriate response. This proposed change would make fiscal action consistent across all repeated meal pattern violations.

What would stay the same?

State agencies would still be required to take fiscal action for missing food components. The only fiscal action required by USDA for meal pattern noncompliance would be disallowing meals when a meal component is missing. Fiscal action for any other meal pattern violations would not be required by USDA.

The proposed changes to make fiscal action consistent across all repeated meal pattern violations are in 7 CFR 210.18(l)(2) of the regulatory text.

Add Buy American to the General Areas of the Administrative Review

Current Requirements

As part of the administrative review, State agencies conduct an on-site review of food components to determine compliance with the Buy American provision in 7 CFR 210.21(d). The on-site review of food components is specified in the FNS Administrative Review Manual, but it is not included in the regulations that list the general areas of review to be conducted.

USDA included the on-site monitoring for compliance with Buy American requirements as part of the administrative review, which is conducted on-site at an SFA. A State agency's responsibility to monitor Buy American also includes reviewing procurement documentation, such as contracts, that may be completed separate from the administrative review.

Proposed Changes To Include Buy American in the Administrative Review Requirements

This rule proposes to add the existing Buy American monitoring requirement to the general areas of review listed at 7 CFR 210.18(h)(2), under the administrative review regulations. This proposed change is consistent with guidance in the FNS Administrative Review Manual and clarifies existing monitoring requirements for State agencies.

What would stay the same?

State agencies would still be required to review SFA compliance with Buy American requirements through the administrative review and the State's procurement oversight process, in line with USDA guidance.

The proposed changes to add the existing Buy American monitoring requirement to the general areas of review are in 7 CFR 210.18(h)(2) of the regulatory text.

Proposals To Simplify Meal Service

Facilitate the Service of Vegetable Subgroups in the NSLP

Current Requirements

Vegetables are good sources of nutrients associated with reduced risk for chronic disease.[8] The Dietary Guidelines for Americans, 2015–2020 (hereafter referred to as the Dietary Guidelines) recommend eating a variety of vegetables and categorize vegetables into five subgroups based on similar nutrient content: (1) Dark green, (2) red/orange, (3) beans/peas (hereafter referred to as legumes, as specified in 7 CFR 210.10(c)(2)(iii)), (4) starchy, and (5) other.[9] Bioactive compounds in vegetables vary across subgroups, and recommended amounts in the Dietary Guidelines aim to optimize health benefits.[10] A healthy eating pattern includes a variety of vegetables from all five subgroups.

In the NSLP, current regulatory provisions at 7 CFR 210.10 (c)(2)(iii) require Program operators to offer all five vegetable subgroups to children over a school week; minimum amounts

[8] Health-promoting components of fruits and vegetables in the diet. Liu RH. *Adv Nutr.* 2013 May 1; 4(3):384S–92S.

[9] Dietary Guidelines for Americans, 2015–2020. Key Recommendations: Components of Healthy Eating Patterns *https://health.gov/dietaryguidelines/2015/guidelines/chapter-1/key-recommendations/*.

[10] U.S. Department of Health and Human Services and U.S. Department of Agriculture. Dietary Guidelines for Americans, 2015–2020, Appendix 3. 8th ed. U.S. Government Printing Office, Washington, DC. Available at: *http://health.gov/dietaryguidelines/*.

vary by age/grade group. These standards specify what must be offered to students, not what students must select for a reimbursable meal. Students must be offered—and, therefore, have an opportunity to select—all five types of vegetables during a school week.[11]

Since implementation of the vegetable subgroups requirement in 2012, some Program operators have experienced challenges, especially with the requirement to offer ½ cup of legumes per week. About 80 percent of lunch menus nationwide offer ½ cup legumes per week; this is significantly lower than other vegetable subgroups, which are offered on more than 90 percent of lunch menus weekly.[12] Program operators say the NSLP vegetable subgroup requirements are complex and confusing, especially the requirement to offer varying amounts of vegetables from different subgroups. USDA is sensitive to these ongoing challenges faced by Program operators. USDA aims to ensure that vegetable requirements are easy to understand and implement in the NSLP while still aligning with key subgroups recommended by the Dietary Guidelines.

Some Program operators also report challenges with food waste and report that children are throwing required vegetables in the trash. USDA's *School Nutrition and Meal Cost Study* found that approximately 31 percent of vegetables served in schools are wasted, which mirrors food waste in America at large: Approximately 31 percent of retail and consumer food is wasted.[13] [14] This amount of waste has far-reaching impacts:

- Wholesome food that could feed children in need is sent to landfills.
- Land, water, labor, energy, and other inputs are wasted in producing, processing, transporting, preparing, storing, and disposing of discarded food.

USDA is committed to reducing food waste, improving Program efficiency, and ensuring responsible stewardship of taxpayer dollars.

Proposed Flexibilities for Required Vegetable Subgroups

This rule proposes the following practical flexibilities to facilitate the service of the required vegetable subgroups at lunch. The proposed flexibilities would maintain the existing daily and weekly total vegetable quantities in the NSLP to help schools continue to offer wholesome, balanced meals that support children's growth, development, and academic achievement.

- *Allow all five subgroups in the same minimum weekly amount for all age/grade groups.*

This rule would maintain the five vegetable subgroups recommended by the Dietary Guidelines to ensure children are offered a variety of vegetables in school lunches. The proposal would also facilitate the service of vegetables and minimize food waste by allowing schools to offer the same weekly minimum amount from each subgroup: ½ cup weekly from each subgroup for all grades. Currently, menu planners are required to offer ½ cup of most vegetable subgroups over a school week, but must offer larger quantities of red/orange vegetables (for all age/grade groups) and ''other'' vegetables (for grades 9–12). USDA is committed to implementing measures that reduce food waste in schools and promote efficient school food service operations.[15] Reducing operational complexity by requiring the same quantities of all vegetable subgroups would simplify menu planning and meal service. The proposed change would continue to make the key vegetable subgroups recommended by the Dietary Guidelines available to schoolchildren while reducing operational complexity and the potential for food waste in school food service operations.

- *Allow legumes offered as a meat alternate to count toward weekly legume vegetable requirement.*

This rule would also allow more flexible crediting for legumes, a consistently under-served and under-consumed vegetable subgroup. Legumes are unique vegetables because of their protein content. Under current regulations, local menu planners can offer legumes and count them as either a vegetable or as a meat alternate. Despite this flexibility, some schools are struggling to meet the weekly legumes subgroup requirement. As noted above, about 80 percent of menus met the weekly requirement to offer ½ cup of legumes. This suggests that menu planners who are struggling with the weekly vegetable requirements are struggling most with the legumes requirement.

This proposal would allow menu planners who offer at least ½ cup of legumes as a meat alternate to also count the same ½ cup legumes toward the weekly legumes requirement. Even though the legumes would be included on the menu as a meat alternate, children would still be exposed to legumes and the nutrients they provide. Therefore, this flexibility would not deprive children of access to legumes, it would simply offer flexibility in how legumes are credited toward meal pattern requirements. Under this proposal, offering ½ cup of legumes as a meat alternate would not count toward the daily or weekly vegetable minimums because ''double-counting'' components could reduce the overall food quantity and calories in school meals. Therefore, menu planners would still have to offer vegetables in addition to the legumes (offered as a meat alternate) to meet the established daily and weekly minimum required quantities of vegetables. This flexibility seeks to provide additional options for local Program operators to offer legumes to children.

These proposed flexibilities are expected to make it easier for local Program operators to offer legumes, consistent with the Dietary Guidelines' emphasis on legumes. The Dietary Guidelines recommend (1) increasing legume consumption (legumes are underconsumed for all school-aged children) and (2) increasing the consumption of lean protein foods, including legumes.[16] The proposed changes aim to support operational efficiency and facilitate compliance with NSLP nutrition requirements.

[11] The NSLP meal patterns require a variety of vegetables over a typical, 5-day school week. FNS guidance also specifies vegetable subgroup requirements for shorter (*e.g.,* 3- or 4-day) and longer (*e.g.,* 6- or 7-day) school weeks for institutions that operate on different schedules.

[12] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2018.

[13] Buzby, Jean C., Hodan F. Wells, and Jeffrey Hyman. *The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States, EIB–121,* U.S. Department of Agriculture, Economic Research Service, February 2014. Available at: *https://www.ers.usda.gov/webdocs/publications/43833/43680_eib121.pdf.*

[14] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

[15] Buzby, Jean C., Hodan F. Wells, and Jeffrey Hyman. *The Estimated Amount, Value, and Calories of Postharvest Food Losses at the Retail and Consumer Levels in the United States, EIB–121,* U.S. Department of Agriculture, Economic Research Service, February 2014. Available at: *https://www.ers.usda.gov/webdocs/publications/43833/43680_eib121.pdf.*

[16] U.S. Department of Health and Human Services and U.S. Department of Agriculture. *Dietary Guidelines for Americans, 2015–2020.* 8th Edition. December 2015. Available at: *http://health.gov/dietaryguidelines/2015/guidelines/.*

Schools using these flexibilities would be able to continue offering wholesome and balanced lunches that support children's growth, development, and academic achievement, as the existing vegetable variety and daily and weekly total vegetable requirements would remain in place.

The flexibilities would be available to all age/grade groups. As an example, the chart below shows differences between the current meal pattern and the proposed flexibilities for grades 9–12.

Grades 9–12	Current meal pattern: Require 5 groups/week	Proposed alternative for program operators facing operational challenges: Require 5 groups/week (same minimum amounts) + legumes flexibility
Vegetable Requirements	5 cups/week	5 cups/week.
	1 cup/day	1 cup/day.
Dark green	0.5	0.5.
Red/orange	1.25	0.5.
Beans and peas (Legumes)	0.5	* 0.5.
Starchy	0.5	0.5.
Other	0.75	0.5.
+ cups to reach weekly 5 cup minimum.	1.5	2.5–3.
	Local menu planners decide which vegetables to offer.	Local menu planners decide which vegetables to offer.

* Legumes offered as a meat alternate could meet the weekly legumes subgroup requirement. However, legumes offered as a meat alternate would not count toward the daily and weekly vegetable minimums (1 cup and 5 cups, respectively, in the grades 9–12 example above) because doing so could significantly reduce calories.

In addition to the changes proposed in this rulemaking, FNS recently made several updates to crediting and meal pattern guidance that seek to ease vegetable subgroup requirements:

(1) Pasta made of vegetable flour(s) may credit as a vegetable, even if the pasta is not served with another recognizable vegetable.[17]

(2) Menu planners may estimate the amounts of specific subgroups in vegetable mixtures and credit them accordingly (assuming the minimum creditable amount of ⅛ cup is present).[18]

(3) Salad bars may be located after the point-of-service/point-of-sale if students have access to instructions and serving utensils needed to select required amounts, and provided that the salad bar meets State and local health department requirements.[19]

These recent updates and the proposed flexibilities in this rule respond to input from State and local Program operators who, at listening sessions and roundtable discussions, shared their challenges of offering students a wide variety of healthy vegetables while still meeting the requirement to offer different quantities of vegetable subgroups over the course of a school week. USDA is committed to promulgating common-sense flexibilities that help local Program operators offer wholesome foods that are appealing to children, while maintaining student participation, encouraging meal consumption, and minimizing food waste. The proposed alternatives are consistent with the Administration's regulatory reform, allows more discretion and efficiency in local school food service operations, and maintains children's access to key vegetable subgroups recommended for increased consumption by the Dietary Guidelines.

What would stay the same?

Program operators who wish to offer all five vegetable subgroups in the amounts specified in the existing lunch meal pattern may continue to do so. The proposed flexibility to offer the same weekly amount of each subgroup is optional and primarily intended for Program operators experiencing challenges with specific vegetable subgroups. Under this proposal, schools would continue to offer children at least the same minimum amounts of vegetables daily and weekly (varied by age/grade group) as established in the existing meal patterns. Under Offer versus Serve, at least ½ cup of fruits and/or vegetables would still be required for a reimbursable meal.

Specific Public Input Requested

USDA seeks public comments on the minimum weekly amount(s) that SFAs should be required to offer from each vegetable subgroup. The proposed changes would retain the daily and weekly total vegetable minimums, which ensure that school meals offer children 33–50 percent of total vegetables (by volume) that the Dietary Guidelines recommend children consume in a typical 5-day school week.[20] This is consistent with the goal of school lunches to provide approximately 32 percent of nutrients that children need for optimum growth and development. This proposal would lower the required amount of red/orange vegetables offered to all age/grade groups, and the required amount of other vegetables offered to grades 9–12. Therefore, local Program operators would have more flexibility to choose which vegetables are offered to meet minimum daily and weekly vegetable requirements. USDA seeks public input on how this proposal could be implemented in a way that supports menu planners in offering a variety of healthy vegetables to children.

The proposed flexibility to offer the same weekly amount from all vegetable subgroups is in 7 CFR 210.10(m)(4)(ii) of the regulatory text. The proposed flexibility to offer legumes as a meat alternate and simultaneously meet the

[17] Policy memo. *Crediting Pasta Products Made of Vegetable Flour in the Child Nutrition Programs.* (SP 26–2019, CACFP 13–2019, SFSP 12–2019, published April 19, 2019). Available at: *https://www.fns.usda.gov/school-meals/crediting-pasta-products-made-vegetable-flour-child-nutrition-programs.*

[18] Policy memo. *Meal Requirements under the National School Lunch Program and School Breakfast Program: Questions and Answers for Program Operators.* (SP 38–2019, published September 23, 2019). Available at: *https://www.fns.usda.gov/school-meals/meal-requirements-under-national-school-lunch-program-and-school-breakfast-program.*

[19] Policy memo. *Salad Bars in the National School Lunch Program and School Breakfast Program.* (SP 41–2019, published September 23, 2019). Available at: *https://www.fns.usda.gov/school-meals/salad-bars-national-school-lunch-program-and-school-breakfast-program.*

[20] The Dietary Guidelines recommended amounts vary by calorie levels. School-aged children typically require between 1,200 calories (sedentary, 5-year-old) and 3,200 calories (active, 18-year-old) per day. Additional information is available at: *https://health.gov/dietaryguidelines/2015/guidelines/.*

weekly legume vegetable requirement is in 7 CFR 210.10(c)(2)(iii) of the regulatory text.

Add Flexibility to Established Age/Grade Group

Current Requirements

Childhood overweight and obesity are critical public health concerns. To avoid excessive calorie intake and provide age-appropriate school meals, USDA regulations at 7 CFR 210.10(c)(1) and 220.8(c)(1) establish NSLP and SBP meal patterns for three age/grade groups: K–5, 6–8, and 9–12. These age/grade groups reflect widely used school grade configurations and are consistent with the National Academies of Sciences, Engineering, and Medicine's Dietary Reference Intake (DRI) groupings.[21] The meal patterns specify amounts of food and dietary specifications (calories, saturated fat, *trans* fat, and sodium) for each age/grade group to support healthy weight and minimize chronic disease risk in the student population. Use of these age/grade groups enables schools to provide meals that meet the nutrition needs of most school children.

Through the SBP and NSLP, USDA aims to offer age-appropriate meals to provide school children the energy needed for learning and development. USDA's *School Nutrition and Meal Cost Study* found that, overall, 41 percent of average weekly lunch menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). It was more common for average weekly lunch menus in elementary and middle schools to exceed the maximum calorie level (40 percent and 34 percent, respectively) than to fall below the minimum calorie level (13 percent and 24 percent, respectively). However, the findings were reversed for high schools: Approximately 66 percent of average weekly lunch menus for high schools fell below the minimum calorie level.

Existing flexibility permits a school to use one lunch meal pattern for students in grades K through 8 as food quantity requirements overlap for groups K–5 and 6–8 (7 CFR 210.10(c)(1)). In such a case, the school continues to be responsible for meeting the calorie, saturated fat, and sodium standards, as well as the meat/meat alternate minimums, for each of the age/grade groups receiving the school meals. However, due to several non-overlapping requirements for groups 6–8 and 9–12, USDA does not currently permit flexibility to use one lunch meal pattern for these age/grade groups. USDA recognizes that the existing flexibility does not meet the needs of some schools, especially small schools in rural areas, with unique grade configurations and logistical challenges that may interfere with the reasonable use of the established age/grade groups and flexibility.

Proposed Flexibility in Age/Grade Groups

This rule proposes two common-sense flexibilities to help schools with unique grade configurations that differ from the age/grade groups established in Program regulations (K–5, 6–8, 9–12). In the proposed rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (76 FR 2494, published January 13, 2011), USDA proposed the age/grade groups recommended by the Health and Medicine Division of the National Academies of Science, Engineering, and Medicine (formerly, the Institute of Medicine (IOM)). In response to the proposed rule, a few commenters requested flexibility in use of the age/grade groups (*e.g.,* one grade level leeway); however, the 2012 final rule implemented the IOM recommended age/grade groups to ensure that children are offered age-appropriate meals. Experience since implementation suggests that some flexibility in age/grade groups would ease requirements for local Program operators, and help them offer wholesome meals in different types of schools in a more efficient manner. The proposed flexibilities are as follows:

- *Allow schools with unique grade configurations to use the same meal pattern for a broader group of students by adding or subtracting one grade on either or both ends of an established age/grade group.*

This proposed flexibility would enable schools with unique grade configurations to be more efficient in menu planning and service, and make better use of limited resources. Schools using this proposed flexibility would follow the meal pattern and dietary specifications corresponding to the majority of grades served. For example, a school with students in grades 7–9 could offer the meal pattern for grades 6–8 to all students (by adding one grade to the 6–8 meal pattern to serve students in grade 9). In this example, because the 6–8 age/grade group meal pattern may not meet the calorie needs of students in grade 9, the school would have the option of offering additional food (*e.g.,* larger portions, additional choices) to the older students to ensure they receive age-appropriate meals. This flexibility would be available to all schools. Any SFA would be able to elect this flexibility by notifying their State agency; State agency approval would not be required.

- *Allow schools with unique grade configurations in small SFAs (i.e., SFAs serving fewer than 2,500 students) to use one or two meal patterns to plan meals for students in all grades.*

This proposed flexibility would permit schools with unique grade configurations in small SFAs to follow one or two NSLP and/or SBP meal pattern(s) to plan meals more efficiently. The Dietary Guidelines would continue to be the foundation for meal pattern requirements. This flexibility would help local Program operators maintain efficient food service operations while offering meals to schoolchildren in multiple age/grade groups.

For example, in a K–12 school in a small SFA, it may be operationally efficient for a menu planner to use the grades 6–8 meal pattern to plan meals for all students. Using a single meal pattern may overfeed younger students and underfeed older students, therefore, schools would have the option of offering additional food (*e.g.,* larger portions, additional choices) to older students to ensure they receive age-appropriate meals. This flexibility would only be available to schools with unique grade configurations in SFAs serving fewer than 2,500 students. SFAs that choose to exercise this flexibility would work with their State agency to identify which meal pattern(s) best balance operational ease and offering children age-appropriate meals.

The proposed age/grade group flexibilities respond to input from State and local Program operators, who shared that the current regulatory requirements do not work for the unique and varied age/grade group structure of schools across the country, especially small, often rural SFAs that adopt unique grade configurations to best serve their communities. USDA is committed to easing regulatory requirements so that local Program operators, who understand their communities' unique situations and needs, have discretion to administer the SBP and NSLP most efficiently. Any small SFA would be able to elect this flexibility by notifying their State

[21] Developed by the National Academy of Medicine, the Dietary Reference Intakes (DRIs) are nutrient reference values that support many program, policy, and regulatory initiatives. The DRIs serve as a guide for good nutrition and provide the scientific basis for the development of food guidelines in the United States and Canada. More information is available at *http://nationalacademies.org/hmd/about-hmd/leadership-staff/hmd-staff-leadership-boards/food-and-nutrition-board.aspx.*

agency; State agency approval would not be required.

What would stay the same?

This proposed rule would maintain the established age/grade groups for menu planning for Program operators offering meals to students in schools with grade configurations that align with the age/grade groups established in 7 CFR 210.10(c)(1). Schools with unique grade configurations may benefit from the flexibilities described above.

Schools adopting one of the proposed flexibilities would be encouraged to offer additional foods to older children who receive meals based on meal patterns intended for younger children. For example, such schools may offer older students larger portions or additional choices to ensure their calorie and nutrient needs are met.

Specific Public Input Requested

USDA seeks public comments on:

- The benefits of each proposed age/grade group flexibility, including how the proposals may ease requirements for local Program operators;
- The drawbacks of each proposed age/grade group flexibility, including the potential of overfeeding or underfeeding children by offering meals not designed for their age/grade group; and
- The feasibility of offering additional foods or larger portions to older children when schools plan meals based on the meal pattern for younger children.

The proposed flexibilities to the established age/grade groups are in 7 CFR 210.10(c)(1) and (m)(4) and 220.8(c)(1) and (m)(2) of the regulatory text.

Increase Flexibility To Offer Meats/Meat Alternates at Breakfast

Current Requirements

Prior to the 2012 meal pattern updates, SBP operators could offer meats/meat alternates, grains, or a combination of meats/meat alternates and grains at breakfast. Regulations specified that Program operators could offer meats/meat alternates only, grains only, or a combination of the two. Currently, meats/meat alternates are not required in the SBP meal pattern; only fruits, grains, and fluid milk are required (7 CFR 220.8(c)(2)). In the proposed rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (76 FR 2494, published January 13, 2011), USDA proposed a daily meat/meat alternate requirement in the SBP. However, many school districts expressed concerns about offering a daily meat/meat alternate at breakfast due to cost, logistical and food safety challenges, and availability of meat/meat alternate products that would meet the dietary specifications for sodium and saturated fat. Prior to 2012, schools had the flexibility to offer one serving each of grains and meat/meat alternate, or two servings of either one at breakfast. Therefore, some of the longstanding SBP flexibility to offer grains and/or meats/meat alternates was retained in the final rule for operational efficiency and cost effectiveness: Menu planners that offer a minimum amount of grains may offer meats/meat alternates to credit toward the grains requirements. Meats/meat alternates may also be offered in the SBP as ''extra'' food items that do not count toward meal pattern requirements, but are subject to dietary specifications (calories, saturated fat, *trans* fat, and sodium).

USDA recognizes that Program operators want to offer meals that appeal to students and encourage participation in the school meal programs. In listening sessions and roundtable discussions, Program operators expressed confusion about the requirement to offer a minimum amount of grains in order to offer meats/meat alternates.

Proposed Changes to SBP Grains Component

This rule proposes to allow schools to offer meats/meat alternates and/or grains interchangeably in the SBP, with no minimum grain requirement. It would remove the requirement to offer a minimum amount of grains before meats/meat alternates can be offered. Instead, Program operators would be permitted to offer 1–2 ounce equivalents of grains or meats/meat alternates, or a combination of the two, daily to total a minimum of 7–9 ounce equivalents over a school week (amounts vary depending on the age/grade group).

The proposed flexibility responds to input from State and local Program operators who want to offer meats/meat alternates at breakfast without the requirement to offer a grain first. In December 2017, USDA solicited comments on the Child Nutrition Programs crediting system through a Request for Information (RFI).[22] USDA sought public input about specific foods of interest to stakeholders and asked for recommendations to make crediting more simple, fair, and transparent. FNS received a total of 437 comments. Several commenters from State agencies and the food industry, asked USDA to make it easier for local Program operators to offer meats/meat alternates in the SBP. This proposal responds to those comments, and would allow menu planners to offer grains and/or meats/meat alternates in the SBP.

USDA is conscious of how complexities in meal pattern requirements are challenging for some local school food service staff, and strives to simplify Program requirements so local food service staff can focus on feeding children.

What would stay the same?

Program operators would not be required to change menu planning practices. Menu planners could continue to offer grains only in the SBP, consistent with current requirements. Remaining elements of the SBP meal pattern (*i.e.,* fruit and fluid milk requirements) would not change.

The proposed change to the SBP grains component is in 7 CFR 220.8(c) of the regulatory text.

Flexibility in SBP Fruit Component

Current Requirements

Fruit is one of three required components in the SBP meal pattern (7 CFR 220.8(c)(2)). Schools are required to offer students in all grades at least one cup of fruit per day at breakfast. Although offer versus serve (OVS) is optional in the SBP, many schools use OVS and allow students to take only ½ cup fruit at breakfast if they do not want the whole cup.[23]

In addition to the traditional, cafeteria-based breakfast model, schools may operate an alternative breakfast model. For example, ''Breakfast in the Classroom'' involves serving the breakfast meal to children during a morning class, often while the teacher is taking attendance or giving classroom announcements. Schools operating ''Grab & Go Breakfast'' serve children a breakfast ''to go,'' often in a bag, before school or during a morning break. Alternative breakfast models give more children an opportunity to eat breakfast, ensuring they have the nutrition necessary to optimize learning and development.

SBP meals served outside the cafeteria are often pre-packaged for convenience and operational ease. Students generally have fewer choices when SBP is offered in a non-cafeteria setting and have limited opportunities to decline food

[22] *Food Crediting in the Child Nutrition Programs: Request for Information.* 82 FR 58792, published December 14, 2017.

[23] Offer versus serve is a provision in the NSLP and SBP that allows students to decline some of the food offered. The goals of OVS are to reduce food waste in the school meals programs while permitting students to decline foods they do not intend to eat.

items, and Program operators are required to offer students a full cup of fruit.

Proposed Flexibility in SBP Fruit Component

To help reduce food waste and encourage breakfast service outside the cafeteria, this rule proposes to allow SBP operators to offer ½ cup of fruit in reimbursable breakfasts served outside the cafeteria, with State agency approval. Consistent with the Dietary Guidelines' emphasis on fruit intake, this proposal continues to provide children with access to fruit in the SBP, while promoting operational efficiency and reducing food waste. This flexibility would make the fruit requirement for breakfasts served outside the cafeteria consistent with the minimum amount of fruit required for a reimbursable meal in schools using OVS in cafeteria settings.

When breakfast is served outside the cafeteria, food waste is a concern. Classrooms, buses, hallways, and other areas where breakfast might be offered do not have a cafeteria-like capacity to collect food waste. Pre-packaged meals often contain the required one cup of fruit. Some Program operators are concerned that one cup is too much fruit for younger students who eat less, and assert that excess fruit is ending up in the trash. Under OVS, in a cafeteria setting, students are offered one cup of fruit, but only required to take ½ cup for a federally reimbursable meal (provided that the other required meal components are included). Currently, if a school does not use OVS, students offered SBP in non-cafeteria settings must take one full cup of fruit; food that is not eaten in the time allotted is often thrown away. This may contribute to food waste in non-cafeteria settings. In recent listening sessions and roundtable discussions about food waste, some Program operators suggested this strategy to reduce food waste: Allow school breakfasts served outside the cafeteria to be reimbursed with only ½ cup of fruit offered. Wasting food is bad business for school food service operations; this proposal aims to support financial stability and help school food service operations minimize food waste.

USDA understands this change could result in a concurrent reduction in calories in the SBP meal pattern. However, USDA does not propose any changes to the average weekly minimum calorie requirements in the SBP. Schools that choose to exercise this flexibility would be encouraged to offer additional fruit to students who would like a full cup (*e.g.,* have a basket of whole fruits available on the breakfast cart for students to take more fruit).

In addition, this flexibility may entice more schools to offer school breakfast in non-cafeteria settings. The potential increase in alternative SBP service models could result in increased participation (*i.e.,* more students eating school breakfast and starting the school day well-nourished and ready to learn).

What would stay the same?

SBP operators that offer breakfast to students in the cafeteria must continue to offer one cup of fruit to students in all age/grade groups. Schools offering the SBP outside the cafeteria may also continue to offer one cup of fruit to all age/grade groups. In all settings where breakfast is offered, students would still be required to select at least ½ cup of fruit for a reimbursable breakfast. No additional changes to the weekly average calorie minimums are being proposed, and OVS remains an option for the SBP at all grade levels.

Specific Public Input Requested

USDA's *School Nutrition and Meal Cost Study* found that, overall, more than half (56 percent) of average weekly breakfast menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). While it was more common for average weekly breakfast menus across all school types to exceed the maximum calorie level (36 percent overall), approximately 18 percent of average weekly menus for high schools offer too few calories. USDA seeks public comments on:

- Expected benefits of permitting schools to offer ½ cup of fruit in non-cafeteria breakfasts;
- The potential of underfeeding children by offering less fruit; and
- The feasibility of offering additional foods or larger portions to older children and children who would like a full cup of fruit.

The proposed change to permit schools to serve ½ cup of fruit in breakfasts served in non-cafeteria settings is in 7 CFR 220.8(c)(2) and (m)(1) of the regulatory text.

Remove Synthetic Trans Fat Limit as a Dietary Specification

Current Requirements

Synthetic *trans* fats are currently prohibited in the NSLP and SBP, and in all foods sold to students on campus during the school day (7 CFR 210.10(f)(4), 220.8(f)(4), and 210.11(g), respectively).[24] Since these USDA regulations were implemented, the Department of Health and Human Services' Food and Drug Administration (FDA) determined that partially hydrogenated oils—the leading dietary source of synthetic *trans* fats—are not ''Generally Recognized as Safe'' (or GRAS) because *trans* fats are associated with negative health consequences (*e.g.,* heart disease, high cholesterol). After reviewing extensive clinical data and public comments, the FDA enacted regulations to eliminate partially hydrogenated oils from the food supply.[25] The FDA originally established the compliance deadline as June 18, 2018, for all products, but has extended the deadline due to the shelf life of some food products. The FDA prohibited the addition of partially hydrogenated oils to foods effective June 18, 2018; however, petitioned uses of partially hydrogenated oils were allowed to continue through June 18, 2019. Old inventory may exist in the food supply until January 1, 2021, after which synthetic *trans* fats will be effectively eliminated from the food supply.

Flexibilities Proposed by This Rule

Under this proposal, the current synthetic *trans* fats limit for SBP, NSLP, and competitive foods would be removed effective July 1, 2021. Beginning SY 2021–2022, State and local Program operators would not have to comply with, or monitor, synthetic *trans* fats in school meals or competitive foods.

FDA's regulations are removing synthetic *trans* fats from the United States food supply. Therefore, it is unnecessary for USDA to maintain additional regulations to prohibit synthetic *trans* fats in school meals. The proposed changes to remove the synthetic *trans* fat limit are in 7 CFR 210.10, 210.11, and 220.8 of the regulatory text.

Change the Performance-Based Reimbursement (7 Cents) Quarterly Report to an Annual Report

Current Requirement

States are currently required to submit a quarterly report to USDA detailing SFAs certified to receive the performance-based reimbursement (7 CFR 210.5(d)(2)(ii)). Currently, more than 99 percent of SFAs are certified to

[24] This restriction does not apply to naturally occurring *trans* fats present in meat and dairy products.

[25] *https://www.fda.gov/food/ingredients packaginglabeling/foodadditivesingredients/ ucm449162.htm.*

receive the performance-based reimbursement.[26] The report is no longer needed quarterly because nearly all SFAs are certified to receive the performance-based reimbursement.

As part of the recent *Child Nutrition Programs Reducing Burden Study,* FNS sought feedback from State and local Program operators about administrative burden. The study aimed to identify the best means of efficiently consolidating Child Nutrition Program administrative and reporting requirements, to simplify regulations, and to improve efficiencies. Reviewing and reconciling information to submit reports, and the amount/type of information required, were noted as frequent contributors to State and local reporting burden.

Flexibilities Proposed by This Rule

This rule proposes that the performance-based reimbursement quarterly reporting requirement specified in 7 CFR 210.5(d)(2)(ii) be changed to an annual reporting requirement.

USDA is proposing to reduce the frequency of this reporting requirement in response to Program operator feedback. USDA seeks to ease Program requirements so State and local Program operators have more time to focus on feeding children.

The proposed change to make the performance-based reimbursement (7 cents) quarterly report an annual report is in 7 CFR 210.5(d)(2)(ii) of the regulatory text.

Update Meal Modifications for Disability and Non-Disability Reasons

Current Requirements

Schools participating in the NSLP and SBP are required to ensure that children with disabilities have an equal opportunity to participate in, and benefit from, the NSLP and SBP. Likewise, institutions, child care facilities, and adult day care facilities (''institutions and facilities'') participating in the Child and Adult Care Food Program (CACFP) must ensure equal access to Program benefits regardless of disability status. This includes providing special meals, at no extra charge, to Program participants with a disability that restricts their diet. FNS proposes several changes to regulations at 7 CFR 210.10(m) and 226.20(g) to align Program regulations with statutory requirements established in the Americans with Disabilities Act (ADA) Amendments Act of 2008, Public Law 110–325 (42 U.S.C. 12101).[27]

Current regulations at 7 CFR 210.10(m) and 226.20(g) describe exceptions and variations in reimbursable meals, including exceptions due to a disability that restricts a participant's diet. Schools, institutions, and facilities are required to make substitutions to ensure Program participants with disabilities have an equal opportunity to participate in, and benefit from, the Federal meal programs (7 CFR 210.10(m)(1) and 226.20(g)(1)). Current regulations require substitutions to be made only when the need for the substitution is supported by a written statement signed by a licensed physician.

Current regulations also describe ''medical or other special dietary needs'' that are not considered disabilities, but prevent a Program participant from consuming the regular meal. Schools, institutions, and facilities are currently allowed, but not required, to make substitutions for ''medical or other special dietary needs'' (7 CFR 210.10(m)(2) and 226.20(g)(2)). Current regulations require schools, institutions, and facilities to obtain a written statement signed by a recognized medical authority in order to make a substitution due to a participant's ''medical or other special dietary need,'' except for fluid milk substitutions. Consistent with statute, schools, institutions, and facilities have discretion to provide fluid milk substitutions with a note from a medical authority, a note from the child's parent or guardian, or a note by, or on behalf of, an adult participant (7 CFR 210.10(m)(2)(ii)(B) and 226.20(g)(3)). In the 2004 Child Nutrition and WIC Reauthorization Act, Congress directed FNS to establish nutrition standards for fluid milk substitutions, and required FNS to include standards for calcium, protein, vitamin A, and vitamin D. Therefore, fluid milk substitutions for ''medical or other special dietary needs'' must meet the nutrition standards included in FNS regulations at 7 CFR 210.10(d)(3) and 226.20(g)(3).

Additionally, current regulations encourage schools to consider ''ethnic, religious, or economic'' factors when planning or preparing meals, provided the variations are within the meal pattern requirements (7 CFR 210.10(m)(3)). Current regulations allow institutions and facilities, with FNS approval, to vary meal components on an experimental or continuing basis if the variation is nutritionally sound and necessary to meet ethnic, religious, economic, or physical needs (7 CFR 226.20(h)).

According to the U.S. Census Bureau, approximately 56.7 million people in the United States had a disability in 2010.[28] Further, 2.8 million school-age children (ages 5 to 17) were reported to have a disability in 2010.[29] It is important that FNS provide up-to-date guidance so that schools, institutions, and facilities participating in the Federal meal programs understand their legal obligation to ensure Program participants with disabilities have an equal opportunity to participate in and benefit from the Federal meal programs.

To that end, FNS has developed policy guidance, consistent with applicable Federal law. On September 27, 2016, FNS issued SP 59–2016: Policy Memorandum on Modifications to Accommodate Disabilities in the School Meal Programs. In 2017, FNS issued SP 26–2017: Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers, SP 40–2017: Accommodating Children with Disabilities in the School Meal Programs, and CACFP 14–2017: Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program. These policy resources provide detailed guidance on how the broader vision of the ADA can be implemented in Federal meal programs nationwide.

However, current Program regulations are not consistent with statute, as described below. FNS aims to correct this inconsistency with this proposed regulation.

Proposed Update to Disability Modifications Requirements

The basis for these changes is statutory. The ADA Amendments Act of 2008 made important changes to the meaning and interpretation of the term ''disability.''

According to the ADA, the term ''disability'' means:

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of such an impairment; and
- Being regarded as having such an impairment.

In the ADA, Congress provided a non-exhaustive list of ''major life activities,'' including eating and breathing. Additionally, Congress clarified that the operation of a ''major bodily function'' is considered a major life activity. Examples of major bodily functions include (but are not limited to) digestive, bowel, bladder, and respiratory functions.

[26] FNS administrative data, February 2019.

[27] *https://www.congress.gov/110/plaws/publ325/PLAW-110publ325.pdf.*

[28] *https://www2.census.gov/library/publications/2012/demo/p70-131.pdf.*

[29] *https://www.census.gov/library/publications/2011/acs/acsbr10-12.html.*

The Department of Justice implemented the ADA Amendments Act in 2016 with the final rule, *Amendment of Americans with Disabilities Act Title II and Title III Regulations to Implement ADA Amendments Act of 2008.*[30] The final rule clarified that the terms ''disability'' and ''substantially limits'' must be construed broadly and in favor of expansive coverage. For instance, a food allergy does not need to cause anaphylaxis to be considered a disability. A non-life threatening allergy may be considered a disability and require a meal modification, if it impacts a major bodily function or other major life activity. After the passage of the ADA Amendments Act, most physical and mental impairments are considered disabilities.

Based on this expanded definition of ''disability,'' this rule proposes removing the term ''medical or other special dietary needs'' from the regulations. ''Medical or other special dietary needs'' that prevent a Program participant from consuming a meal or meal component are considered a disability under this expanded definition. This rule proposes breaking the regulatory language into the following two paragraphs—''Reasonable modifications for disability requests'' and ''Variations for non-disability requests''—to more clearly distinguish between these two situations. The proposed ''Variations for non-disability requests'' paragraph includes variations for cultural, ethical, Tribal, and religious preferences.

Additionally, the Department of Justice's final rule clarified that determining whether an individual's impairment is a disability under the ADA should not demand extensive analysis. To that end, through policy guidance, FNS has broadened the scope of who is permitted to write a medical statement, to include State licensed healthcare professionals. In guidance, FNS has defined a State licensed healthcare professional as an individual authorized to write medical prescriptions under State law. For example, in many States, this will include licensed nurse practitioners and licensed physicians. This proposal incorporates this change into regulation, and adds a definition for ''State licensed healthcare professional'' at 7 CFR 210.2 and 226.2. FNS also considered accepting medical statements from other licensed professionals who are not authorized to write medical prescriptions under State law, such as dietitians, nutritionists, psychologists, and clinical social workers. FNS aims to ensure that meal pattern exceptions are based on bona fide medical reasons. Therefore, FNS requests public comment on the proposed definition of ''State licensed healthcare professional,'' including if the definition should be broadened.

Through policy guidance, FNS has also clarified that a written medical statement is only required when a disability modification results in a meal that does not meet the meal pattern requirements, reducing burden on schools, institutions, facilities, and families. FNS proposes to add this clarification to the regulations.

Finally, when a disability modification is no longer needed, FNS has recommended in policy guidance that schools, institutions, and facilities obtain written documentation rescinding the original medical statement. This could include, for example, a written statement from the child's parent or guardian indicating that the disability modification is no longer needed. To better align the non-disability fluid milk substitution regulations with disability modification regulations and current policy guidance, FNS proposes to remove language at 7 CFR 210.10(m)(2)(iii) describing the process to revoke a non-disability fluid milk substitution request. FNS expects this change will allow more flexibility for local Program operators to manage fluid milk substitution requests in a way that meets their communities' needs and reduces burden for households.

This proposal would align USDA regulations with current law and guidance.

What would stay the same?

The proposed revisions would not change the overarching requirement that schools, institutions, and facilities make reasonable modifications for Program participants with disabilities that restrict their diet. Rather, the proposed changes align FNS regulations with current statutory requirements and make a clearer distinction between disability and non-disability situations.

Schools, institutions, and facilities would still be encouraged to meet participants' dietary requests and preferences that are not considered disabilities, including those related to cultural, ethical, Tribal, or religious preferences and principles, provided the variations are within the meal pattern requirements. Because menus are planned locally, schools, institutions, and facilities have flexibility to determine which foods to serve, the number of choices (if any), and how foods are prepared. FNS strives to provide schools, institutions, and facilities the resources they need to serve culturally appropriate meals to participants. For example, FNS issued guidance in 2015 to clarify that traditional foods may be served in the Child Nutrition Programs, and provided examples of how several traditional foods (such as buffalo, blue cornmeal, and wild rice) may credit towards a reimbursable meal.[31] FNS has also published guidance on procuring local meat, including traditional foods like bison and venison, for use in the Child Nutrition Programs.[32] The proposed changes to the terminology in this section seeks to align with reasons that variations may be requested for participant meals (*e.g.,* an ethical preference for vegetarian meals).

Finally, the proposed regulations maintain several requirements regarding fluid milk substitutions for non-disability reasons. This is due to specific statutory requirements included in the NSLA. The proposed regulation maintains the option for schools, institutions, and facilities to provide fluid milk substitutions for non-disability reasons, and continues to allow SFAs, institutions, and facilities to select nondairy beverage(s) that meet FNS nutrition standards. For schools that opt to provide fluid milk substitutions, the proposed regulation maintains the requirement that they obtain a written request from a parent or guardian, or by, or on behalf of, an adult participant to support a request for a fluid milk substitution in a non-disability situation. Also, as required by statute, the proposed regulations maintain the requirement that SFAs notify the State agency if any of their schools choose to offer fluid milk substitutions for non-disability reasons. Finally, the proposed regulation maintains the nutrition standards for fluid milk substitutions.

Specific Public Input Requested

USDA is seeking public comment on the following questions:

- Is it too burdensome to require a note from a State licensed healthcare professional for meal modifications that do not meet the meal pattern requirements?

[30] *https://www.ada.gov/regs2016/final_rule_adaaa.html.*

[31] Policy memo TA 01–2015. *Child Nutrition Programs and Traditional Foods,* published July 15, 2015. Available at: *https://fns.usda.gov/sites/default/files/TA01-2015_Child_Nutrition_Programs_and_Traditional_Foods.pdf.*

[32] Policy memo SP 01–2016. *Procuring Local Meat, Poultry, Game, and Eggs for Child Nutrition Programs, published October 22, 2015. Available at: https://fns.usda.gov/sites/default/files/cn/SP01_CACFP%2001_SFSP01-2016os.pdf.*

• Would a different definition for State licensed healthcare professional better facilitate reasonable meal modifications for individuals with disabilities?

○ If so, which additional healthcare professionals (*e.g.,* licensed dietitians, nutritionists, psychologists, and clinical social workers) should be allowed to write a note to support meal modifications that do not meet the meal pattern requirements?

The proposed updates to regulatory language for meal modifications for disability and non-disability requests are in 7 CFR 210.2, 210.10(d)(3) and (m), 226.2, and 226.20(g) of the regulatory text.

Expand Potable Water Requirement To Include Calorie-Free, Noncarbonated, Naturally Flavored Water

Current Requirements

Section 201 of HHFKA amended section 9(a) of the NSLA (42 U.S.C. 1758(a)), to require that schools participating in the SBP and NSLP make potable water available and accessible without restriction to children at no charge in the place(s) where meals are served during the meal service. FNS originally required unflavored water.[33] However, since implementation, the availability of calorie-free, noncarbonated, naturally flavored water has grown in response to consumer interest in healthy beverage options. Local Program operators requested flexibility to offer naturally flavored water (*e.g.,* water infused with fruit) to meet the potable water requirement. Offering naturally flavored water is expected to make water more appealing to children, thereby increasing water consumption.

Proposed Update to Potable Water Requirements

This rule proposes to expand the potable water requirement to permit schools to offer calorie-free, naturally flavored, noncarbonated water. Flavoring added to water would be required to meet the FDA's definition of ''natural flavor or natural flavoring'' described at 21 CFR 501.22(a)(3).

What would stay the same?

Schools may continue to meet the potable water requirement by making unflavored, potable water available and accessible without restriction to children at no charge in the place(s) where meals are served during the meal service.

Proposals To Simplify Competitive Foods

Extend the Entrée Exemption Timeframe

Current Requirements

In an effort to create healthy school nutrition environments, regulations at 7 CFR 210.11(c)(3) established nutrition standards for foods sold to students outside of school meals, on the school campus during the school day. Such foods, commonly referred to as competitive foods, may be available to students in the cafeteria, vending machines, school stores, or other campus locations. The competitive food standards establish nutrition requirements that each individual food item sold on the school campus during the school day must meet. The competitive food standards also include nutrition requirements for entrées sold à la carte.

For a unitized reimbursable Program meal, USDA meal patterns establish daily and weekly nutrition standards that provide age-appropriate, nutritionally balanced portions to children.

Entrées offered as part of a reimbursable meal also may be sold à la carte as a competitive food to students. While an entrée item could fit into the weekly Program meal pattern standards as part of a unitized, reimbursable meal, that same entrée item may not comply with the competitive food standards, which are designed to apply to individual food items.

Recognizing that foods in school meals are typically healthier due to the meal pattern standards, USDA provided schools with the flexibility to sell SBP and NSLP entrée items as à la carte foods exempt from the competitive food standards on the day the entrée is offered on the SBP or NSLP menu, and on the next school day (*e.g.,* students can buy a piece of pizza separately on the day the pizza is also served as part of the unitized school lunch, and the day after). This flexibility was particularly designed to account for leftovers and reduce food waste (7 CFR 210.11(c)(3)(i)).

Program operators are responsible for procuring foods to offer in the Child Nutrition Programs. When standards differ—as in the case of school meals and competitive foods—Program operators may have to procure multiple types of food. For example, one pizza may meet the unitized school meal standards, while a different pizza meets competitive food standards and can be sold à la carte.

Program operators are also concerned about food waste. Local Program operators appreciated the current flexibility, and suggested that exempting SBP and NSLP entrées from competitive food standards for an additional school day would further reduce waste by allowing additional time to sell leftovers.

Therefore, in response to Program operator concerns, this rule proposes to ease requirements and exempt SBP and NSLP entrées from the competitive food nutrition standards for one additional school day. It is proposed that SBP and NSLP entrées be exempt from the competitive food standards on the day the entrée is offered on the SBP and NSLP menu, and for two school days after.

The proposed change to extend the entrée exemption is in 7 CFR 210.11(c)(3) of the regulatory text.

Specific Public Input Requested

As previously discussed, only entrées are exempt from the competitive food standards on the day such an entrée is offered in the school meal programs and the day after. This rule proposes to add an extra day to the entrée sale exemption. Side dishes offered as part of the SBP and NSLP reimbursable meal are not exempt from the competitive food nutrition standards. Further, USDA is taking this opportunity to solicit public input as to whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

As background information, the proposed rule, *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010* (78 FR 9530, February 8, 2013) provided two alternatives by which any menu item (both entrées and side dishes) provided as part of the NSLP and/or SBP school meal would be exempt from all or some of the competitive food nutrition standards.

In an attempt to balance the majority of commenters' opposition to allowing exemptions for any SBP/NSLP menu items, the interim final rule (78 FR 39068, June 28, 2013), established that, to ensure that improvements from the updated school meal standards were not undermined and for ease of implementation, entrée items were provided an exemption, but side dishes were not. This was implemented to ensure the nutritional integrity of the meal programs as well as the competitive food standards. The

[33] Policy memo SP 28–2011. *Child Nutrition Reauthorization 2010: Water Availability During National School Lunch Program Meal Service,* published July 15, 2015. Available at: *https://www.fns.usda.gov/water-availability-during-nslp-meal-service.*

approach adopted in the interim final rule and the subsequent final rule (81 FR 50151, July 29, 2016) was intended to ensure that students are provided healthful school meals, while allowing Program operators flexibility in planning à la carte sales and handling leftovers. However, given the fact that implementation of the competitive food nutrition standards has been in place for a period of time, the Department is interested in receiving feedback as to whether or not exemptions to the competitive food standards should be extended to all menu items offered in the SBP and NSLP.

Additionally, USDA is seeking specific public input on grain products and the definition of entrée. Current Program requirements specify that entrées that include grains and are sold à la carte must be whole grain-rich or have a whole grain as the first ingredient. This requirement is inconsistent with the updated whole grain-rich requirements in the SBP and the NSLP. Therefore, USDA is seeking public comment to determine if the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of ''Entrée'' included in 7 CFR 210.11(a)(3)(i). This change would make the grain requirement for entrées consistent between school meals and entrées sold à la carte as competitive foods. USDA seeks comments on whether or not this definition change is necessary, particularly in light of the proposed extension of the competitive food exemption for Program entrées. Based on public input and at the Secretary's discretion, USDA may implement and/or modify the proposed operational flexibility in a final rule.

Expand Flexibility for the Sale of Calorie-Free, Naturally Flavored Waters During the School Day to All Age/Grade Groups

Current Requirement

Calorie-free, naturally flavored waters (with or without carbonation) may be sold to students in grades 9–12 only (7 CFR 210.11(m)). Calorie-free/low calorie, non-naturally flavored, carbonated beverages (*i.e.,* diet soft drinks) may be sold only to high school students.

Program stakeholders expressed interest in having calorie-free, naturally flavored water—a healthy beverage choice—available to middle and elementary school students.

Flexibilities Proposed by This Rule

This rule proposes to allow local Program operators to sell calorie-free, naturally flavored waters (with or without carbonation), in portions up to 20 ounces, to students in all age/grade groups. This proposal would expand the current policy for grades 9–12 to all grades.

Local Program operators seek healthy foods and beverages that appeal to students who want to purchase only certain items, and not an entire school lunch. Sales from à la carte foods and beverages help support the financial viability of non-profit SFAs. Expanding the sale of calorie-free, naturally flavored waters to all students increases healthy choices available to students without compromising nutritional integrity. Increased water consumption may also offset the consumption of other, higher-calorie beverages. This proposal seeks to ease Program requirements, permitting local Program operators to decide if (and to whom) they would like to sell naturally flavored, carbonated or noncarbonated water.

What would stay the same?

This beverage flexibility does not expand requirements for no/low calorie, non-naturally flavored, carbonated beverages (*i.e.,* diet soft drinks). The existing policy related to diet soft drinks would stay the same: Diet soft drinks may be sold only to high school students.

The proposed change to expand the sale of calorie-free, naturally flavored waters to all age/grade groups is in 7 CFR 210.11(l) of the regulatory text.

Clarifications, Updates, and Technical Corrections

Add Flexibility to State Administrative Expense (SAE) Funds

This rule proposes to update language at 7 CFR 235.5(e)(2) to change the word ''unexpended'' to ''unobligated.'' States are currently required to return to USDA any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded. This proposal would give States more flexibility to spend SAE funds.

Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition

This rule proposes to correct erroneous citations and a definition related to the NSLP Afterschool Snack Service. Regulations at 7 CFR 210.4(b)(3), 210.7(e), and 210.9(c) refer to 7 CFR 210.10(n)(1) in error when referring to NSLP Afterschool Snacks site eligibility. The citation would be corrected to refer to 7 CFR 210.10(o)(1). This rule would provide a technical correction to those three incorrect citation references, remove old citations, and redesignate certain paragraphs.

There is also an error in the definition of ''child'' in 7 CFR 210.2 that this rule proposes to correct. The NSLA permits children through age 18 to receive reimbursable snacks via the NSLP Afterschool Snack Service. The current regulatory definition of ''child'' in 7 CFR 210.2 restricts snacks to children 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age. This rule proposes to modify the definition of ''child'' to be consistent with the NSLA and clarify that children, through age 18, are eligible to receive snacks via the NSLP Afterschool Snack Service.

Expand List of Outlying Areas

Regulations at 7 CFR 210.10(c)(3) and 220.8(c)(3) permit schools in American Samoa, Puerto Rico and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component. These vegetables are traditional foods and, in outlying areas, may be easier to procure than grains. Based on their use of traditional foods, this rule proposes adding Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.

Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions

Nutrition requirements for fluid milk substitutes are detailed in 7 CFR 210.10(d)(3), 215.7a(b), and 226.20(g)(3). The vitamin A and vitamin D requirements are specified in International Units (IUs). The FDA published a final rule that changed the labeling requirements for vitamins A and D to micrograms (mcg) rather than IUs.[34] As a conforming amendment, this rule proposes to change the units for vitamin A and vitamin D requirements for fluid milk substitutes. The units for the vitamin A requirement would change from 500 IUs to 150 mcg per 8 fluid ounces. The units for the vitamin D requirement would change from 100 IUs to 2.5 mcg per 8 fluid ounces. The amounts of required vitamins A and D in fluid milk substitutes would not change; only the unit of measurement would change to conform to FDA labeling requirements.

[34] Final rule. *Food Labeling: Revision of the Nutrition and Supplement Facts Labels* (81 FR 33742, published May 27, 2016). Available at: *https://www.govinfo.gov/content/pkg/FR-2016-05-27/pdf/2016-11867.pdf.*

Seeking Public Input on Specific Items

This rule does not propose changes to the following items, but USDA is seeking public input to inform future policymaking. Based on public input and at the Secretary's discretion, USDA may incorporate these items, as described or modified based on public comment, in the final rule.

Substituting Vegetables for Fruits in the SBP

SFAs participating in the SBP are required to offer one cup of fruit daily to children in all age/grade groups (7 CFR 220.8(c)). To meet this requirement, SFAs may offer a vegetable in place of a fruit. Under current regulations, SFAs choosing to offer a vegetable in place of a fruit at breakfast must ensure that at least two cups per week are from the dark green, red/orange, legumes, or ''other'' vegetables subgroups (7 CFR 220.8(c), footnote (c)). This substitution requirement increases children's access to key food groups recommended by the Dietary Guidelines.

Section 768 of the Consolidated Appropriations Act, 2019 (Pub. L. 116–6), enacted on February 15, 2019, and effective through September 30, 2019, provided additional flexibility in planning breakfast menus but did not require SFAs to make any menu changes. Through September 30, 2019, SFAs participating in the SBP could credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus. Section 749 of H.R. 1865, The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), enacted December 20, 2019, extends this flexibility through June 30, 2021. USDA seeks public comments on making this flexibility permanent.

Competitive Foods: Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods

As described earlier, USDA is soliciting public input on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of ''Entrée'' included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

Transparency for Administrative Review Results

Section 22(b)(1)(C)(iii) of the NSLA directs USDA to ensure that State agencies report the final results of administrative reviews to the public in an accessible, easily understood manner. To satisfy this statutory requirement, State agencies must post a summary of the most recent administrative review results for each SFA on the State agency's public website, and make a copy of the final administrative review report available to the public upon request. The summary must be posted no later than 30 days after the State agency provides the results of the administrative review to the SFA (7 CFR 210.18(m)). While SFAs may have outstanding findings, the intent of the law is to provide information on the SFA's review to the public, including parents and community members, regardless of whether there are areas of noncompliance or needed improvements still pending.

USDA has received feedback from State agencies that the required summary content and the 30-day posting requirement are challenging. USDA has specified minimum reporting requirements (the summary must cover meal access and reimbursement, meal patterns and nutritional quality of school meals, and the school nutrition environment), which limit the reporting burden on State agencies but still provide robust information to the public in areas of common interest. State agencies have discretion to provide additional summary information, including commendations for work well done in any area of the review. Some States have found posting the review summary to be too burdensome and noted that 30 days is not enough time. While USDA considered other timeframes, 30 days seemed to be a reasonable amount of time to post a summary of an already completed review.

The Department is seeking comments to simplify the transparency requirement, including the process of posting a summary of the Administrative Review report, the content of that summary, and the 30-day timeline. USDA is seeking comments to consider how to address any challenges or unintended burden in this requirement. In addition, the Department would like to know what resources or updated guidance would be helpful, if any, to help State agencies satisfy this important requirement that helps the public engage with Programs supported by Federal tax payer dollars.

Grain-Based Desserts in the Child and Adult Care Food Program

Under current regulations, grain-based desserts do not count toward the grains requirement in the Child and Adult Care Food Program (CACFP) (7 CFR 226.20(a)(4)(iii)). In 2015, USDA issued a proposed rule to update the CACFP meal patterns that excluded grain-based desserts from crediting toward the grains requirement (80 FR 2037, published January 15, 2015). A majority of commenters supported the exclusion, and the final rule adopted the proposal (81 FR 24348, published April 25, 2016). Since implementation of the final rule, USDA issued two requests for information soliciting ideas from the public on (1) how to make Child Nutrition Program food crediting more simple, fair, and transparent; [35] and (2) how USDA can provide better customer service and remove unintended barriers to Program participation.[36] In response, commenters expressed a need for increased flexibility for local Program operators to plan wholesome menus that entice children to participate and also stated a desire for more consistency across Child Nutrition Program requirements. Commenters also mentioned the importance of balancing nutrition standards and children's taste preferences. Some commenters expressed a desire to serve grain-based desserts in the CACFP, which would offer menu planners an additional opportunity to incorporate whole grains into foods that children like to eat. Based on this stakeholder feedback and in its continued commitment to customer service, USDA seeks comments on:

- Allowing up to 2 ounce equivalents (oz. eq.) of grain-based desserts per week in the CACFP (consistent with requirements in SBP and NSLP); and/or
- Other approaches that would permit grain-based desserts to credit toward the grains requirement in CACFP and support healthy nutrition standards.

Summary of Flexibilities and Changes Proposed by This Rule

In summary, the changes and flexibilities proposed in this rule are the following:

[35] *Food Crediting in the Child Nutrition Programs: Request for Information.* 82 FR 58792, published December 14, 2017.

[36] *Identifying Regulatory Reform Initiatives: Request for Information.* 82 FR 32649, published July 17, 2017.

Area	Program	Current requirement	Proposed rule	Regulations impacted
Proposals to Simplify Monitoring				
Establish 5-year Administrative Review Cycle & Targeted, Follow-up Reviews of High-Risk SFAs.	SBP, NSLP	All SFAs are reviewed on a 3-year cycle	State agencies would be required to review SFAs once every 5 years, with high-risk SFAs receiving additional oversight.	7 CFR 210.18(c).
Align Administrative Review and Food Service Management Company Review Cycles.	SBP, NSLP	SFAs operating with a food service management company must be reviewed once every 3 years.	State agencies would be required to review SFAs operating with a food service management company once every 5 years.	7 CFR 210.19(a)(5).
Address Significant Performance Standard 1 Noncompliance Early in Review Cycle.	SBP, NSLP	SFAs with significant performance standard 2 noncompliance must be reviewed earlier in the administrative review cycle.	SFAs with significant performance standard 1 and/or performance standard 2 noncompliance would be reviewed earlier in the administrative review cycle.	7 CFR 210.18(e)(5).
Allow Expanded Use of Third-Party Audits	SBP, NSLP	State agencies may use recent and currently applicable findings from federally required audit activity or from any State-imposed audit requirements.	State agencies also would be allowed to use recent and applicable findings from supplementary audit activities, requirements added to Federal or State audits by local operators, or other third-party audits initiated by SFAs or other local entities.	7 CFR 210.18(f)(3).
Allow Completion of Review Requirements Outside of the Administrative Review.	SBP, NSLP, SMP, FFVP [37].	State agencies cannot satisfy administrative review requirements by conducting monitoring and oversight activities outside of the formal administrative review process.	State agencies would be allowed to satisfy sections of the administrative review through equivalent State monitoring or oversight activities conducted outside of the established administrative review process.	7 CFR 210.18(f), (g), and (h).
Provide Incentives to Invest in Integrity-Focused Process Improvements.	SBP, NSLP	State agencies conduct administrative reviews to monitor compliance with Program requirements.	Proposes a framework for waiving or bypassing certain administrative review requirements for State and/or local agencies that implement FNS-specified process improvements.	7 CFR 210.18(f), (g), and (h).
Omit the On-Site Breakfast Review in Extenuating Circumstances.	SBP	State agencies must conduct on-site SBP reviews of half of review sites that operate SBP.	State agencies would be allowed to omit the on-site SBP review in extenuating circumstances.	7 CFR 210.18(g)(1)(ii), 7 CFR 210.18(g)(2)(i)(B).
Add Flexibility to Completion of the Resource Management Module.	SBP, NSLP	State agencies must conduct an off-site assessment of an SFA's financial practices before the review of Resource Management requirements.	State agencies would be allowed to assess an SFA's risk for noncompliance in Resource Management areas at any point in the review process.	7 CFR 210.18(h)(1).
Set Consistent Fiscal Action for Repeated Meal Pattern Violations.	SBP, NSLP	State agencies *must* take fiscal action for repeated violations for milk type and vegetable subgroups.	Proposal would allow State agencies *discretion to* take fiscal action for repeated violations for milk type and vegetable subgroups.	7 CFR 210.18(l)(2).
Add Buy American to the General Areas of the Administrative Review.	SBP, NSLP	State agencies conduct an on-site review of food components to check compliance with Buy American provision, as specified in guidance, but not in regulations.	Proposal would add Buy American on-site compliance check to the regulations under general areas of the administrative review.	7 CFR 210.18(h)(2).
Proposals to Simplify Meal Service				
Facilitate the Service of Vegetable Subgroups in the NSLP.	NSLP	SFAs must offer different amounts of five vegetable subgroups identified in the Dietary Guidelines over the school week (Dark Green, Red/Orange, Legumes, Starchy, and Other).	Proposal would allow SFAs to offer the same amount of vegetables from all five subgroups to all age/grade groups. It would also allow legumes offered as a meat alternate to count toward the weekly legumes vegetable requirement.	7 CFR 210.10(c)(2)(iii), 7 CFR 210.10(m)(4)(ii).
Add Flexibility to Established Age/Grade Groups.	SBP, NSLP	Schools are required to offer meals that meet requirements established for three established age/grade groups (K–5, 6–8, 9–12).	Proposal would allow schools with unique grade configurations to add or subtract a grade on either or both ends of an established age/grade group. Also, schools with unique grade configurations in SFAs with fewer than 2,500 students would have the option to use one (or two) meal patterns for established age/grade groups for all students.	7 CFR 210.10(c)(1), 7 CFR 210.10(m)(4), 7 CFR 220.8(c)(1), 7 CFR 220.8(m)(2).
Increase Flexibility to Offer Meats/Meat Alternates at Breakfast.	SBP	Schools may offer meats/meat alternates at breakfast after the minimum daily grains requirement is offered.	Proposal would allow schools to offer a meat/meat alternate or a grain at breakfast (or a combination of the two) with no daily minimum grain requirement.	7 CFR 220.8(c)(2).
Flexibility in SBP Fruit Component	SBP	Schools must offer 1 cup of fruit per day and 5 cups of fruit per week. Students may select ½ cup of fruit for a reimbursable meal under Offer versus Serve (OVS).	With State agency approval, schools serving SBP in a non-cafeteria setting would be allowed to offer ½ cup fruit per day (2½ cups per week) as part of reimbursable breakfasts.	7 CFR 220.8(c)(2), 7 CFR 220.8(m)(1).
Remove *Trans* Fat Limit as a Dietary Specification.	SBP, NSLP, Competitive Foods.	*Trans* fats are prohibited in NSLP, SBP, and competitive foods.	Proposal would remove USDA's *trans* fat prohibition effective July 1, 2021. The Food & Drug Administration is removing *trans* fats from the food supply.	7 CFR 210.10(f)(4), 7 CFR 210.11(g), 7 CFR 220.8(f)(4).
Change Performance-based Reimbursement (7 cents) Quarterly Report to an Annual Report.	NSLP	States are required to submit a quarterly report detailing the SFAs to receive the performance-based 7 cents reimbursement.	Proposal would reduce the frequency of the performance-based report from quarterly to annually.	7 CFR 210.5(d)(2)(ii).
Update Meal Modifications for Disability and Non-Disability Reasons.	SBP, NSLP, CACFP	Schools, institutions, and facilities are required to obtain a written statement from a licensed physician to make meal substitutions for a child's disability.	Proposal would: Remove the term ''special dietary needs,'' which is encompassed in the expanded definition of ''disability''. Add a definition for ''State licensed healthcare professional''. Clarify that a medical statement is only required for accommodations that fall outside the meal patterns.	7 CFR 210.2, 7 CFR 210.10(d)(3), 7 CFR 210.10(m), 7 CFR 226.2, 7 CFR 226.20(g).

Area	Program	Current requirement	Proposed rule	Regulations impacted
Expand Potable Water Requirement to Include Calorie-free, Noncarbonated, Naturally Flavored Water.	SBP, NSLP	Schools are required to make unflavored, potable water available and accessible without restriction to children at no charge in the place(s) where lunches are served during the meal service.	Proposal would permit schools to offer naturally flavored water to meet the potable water requirement.	7 CFR 210.10(a)(1)(i), 7 CFR 220.8(a)(1).
Proposals to Simplify Competitive Foods				
Extend the Entrée Exemption Timeframe	Competitive Foods	Currently, an entrée is exempt from competitive food standards the day offered on the NSLP and SBP menu and the day after.	Would exempt entrées from standards the day offered on the SBP and NSLP menu and for two days after.	7 CFR 210.11(c)(3).
Expand Flexibility for the Sale of Calorie-Free, Naturally Flavored Waters During the School Day to All Age/Grade Groups.	Competitive Foods	Calorie-free, flavored waters, with or without carbonation may be sold to students in grades 9–12.	Proposal would allow the sale of calorie-free, flavored waters, with or without carbonation to students in all grades.	7 CFR 210.11(l).
Clarifications, Updates, & Technical Corrections				
Add Flexibility to State Administrative Expense (SAE) Funds.	SBP, NSLP, SMP, CACFP, SFSP[38].	States are required to return any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds are awarded.	Changes ''unexpended'' to ''unobligated'' to allow States more flexibility to spend SAE funds.	7 CFR 235.5(e)(2).
Correct NSLP Afterschool Snack Eligibility Erroneous Citations & Definition of ''child''.	NSLP	7 CFR 210 contains erroneous citations related to NSLP Afterschool Snack site eligibility. Definition of ''child'' is outdated.	Corrects erroneous citations and definition	7 CFR 210.2, 7 CFR 210.4(b)(3), 7 CFR 210.7(e), 7 CFR 210.9(c).
Expand List of Outlying Areas	SBP, NSLP	Certain outlying areas are permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	Adds Guam and Hawaii to the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.	7 CFR 210.10(c)(3), 7 CFR 220.8(c)(3).
Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions.	SBP, NSLP, SMP, CACFP.	Fluid milk substitutes must contain at least 500 International Units (IUs) of vitamin A and 100 IUs of vitamin D per 8 fluid ounces.	The required levels of vitamin A and D are unchanged. Consistent with FDA labeling changes for vitamins A and D, the proposal would change the units of the vitamin A and vitamin D requirements for fluid milk substitutes to 150 mcg and 2.5 mcg, respectively, per 8 fluid ounces.	7 CFR 210.10(d)(3), 7 CFR 215.7a(b), 7 CFR 226.20(g)(3).
Seeking Public Input on Specific Items (no changes proposed)				
Substituting Vegetables for Fruits at Breakfast.	SBP	SFAs choosing to offer a vegetable in place of a fruit must ensure that at least two cups per week are from the dark green, red/orange, legumes, or ''other vegetables'' subgroups[39].	Proposal requests public comments on whether or not to permanently allow SFAs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit without including vegetables from the designated subgroups in the weekly menus.	7 CFR 220.8(c).
Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods.	Competitive Foods	Entrees are required to be whole grain-rich. Entrees are exempt from competitive foods standards on the day offered on the SBP/NSLP menu and one day after.	Proposal requests public comments on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of ''Entrée'' included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.	7 CFR 210.11(a)(3), 7 CFR 210.11(c)(3).
Transparency for Administrative Review Results.	SBP, NSLP	State agencies must report the final results of an administrative review to the public (in an accessible, easily understood manner) no later than 30 days after the State agency provides the results to the SFA.	Proposal requests public comments on how to simplify this transparency requirement, including the process of posting results, the summary content, and the 30 day timeframe.	7 CFR 210.18(m).
Grain-based Desserts in the Child and Adult Care Food Program.	CACFP	Grain-based desserts do not count toward the Grains requirement.	Proposal requests comments on permitting grain-based desserts: up to 2 oz. eq. per week (same as SBP and NSLP) or other approaches.	7 CFR 226.20.

IV. Timeline and Instructions to Commenters

Comments from State agencies, local Program operators, food industry, nutrition advocates, parents, and other stakeholders on the day-to-day impact of these proposals will be extremely helpful in the development of a final rule. USDA will carefully consider all relevant comments submitted during the 60-day comment period for this rule, and intends to issue a final rule promptly.

Procedural Matters

Economic Summary

Executive Order 12866 and 13563

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

This proposed rule is significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866. This rule proposes a number of changes to simplify the monitoring and meal service requirements for the National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program. The proposed changes are a direct result of operator feedback, and intend to provide State

[37] SMP = Special Milk Program, FFVP = Fresh Fruit and Vegetable Program.

[38] SMP = Special Milk Program; CACFP = Child and Adult Care Food Program; SFSP = Summer Food Service Program.

[39] Through September 30, 2019, the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) permitted any vegetable offered, including potatoes and other starchy vegetables, to credit in place of fruit without including vegetables from the designated subgroups in the weekly menus. The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), enacted December 20, 2019, extends this flexibility through June 30, 2021.

and local Program operators necessary flexibilities to ensure they can operate the programs effectively and efficiently.

While there are a number of proposed changes in this rule, the increase in administrative review cycle length from reviewing all SFAs once every 3 years to once every 5 years and a reduction in the frequency of the reporting performance-based certification requirement impact burden hours and result in minimal administrative savings. Existing NSLP requirements for recordkeeping and reporting do not reflect the current 3-year administrative cycle or the reporting requirement for the performance-based reporting. These errors will be corrected during the scheduled renewal process in fall 2019. The reduction in burden hours in this rule are based on the estimated corrected hours. This rule is estimated to reduce school meal administrative burden by 171,372 hours, which is $11.4 million in annualized savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

The proposed rule includes a detailed table that lists each change. This economic summary follows the order of this table to discuss each proposed change.

Proposals To Simplify Monitoring Requirements

USDA published a final rule in 2012 to establish a 3-year monitoring cycle for SFAs. This rule merged the prior requirements to conduct a Coordinated Review Effort on a 5-year cycle and the School Meals Initiative, a nutritional assessment of meals, on a separate 3-year cycle. USDA published regulations in 2016 that created the administrative review, which is a unified review process that includes both the operational and nutritional assessment in one process that follows a 3-year review cycle. Increasing the review frequency—from once every 5 years to once every 3 years—along with the introduction of a more comprehensive and unified review resulted in a number of challenges. Some State agencies had difficulty completing the new administrative review process within the 3-year cycle, while also providing technical assistance and maintaining effective and efficient program operations. Some State agencies needed to hire additional staff to complete reviews more frequently; however, not all State agencies could do this due to financial constraints.

These challenges and resource constraints resulted in USDA allowing State agencies to submit waiver requests to extend the administrative review cycle to 4 or 5 years instead of 3 years. The changes proposed in this rule are to alleviate monitoring burden to State and local Program operators. The changes are intended to streamline the review process and target limited resources toward SFAs most at-risk for noncompliance. This proposed rule responds to on-going concerns from Program operators who are challenged to fulfill oversight responsibilities. Some of these changes are estimated to have minimal impact on burden and the associated administrative costs for completing program monitoring requirements.

5-Year Administrative Review Cycle and Targeted, Follow-Up Reviews for High-Risk SFAs

The transition from a 5-year cycle to a 3-year cycle for the administrative review process resulted in some State agencies and SFAs struggling to complete reviews and oversight activities. USDA has received feedback through a number of avenues regarding the difficulties faced by State agencies. The *Child Nutrition Burden Study* was conducted in SY 2017–2018 in response to a Congressional mandate in House Report 114–531 to identify areas to reduce burden in the Child Nutrition Programs. This study collected data through workgroups with State and local Program operators, as well as a survey from a census of all State agencies and a nationally representative sample of SFAs. One reoccurring theme in this study, from both the State agency and SFA perspectives, was the burden associated with the 3-year administrative review cycle. To comply with the 3-year administrative review requirements, some State agencies and SFAs were sacrificing staff resources needed for program administration, including providing technical assistance. State agencies face a number of time and resource constraints, and Program operators struggled to adopt the new procedures and timeframes.

According to the *Child Nutrition Burden Study* results, both State agencies and SFAs reported administrative reviews to be time-consuming and resource intensive. The top factors cited by State agency respondents as contributing to administrative review efforts were the amount of information required (77 percent) and preparation time (73 percent). About two-thirds of State agency respondents identified the frequency of administrative reviews and staff availability as key contributors to the effort needed to conduct administrative reviews. Time and resource constraints disproportionately affected smaller State agencies as they were nearly twice as likely to cite staff availability to participate in administrative reviews as a burden factor, compared to the very large States. Both State respondents and SFA workgroup participants noted that they had to hire extra staff to prepare for and conduct administrative reviews. One of 10 key considerations in the report is to implement a risk-based administrative review process where low-risk SFAs are reviewed less frequently than high-risk SFAs.[40]

This proposed rule would provide State agencies with the ability to conduct a comprehensive NSLP and SBP review of each SFA at least once during a 5-year cycle, instead of once during a 3-year cycle. State agencies would be required to identify high-risk SFAs for additional oversight. SFAs designated as high-risk must receive a follow-up review within two years of being identified as high-risk. State agencies may still opt to review SFAs more frequently.

Determining the high-risk designation is still under consideration but USDA anticipates factoring in prior administrative review findings, operational history of SFA (to include staff experience), and SFA characteristics such as funding level, type of meal counting and claiming system, and point-of-service system.

The follow-up review process proposed in this rule is not new to Child Nutrition Program monitoring. Prior to the implementation of the current administrative review process, the Coordinated Review Effort included follow-up reviews. The Coordinated Review Effort procedures required States to conduct follow-up reviews of all large, and at least 25 percent of all small, SFAs when certain review thresholds were exceeded. State agencies were encouraged to conduct the follow-up review in the same school year as the coordinated review. While similar in structure, the proposed addition of follow-up reviews in high-risk SFAs would likely be different from follow-up reviews in the prior Coordinate Review Effort. The administrative review process is now a more comprehensive review, and the high-risk criteria and follow-up reviews will likely differ in selection and scope from the Coordinated Review Effort.

It is important to assess the impact of returning to a 5-year cycle. Fewer SFAs would be reviewed each year, resulting in the potential for program error to continue for longer. Table 1 shows the

[40] *https://fns-prod.azureedge.net/sites/default/files/resource-files/CN-Reducing%20Burden.pdf.*

projected number of annual reviews that would be conducted using a 5-year cycle and the number of annual reviews that would be conducted using a 3-year cycle. It also provides the number of actual reviews conducted in SY 2016–2017 [41] when 48 States were on a 3-year cycle. Six States were on either a 4 or 5-year cycle (due to receiving a waiver to extend the review cycle) in SY 2016–2017.

TABLE 1—NUMBER OF ANNUAL REVIEWS CONDUCTED

Total number of SFAs in SY 2016–2017	Number of SFAs reviewed during 5-year cycle	Number of SFAs reviewed during 3-year cycle	Number of SFAs reviewed SY 2016–2017
19,240	3,848	6,413	5,537

If all State agencies use a 5-year cycle, and conduct an equal number of reviews each year, approximately 40 percent (or 2,565) fewer SFAs would be reviewed each year (compared to a 3-year cycle). In SY 2016–2017 due to the review cycle flexibilities (that currently remain in effect), 5,537 SFAs were actually reviewed. This is 876 fewer reviewed SFAs than the expected 6,413 SFAs receiving annual reviews on a 3-year cycle. These figures do not take into account follow-up reviews proposed in this rule.

To better understand the impact of the proposed follow-up review, the data from the SY 2016–2017 review year was analyzed to estimate the potential number of follow-up reviews that may have been conducted, if the proposed follow-up reviews were implemented. The criteria used in this simulation only focuses on the results of the administrative reviews, and does not account for other important criteria that the State agency may identify or items that may be identified through public comments on this proposed rule.

To estimate the potential number of follow-up reviews, reviewed SFAs were grouped by the number of error flags triggered during administrative reviews in SY 2016–2017. SFAs with any application errors (for example missing child or household name or income information) were assigned an error flag for applications, the same process was done for SFAs with certification benefit issuance errors (for example, during a review, a sampled student was approved for free meals but was not eligible). SFAs with a fiscal action amount that was not disregarded were assigned a fiscal action error flag. SFAs were also assigned an error flag if they triggered the risk flag for the resource management errors (nonprofit school food service account, Paid Lunch Equity, revenue from nonprogram foods, and indirect costs) or served meals missing components.

The number of SFAs by type of error flag is presented in Table 2. Similarly, the number of SFAs reviewed by total number of error flags is in Table 3. It is important to note this analysis does not consider the magnitude of a particular error, just the presence of an error found during an administrative review.

TABLE 2—NUMBER OF SFAS BY ERROR FLAG—SY 2016–2017 REVIEWS

Total SFAs reviewed with data *	No error flags	Application error flag	Certification benefit error flag	Fiscal action taken flag	Resource management flag	Incomplete meal error flag
4,224	103	1,070	661	347	3,668	3,162

* The total number of SFAs reviewed in SY 2016–2017 is less than the total in Table 1 above, due to USDA providing 13 State agencies the flexibility to only report data for a percentage of total SFAs reviewed (due to resource constraints on State agencies).

TABLE 3—NUMBER OF REVIEWED SFAS BY COUNT OF ERROR FLAGS

Number of error flags	Count of SFAs	Percent of SFAs reviewed by number of flags (percent)
0	103	2.4
1	874	20.7
2	2,173	51.4
3	678	16.1
4	326	7.7
5	70	1.7

The top two most common flags assigned were (1) SFAs flagged for triggering resource management risk criteria (and, thereby, triggering a comprehensive resource management review), followed by (2) meals served missing one or more components. The resource management error flag does not necessarily mean there is noncompliance; it only means that the SFA was triggered to require a comprehensive review based on an off-site risk assessment. The SFA may not actually be in error. Table 3 shows the total number of SFAs by total count of flags. About 9.4 percent of SFAs were flagged for four or more flags and 2.4 percent had zero flags assigned. The vast majority of SFAs received two or fewer flags. The group of SFAs with zero flags may be over-representing one

[41] This is the first complete year of administrative data USDA collected on the administrative review process. States' report data lagged one year, meaning review results for SY 2016–2017 were reported in SY 2017–2018.

State that has about 40 percent of the SFAs with no flags. For the groups of SFAs with one or more flags there were no discernable patterns with respect to State and SFA size.

To estimate the number of potential follow-up reviews that would be required as proposed in this rule, the total number of SFAs with at least three flags could be assumed to be SFAs with errors across almost all, if not all, major review categories and, therefore, in need of a follow-up review. This would mean about 25 percent of the reviewed SFAs would be triggered for a targeted follow-up review in a given year, which would add about 962 total follow-up reviews in a year across the nation.

It is likely that, for some SFAs, it may take more than one follow-up review to remedy major or systemic issues. Assuming that about 15 percent of SFAs with follow-up reviews would require additional technical assistance through a site visit or validation measure, this would add about 144 more review activities in select SFAs.[42]

The total number of estimated SFAs receiving annual reviews under this proposal including the targeted follow-up reviews and other review activities would be about 4,954 SFAs, which is about 26 percent of all SFAs in the nation. This would mean around 1,459 (22 percent) fewer SFAs would be reviewed each year across the nation, than if all State agencies were using a 3-year cycle (where State agencies review about 33 percent of SFAs each year). This estimated number of follow-up review is on average, across the nation, in a given year. The actual number of follow-up reviews will vary by individual State agencies. As systemic and significant issues are identified and resolved through the administrative review process, the number of follow-up reviews may decrease over time.

Regarding the number of SFAs reviewed with little to no error; there were 23 percent with zero or one flag. Among SFAs with two flags, almost all were errors requiring corrective action only, with no fiscal action taken. This means there is likely little risk in allowing more time between reviews for these SFAs. However, moving to a 5-year cycle would delay the identification of any potential new errors in low-risk SFAs for two additional years.

There would be about 1,459 fewer annual reviews conducted under this proposed change, leaving the potential for issues to continue for additional years. However, the targeted nature of the follow-up review, in both selection and scope, would aim to redirect resources to fixing program issues and providing the necessary technical assistance that is currently difficult to do for some resource-strapped States under the current 3-year cycle.

An overall decrease in burden hours (−171,330 hours[43]) is expected for moving from a 3-year to a 5-year review cycle. The targeted nature of the follow-up reviews are intended to be more directly focused on noncompliance and high-risk areas, therefore less burdensome than the initial review. This aids in streamlining the review procedures while balancing the need to quickly resolve program errors and the importance of addressing noncompliance in high-risk SFAs. This is intended to help State and local operators focus resources toward technical assistance and technology to improve Program operations. These changes are anticipated to save $60 million over 5 years.

TABLE 3—ANNUAL AND 5-YEAR SAVINGS—OPTIONAL 5-YEAR ADMINISTRATIVE REVIEW CYCLE & TARGETED, FOLLOW-UP REVIEWS FOR HIGH-RISK SFAS

[Millions]

FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	5-Year
$(11.16)	$(11.56)	$(11.98)	$(12.41)	$(12.86)	$(59.97)

Align Administrative Review and Food Service Management Company Review Cycles

This rule proposes to change review of SFAs that contract with a Food Service Management Company to a 5-year review cycle. Currently SFAs with Food Service Management Companies receive a review once every 3 years. This rule proposes giving State agencies the ability to align Food Service Management Company reviews with the administrative review cycle and streamline oversight activities. About 20 percent of SFAs utilize a Food Service Management Company for some or all of their meal service.[44] This proposal will likely alleviate burden in State agencies with SFAs using Food Service Management Companies due to the alignment in review cycles.

Address Significant Performance Standard 1 Noncompliance Early in Review Cycle

This proposed change places the same emphasis on noncompliance with meal pattern requirements and other review areas. SFAs with significant noncompliance issues in Performance Standard 1, which includes certification determinations, may also be reviewed early. Currently, SFAs with meal pattern issues were to be prioritized in the review cycle. This change would require State agencies to review SFAs with significant noncompliance issues across all program areas early in the cycle. This change seeks to increase overall program integrity by allowing State agencies to apply local knowledge to prioritize the SFA review order. There are minimal impacts to program costs with this change. However, prioritizing SFAs with significant noncompliance issues of all types may result in earlier identification of program errors, which may offset some of the delay in identifying program error due to changing to a 5-year administrative review cycle.

Allow Expanded Use of Third-Party Audits

This change would provide States the flexibility to use State/local or third-party audits to count for comparable sections of the administrative review. This proposal intends to take advantage of other relevant audit activities, some of which require specialized experience

[42] This is assuming the 70 SFAs with five error flags plus 85 of the SFAs with four error flags including the fiscal action taken error flag.

[43] This total only includes the reduction due to the change in the administrative review and does not include the reduction of 42 reporting hours associated with decreasing the frequency of the performance based reporting requirement.

[44] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

to complete, to streamline program operations and minimize monitoring burden. This change may result in minimal administrative savings for State agencies that are able to utilize audits for comparable sections of the administrative review. Due to the variation in how State agencies may apply this proposed change, these savings cannot be quantified.

Allow Completion of Review Requirements Outside of the Administrative Review

This proposal would allow State agencies to use review activities conducted outside the administrative review to fulfill the relevant areas of the administrative reviews. Some State agencies proactively conduct technical assistance and review activities throughout the year to ensure compliance across SFAs. This change would allow these activities, if determined to be sufficient by USDA, to count toward the applicable areas of the administrative review. This is intended to reduce duplicative Program oversight efforts. This proposal would allow the use of existing information to fulfill administrative review requirements. There may be minimal administrative savings in State agencies that are able to utilize activities completed outside of review to satisfy administrative review requirements. Due to the wide variation in which State agencies may apply this proposed change, program impacts cannot be quantified.

Provide Incentives To Invest in Integrity-Focused Process Improvements

This proposed change introduces a new concept to encourage program integrity-focused reforms. The proposed framework would include optional reforms that State agencies and SFAs can adopt in exchange for alleviating existing administrative review requirements. This incentive-based approach is intended to encourage States and SFAs to adopt research-based approaches to directly reduce improper payments. This proposal provides a new framework for redirecting program resources toward solving Program integrity challenges. The State and local investments made under this proposal aim to improve and streamline program integrity efforts. There is no immediate impact to Program costs with this proposal because existing program funds are used and impact on Program integrity is unknown. As new integrity challenges arise and solutions determined to impact improper payments are implemented, an impact on Program cost is anticipated; however, the impact cannot be quantified at this time.

Omit the On-Site Breakfast Review in Extenuating Circumstances

The administrative review requires an on-site review of the SBP. The review of SBP is imperative to ensure compliance with Program requirements. Current procedures require on-site review of the SBP in half of the sites selected for review that offer the SBP. This requirement was established at half of sites to reduce the burden associated with reviewing the SBP in all sites. Some SFAs still struggle to review half of the SBP sites. These challenges are unique to certain States with SFAs in remote areas with limited transportation and lodging options. The proposed change would allow States with extenuating circumstances to omit the on-site review and use other existing processes to review the SBP. This rule requests comments on identifying areas of the on-site SBP review that cannot be met during the review of the NSLP, risks to Program integrity, challenges encountered by State agencies and SFAs, and various tools available that could be used to review the SBP. USDA will consider public comments to this proposed rule to inform guidance on if/how this proposed change will be implemented. Pending more information from the comment process, impacts to Program costs cannot be estimated at this time.

Add Flexibility to Resource Management Review

This proposed change is in response to feedback received by USDA on concerns about the off-site assessment of the Resource Management module. The current process requires an off-site resource management assessment, conducted at least four weeks prior to the on-site administrative review, to identify how many SFAs need a comprehensive review. State agencies voiced concerns that evaluating the financial health of the nonprofit school food service account can be challenging to complete off-site, depending on State agency procedures. State agencies also have flexibility to conduct the comprehensive Resource Management review off-site, providing more discretion on how this financial oversight is executed.

In the SY 2016–2017 review dataset, 87 percent of the reviewed SFAs triggered a Resource Management risk flag requiring a comprehensive review. Based on the feedback received from States, some of these SFAs may have been identified as at risk due to the complications of conducting the assessment off-site within the proper timeframes. Ensuring Program integrity is imperative; however, if the current off-site assessment does not accurately reflect the SFA operations once the on-site review is conducted, the result is undue burden and the misdirection of important Program resources.

This proposed change would provide State agencies the flexibility to conduct the Resource Management portion of the review in a way that makes the most operational sense for the State agency. This does not change the requirement that State agencies must conduct as assessment of the SFA's nonprofit school food service account following the administrative review procedures. This proposed change would allow State agencies the flexibility to conduct the Resource Management module at any point in the review process, including the discretion to conduct the risk assessment and/or the comprehensive review off- or on-site. There are negligible impacts to Program costs associated with this proposed change.

Set Consistent Fiscal Action for Repeated Meal Pattern Violations

This proposal aligns fiscal action requirements for repeated violations concerning milk type and vegetable subgroup requirements to increase consistency and reduce confusion. Currently, State agencies *must* take fiscal action for missing food components and for repeated violations of milk type and vegetable subgroup requirements. State agencies *may* take fiscal action for repeated violations concerning food quantities, whole grain-rich foods, and dietary specifications (calories, saturated fat, *trans* fat, and sodium). This proposal would allow State discretion for fiscal action for repeated violations for milk type and vegetable subgroup requirements to be consistent with the requirements for food quantities, whole grain-rich foods, and dietary specifications.

In this instance, students are still receiving the correct food components, just not the specific type of food component that fully meets the meal standards. State agencies are in the best position to use discretion to determine an appropriate course of action for repeated violations of this nature. Fiscal action is still required for meals missing components. This proposed change would allow State discretion and align requirements with similar intent. There are negligible impacts to program costs with this proposed change.

Add Buy American to General Areas of Administrative Review

This proposed change would add the Buy American provisions to the regulations that list the general areas of review. Currently, the Buy American provision review is specified in the FNS Administrative Review Manual, but it is not included in the general areas of review listed at § 210.18(h)(2). This proposed change aligns the regulations with guidance and clarifies existing monitoring requirements. There are no program cost impacts to this proposed change.

Simplifying Meal Service

The following section proposes a number of changes to facilitate school meals service operations for local Program operators. These proposed changes are customer service-focused and intended to simplify program procedures and requirements to address existing challenges. The proposed changes do not significantly affect program costs, but rather allow State and local Program operators to focus critical resources to ensure sustained meal service success. There is a small reduction in burden due to changing the reporting frequency (of a report on the status of SFA compliance with the meal standards) from quarterly to annually.

Facilitate the Service of Vegetable Subgroups in the NSLP

The specific proposed changes in this section are intended to reduce operator challenges with two areas of the vegetable subgroup requirements. The proposed changes would: (1) For all age/grade groups, change the weekly minimums for all subgroups to ½ cup; and (2) allow legumes offered as a meat alternate to simultaneously meet the weekly legumes vegetable subgroup requirement. The overall daily and weekly vegetable quantity requirements remain intact across all age/grade groups.

As stated in the preamble, these flexibilities are proposed to assist program operators struggling with different quantity requirements across subgroups, and challenges with meeting the legumes subgroup requirement.[45] Between 92 and 95 percent of weekly menus met the quantity requirements for dark green vegetables, red/orange vegetables, starchy vegetables, and ''other'' vegetables. About 80 percent of weekly menus met the quantity requirement for legumes.

While the vast majority of menus were meeting the weekly quantity requirements for each of the vegetable subgroups (aside from legumes), offering enough vegetables to satisfy the overall weekly quantity requirement proved more difficult. Nearly 80 percent of weekly lunch menus met the quantity requirement for vegetables overall.[46] The proposed changes would lower the requirement for the red/orange vegetable subgroup for all age grade groups to ½ cup and the requirement for the ''other'' vegetable subgroup to ½ cup for the 9–12 age grade group.[47] This flexibility would still ensure students are exposed to all vegetable subgroups over a school week, but seeks to eliminate confusion caused by requiring different quantities of different vegetable subgroups for different age/grade groups. Lower amounts of vegetables required from some subgroups would give menu planners more space to offer additional vegetables that students prefer to meet daily and weekly vegetables requirements (which remain unchanged from the original 2012 meal standards). The ability to offer more vegetables that students prefer may result in lower food waste. About 31 percent of vegetables served were wasted according to a study conducted in SY 2014–2015 and this did not vary much by subgroup with the exception of starchy vegetables (*e.g.,* white potatoes, corn, green peas). Starchy vegetables were wasted slightly less at about 25 percent compared to around 30 percent for the other vegetable subgroups.[48] This proposed change would allow any one subgroup to make up one-third to one-half of the weekly requirement of vegetables offered; therefore, children could be offered less vegetable variety.

This proposed change is not expected to impact program costs as the total vegetable quantity requirements for daily and weekly remain unchanged. This proposal allows local Program operators more flexibility to include in their menus vegetables that align with student acceptability.

Compared to other vegetable subgroups, the legume vegetable subgroup requirement proved to be more difficult to meet. Some of this difficulty may be explained by current requirements: Beans may credit as a vegetable or a meat alternate, but not both in the same meal (*i.e.,* menu planners cannot ''double-credit'' beans to meet both the vegetable and meat/meat alternate requirement). Nearly all (99 percent) daily lunch menus included one or more vegetables that were not part of a combination entrée or an entrée salad bar. Most daily lunch menus (84 percent) included cooked vegetables. Beans and peas (legumes) were the second most common cooked vegetable (second to starchy) not served as part of a combination entrée with 23 percent of all daily lunch menus offering legumes (including black, baked beans, and other beans—such as white beans, chickpeas, and hummus—as well as pinto and kidney beans).

However, legumes are often an ingredient in combination entrées where the meat/meat alternate component is typically available especially in Mexican-style entrées. These type of entrées are common in lunch menus, especially in high schools with about 25 percent of daily menus including a Mexican-style entrée.[49] About 17 percent of daily lunch menus had an ''other'' protein credited as a meat alternate. This was primarily cheese, but legumes were also included in this group. Children will still benefit from the array of essential nutrients legumes offer, including protein and fiber, regardless of how legumes credit toward vegetable or meat alternate requirements. This proposed change allows legumes that are offered as a meat alternate to simultaneously meet the weekly legumes requirement. This aims to help local Program operators

[45] Due to high protein content, menu planners may offer legumes as a meat alternate or a vegetable, but not both in the same meal. This rule proposes to allow menu planners that offer legumes as a meat alternate to credit those same legumes toward the weekly legumes subgroup requirement, without reducing the total amount of vegetables that students are offered daily or weekly.

[46] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[47] Current requirement for red/orange for K–5 and 6–8 is ¾ cup. Current requirement for 9–12 for red/orange is 1¼ cups and ¾ cup for other vegetables. The *Dietary Guidelines for Americans* group vegetables into categories based on similar nutrient content. The Other vegetable subgroup contains vegetables (*e.g.,* cabbage, green beans, onions, mushrooms) that are not nutritionally similar enough to fit into one of the already named subgroups.

[48] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste,* and Dietary Intakes by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[49] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox, Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

meet the weekly legumes requirement. The daily and weekly menus must still meet minimum quantity requirements for vegetables, which ensures this change does not result in a reduction in calories or vegetables, but rather allows local Program operators the ability to develop menus that better reflect student preferences. The daily and weekly vegetable and meat/meat alternate quantities are unchanged. There is negligible impact to program costs associated with this proposed change.

Add Flexibility to Established Age/Grade Groups

This proposed change addresses challenges in SFAs that serve children in multiple age/grade groups. Currently, schools are required to serve an age-appropriate meal pattern—for grades K–5, 6–8, and/or 9–12—to all age/grade groups in a school. The only exception is the narrow overlap between K–5 and 6–8 age/grade group meal pattern requirements: Because of overlapping requirements, local Program operators can use one meal pattern to plan menus for students in grades K–8. The food component requirements are the same, but meals must meet the calorie and sodium standards in the narrow overlap between both age/grade groups.

The requirement to offer meals for specific age/grade groups resulted in a number of challenges for local Program operators, especially for smaller SFAs with unique grade configurations that do not align with established age/grade groups. A goal of the school meal programs is to ensure students are offered age-appropriate meals that meet specific nutrient targets to optimize growth and development. In SFAs of all sizes (including SFAs with and without schools serving multiple age/grade groups), the *School Nutrition Meal Cost Study* found that local Program directors reported that it was a moderate challenge (mid-way between ''not a challenge'' and ''a significant challenge'') to offer varying portion sizes to different age/grade groups within a school. About 30 percent (about 27,500) of schools participating in the National School Lunch Program have unique age/grade group combinations.[50] The majority of these schools are likely in SFAs with 2,500 or fewer students enrolled.[51]

The proposed changes in this rule would: (1) Allow all schools with multiple age/grade groups (in SFAs of any size) to serve the established meal patterns to a broader range of students. This allows the addition or subtraction of a grade on either or both ends of the current meal pattern age/grade groups (K–5, 6–8, and 9–12); and (2) Allow schools with multiple or unique grade configurations in small SFAs (with 2,500 students or fewer enrolled) to use one or two meal patterns to plan meals for all children.

The first proposed change would allow schools in any SFA to serve one meal pattern if the age/grade groups in the school include one or two grades from an established age/grade group. This means that the K–5 meal pattern could be expanded to serve students in grades K–6; the 6–8 meal pattern could be expanded to serve any students in grades 5–9; and the 9–12 meal pattern could be expanded to serve any students in grades 8–12. For example, a school serving students in grades K–6 could either (1) use the existing K–8 meal pattern age/grade group overlap, or (2) exercise this proposed flexibility and serve the K–5 meal pattern for all children in the K–6 school by adding one year (grade 6) to the upper end of the established K–5 age/grade group. Providing this flexibility seeks to alleviate Program operator burden in schools with students in grades close to the next established meal pattern age/grade group by giving them the ability to serve one meal pattern to all students.

The second proposed change targets schools with multiple or unique grade groupings in smaller SFAs that serve 2,500 or fewer students. This change would allow smaller SFAs, with multiple or unique grade configurations, to use one or two meal patterns to plan meals for students in all grades. This proposed change could impact about 23 percent of total schools (approximately 22,000 schools).[52] However, some of these schools that have successfully implemented the existing age/grade groups would likely continue with their existing practices. In addition, schools serving grades that overlap between grades K–5 and grades 6–8 that have been successful planning meals that meet the K–8 meal pattern overlap could choose to continue that practice.

As stated in the preamble, meeting the calorie requirements in school meal offerings proved to be a challenge: Overall, 41 percent of average weekly lunch menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). Elementary and middle schools were more likely to offer meals above the calorie maximums, while high schools were more likely offer meals with too few calories. Schools adopting these proposed flexibilities are encouraged to find solutions to offer older students larger portions or additional choices to meet their calorie and nutrient needs.

USDA is requesting public comments on solutions to balance operational constraints and student nutritional needs. There may be some minimal savings associated with streamlining menus for some SFAs; however, we do not anticipate significant impacts at this time pending the public comments on this proposed rule.

Increase Flexibility To Offer Meats/Meat Alternates in SBP

This proposed change would allow schools to offer meat/meat alternates or grains interchangeably in the SBP. Currently, schools may offer meat/meat alternate foods in SBP only after one ounce equivalent of grains is offered, then meats/meat alternates may be counted towards the grain component requirements. Meats/meat alternates may also be offered as ''extra'' foods that do not credit toward meal pattern requirements, but must meet the dietary specifications for calories, saturated fat, and sodium.

This proposed change would allow Program operators to offer 1–2 ounce equivalents of grains or meat/meat alternates, or a combination of the two, daily to meet the minimum of 7–9 ounce equivalents over the course of a school week (amounts vary depending on age/grade group). This would allow Program operators the ability to use grains and meat/meat alternates interchangeably in the SBP. This proposed change recognizes the need for flexibility in SBP offerings. While the meal pattern for SBP does not specifically require meats/meat alternates to be offered, meats/meat alternates were included in nearly half (48 percent) of all daily breakfast menus.[53]

[50] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia

[51] FNS administrative data show that about 80 percent of SFAs participating in the NSLP have 2,500 or less students enrolled in SY 2017–2018.

[52] The difference in the number of schools that may be impacted is the number of schools in large SFAs including those that would not be able to utilize the first flexibility (for example, a K–12 school in a SFA that has over 2,500 enrolled students).

[53] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 2: Nutritional Characteristics of School Meals* by Elizabeth Gearan, Mary Kay Fox,

Continued

This would not change the SBP meal pattern, and Program operators may continue to offer grains only in the SBP (consistent with the current requirements). The remaining SBP requirements would not change under this proposal. This change is intended to allow Program operators local control to develop SBP menus that include meats/meat alternates without a requirement to serve a minimum amount of grains. This change is not anticipated to impact Program costs, but rather provide flexibility for local Program operators to work within current resources and student preferences when planning SBP menus.

Allow Schools To Serve ½ Cup of Fruit in Breakfasts Served in Non-Cafeteria Settings

This proposed change would allow schools that serve breakfast in non-cafeteria settings to offer ½ cup of fruit—consistent with the offer-vs-serve (OVS) option in SBP—instead of offering the full-required 1 cup of fruit. In a cafeteria setting, students in schools with OVS have the option to only take ½ cup of fruit. OVS is mandatory for SBP and NSLP for high schools and optional for middle and elementary schools, however about 80 percent of both middle and elementary schools use the option. This practice helps control food waste as the use of OVS at breakfast was associated with lower percentages of waste for calories (15 percent in OVS schools versus 19 percent in non-OVS schools) and fruits (14 percent in OVS schools versus 23 percent in non-OVS schools).[54]

The cafeteria or other foodservice area was the most common place where students ate breakfast (82 percent of schools). Many schools do use other SBP models, often in non-cafeteria settings. Breakfast in the classroom was offered in more than a quarter of elementary schools, which was more frequent than middle and high schools. However, pre-packaged ''grab-and-go'' breakfasts were offered more frequently in high schools (21% of high schools) than middle and elementary schools. Due to cited concerns about students being offered sufficient calories, especially older students,[55] local Program operators are encouraged to have additional fruits, such as a basket of whole fruits, available for students to select additional fruit if desired. The proposed change is not expected to significantly impact program costs but may result in minimal savings by reducing the amount of fruit offered in non-cafeteria SBP models.

Remove Synthetic Trans Fat Limit as a Dietary Specification

This proposed change would eliminate the requirement for SBP, NSLP, and competitive foods to have zero synthetic *trans* fat effective July 1, 2021.[56] FDA regulations are removing synthetic *trans* fat from the United States food supply by January 1, 2021 and the requirement to monitor synthetic *trans* fat in the school meal programs will be unnecessary. This proposed change would eliminate additional regulations that are not necessary after synthetic *trans* fat is no longer in the food supply (January 1, 2021). This proposed change will align Program regulations with the food supply standards. There are negligible impacts to program costs associated with this change.

Change Performance-Based Reimbursement Quarterly Report to an Annual Report

This proposed change would reduce, from quarterly to annually, the frequency of a State agency report on the status of SFAs certified for the performance-based reimbursement. As of February 2019, 99 percent of SFAs are certified to receive the performance-based reimbursement. This change responds to feedback from the *Child Nutrition Program Reducing Burden Study:* State agencies requested USDA to review the reporting requirements and determine areas to streamline reporting.[57] USDA currently receives a count of the monthly number of lunches receiving the performance-based reimbursement on the Report of School Meal Operations (form FNS–10) from States.[58]

The reduced frequency of the quarterly certification report aims to enable State and local Program operators to direct resources to maintain effective and efficient program operations, while still providing USDA the necessary information on SFA certification. Along with the monthly FNS–10 reporting, the annual update will be sufficient for USDA to track the status of SFA certification. This proposed change slightly decreases the burden hours associated with moving the frequency of reporting from quarterly to annually. This is a small reduction of 42 annual burden hours, which is about $3,000 annually.

Update Meal Accommodations for Disability and Non-Disability Reasons

The proposed changes in this section are intended to align current FNS regulations with current statutory requirements and do not change the requirement that schools, institutions, and facilities make reasonable modifications for Program participants with a disability that restricts their diet. The proposed changes aim to make a clear distinction between reasonable modifications for disability requests and variations for non-disability requests. The proposal would also broaden who is authorized to write medical statements consistent with the Department of Justice's final rule that determining an individual's impairment as a disability under ADA should not demand extensive analysis. Schools, institutions, and facilities are still encouraged to meet Program participants' dietary preferences that are not considered disabilities, which includes those related to cultural, ethical, Tribal, or religious preferences. The proposed alignment of USDA regulations with statutory requirements and existing FNS guidance is not expected to impact program costs, but clarify procedures for Program participants with disabilities that restrict their diets.

Proposals To Simplify Foods Sold A La Carte

Extend the Entrée Exemption Timeframes

The proposed change in this section would address concerns from Program operators regarding the number of days schools are permitted to sell reimbursement meal entrées as a competitive food (*i.e.,* à la carte). The majority of schools had at least one

Katherine Niland, Dallas Dotter, Liana Washburn, Patricia Connor, Lauren Olsho, and Tara Wommak. Project Officer: John Endahl. Alexandria, VA: April 2019.

[54] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes* by Mary Kay Fox, Elizabeth Gearan, Charlotte Cabili, Dallas Dotter, Katherine Niland, Liana Washburn, Nora Paxton, Lauren Olsho, Lindsay LeClair, and Vinh Tran. Project Officer: John Endahl. Alexandria, VA: April 2019.

[55] USDA's *School Nutrition and Meal Cost Study* found that, overall, more than half (56 percent) of average weekly breakfast menus fell within the specified calorie range (that is, they met both the minimum and maximum calorie levels). While it was more common for average weekly breakfast menus across all school types to exceed the maximum calorie level (36 percent overall), approximately 18 percent of average weekly menus for high schools offer too few calories

[56] This restriction does not apply to naturally occurring *trans* fats, which are present in meat and dairy products.

[57] *https://fns-prod.azureedge.net/sites/default/files/resource-files/CN-Reducing%20Burden.pdf.*

[58] 99.7% of lunches served in FY 2018 received the performance-based reimbursement.

source of competitive foods available to students. Availability of foods for à la carte purchase in the school cafeteria during meal times was the most common source (in 87 percent of schools for lunch and 56 percent for breakfast). About 40 percent of schools offer entrées (these are not separated out by reimbursable meal entrées and other entrées) as part of their competitive food service. This practice was more common in middle and high schools, where over half of schools sold entrées as competitive foods. In elementary schools, a little over a quarter sold entrées as competitive foods.[59]

There are some entrées that meet the reimbursable meal standards (as part of the unitized, reimbursable meal); an entrée alone may not meet the competitive food standards, which are based on individual items. In these cases, USDA, recognizing that foods sold in reimbursable meals are typically healthier due to the meal pattern standards, allows these entrées to be sold on the same day as served as part of the reimbursable meal, and the day after to help use leftovers and reduce waste. This proposed rule would extend this flexibility by allowing SBP and NSLP entrées to be sold à la carte on the day offered in SBP and NSLP, and two school days after (or for one additional school day). The proposed change promotes improved meal planning flexibility and leftover usage.[60] This proposed change is intended to further reduce waste and streamline operations between the reimbursable meal service and competitive food service. There are minimal impacts to Program costs associated with this change.

This proposed rule also requests specific public comment on whether SBP and NSLP side dishes that do not meet the competitive foods standards should also receive exemptions. Currently only entrées, as noted above, are exempt with this proposed rule extending the exemption for an additional school day. USDA is not proposing a change to the side dish requirements in this rule. However, since the competitive food standards have been in place for a period of time, the Department is taking the opportunity to solicit public input on whether to extend the competitive food entrée exemption to all food items offered as part of the reimbursable SBP and NSLP meals. There are no impacts to program costs at this time as the proposed rule is only seeking public comment on extending the competitive foods exemptions to all menu items in reimbursable meals.

Seeking Public Input on Whether To Remove the Requirement To Make À La Carte Entrées Whole Grain-Rich

USDA is also taking this opportunity to solicit public input on grain products and the definition of entrée. Currently competitive food standards require that entrées that include grains, and are sold à la carte, must be whole grain-rich or have whole grain as the first ingredient. This requirement is not consistent with the NSLP and SBP, where whole grain-rich refers to products that contain at least 50 percent whole grains and any remaining grains must be enriched. USDA is seeking public input to determine if the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of entrée for competitive foods. This change would make the whole grains requirement consistent between SBP/NSLP and entrées sold à la carte as competitive foods. At this point, USDA is only seeking public input to determine if this change is necessary, especially in light of the proposal to extend the exemption for SBP/NSLP entrées. There are no impacts to program costs as USDA is not proposing a change, but using this opportunity to seek public input.

Expand Flexibility for Sale of Calorie-Free, Flavored Waters to All Age/Grade Groups

This proposed change would expand the ability to sell calorie-free, naturally-flavored waters (with or without) carbonation in middle and elementary schools. Currently only high schools can sell these products. Calorie-free/low calorie, non-naturally flavored, carbonated beverages (*i.e.,* diet soft drinks) may also be sold to high school students. This proposed change is not extending the ability to sell diet soft drinks to middle and elementary school students. This rule also proposes to expand the potable water requirement to permit schools to offer calorie-free, naturally-flavored, noncarbonated water. These waters would be required to meet the FDA's definition of ''natural flavor or natural flavoring.''

This rule proposes to allow local Program operators to sell calorie-free, naturally flavored waters (with or without carbonation), in portions up to 20 ounces, to students in all age/grade groups. This proposed change would allow local Program operators the flexibility to expand calorie-free beverages to students who wish to purchase only certain items and not an entire school lunch. Competitive food sales support the financial health of the nonprofit school food service account and can be used to cover costs of operating the school meal programs. Over 40 percent of schools offer bottled water (includes plain, flavored, or sparkling) for purchase à la carte. This varies quite a bit by school type, with only 30 percent of elementary schools, 58 percent of middle schools, and 61 percent of high schools offering bottled water for sale.[61] This proposed change would increase the types of beverages local Program operators may offer à la carte. It may however, impact the amount of milk purchased through à la carte sales; milk was the most commonly offered à la carte item at lunch (73 percent of all schools offered milk as an à la carte item at lunch)[62] followed by water and 100 percent juice (48 percent of all schools). This proposal is not expected to impact program costs but rather provide flexibility for local Program operators to offer calorie-free beverage choices to students across all grades.

Local Program operators have also requested flexibility to offer naturally flavored noncarbonated water (*e.g.,* water infused with fruit) to meet the potable requirement. This rule proposes to allow the flexibility to offer this type of water to meet the requirement. This proposal is not expected to increase costs as Program operators will need to work with existing resources to utilize this flexibility. The addition of naturally flavored potable water may encourage water consumption but may impact the

[59] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

[60] To ensure the food safety of food offered or sold to children, schools must maintain a food safety management system that includes Standard Operating Procedures related to basic sanitation and all Hazard Analysis and Critical Control Point (HACCP) principles. Final rule. *School Food Safety Program Based on the Hazard Analysis and Critical Control Point Principles* (74 FR 66213, published December 15, 2009).

[61] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

[62] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *School Nutrition and Meal Cost Study, Final Report Volume 1: School Meal Program Operations and School Nutrition Environments* by Sarah Forrestal, Charlotte Cabili, Dallas Dotter, Christopher W. Logan, Patricia Connor, Maria Boyle, Ayseha Enver, and Hiren Nissar. Project Officer: John Endahl. Alexandria, VA: April 2019.

consumption of milk if students choose to consume water in lieu of milk.[63]

Clarifications, Updates, and Technical Corrections

Add Flexibility to State Administrative Expenses

This rule proposes to change the word ''unexpended'' to ''unobligated'' in the regulations for the State Administrative Expense (SAE) Funds. Currently States must return to USDA any unexpended SAE funds at the end of the fiscal year following the fiscal year for which the funds were awarded. This proposed change would allow State agencies some additional time to expend SAE funds they have already obligated. There are negligible impacts to program costs with this proposed change as it is increasing flexibility within the current funding level.

Correct Afterschool Snack Eligibility Erroneous Citations and Definition of ''Child''

The proposed changes in this section would provide a technical correction to three erroneous citations and correct a definition relating to the NSLP Afterschool snack service. The rule also proposes to correct an error in the definition of ''child'' to align with the NSLA. Currently the regulatory definition restricts snacks to children 12 years and younger, or in the case of migrant workers and children with disabilities not more than 15 years of age. This rule proposes to modify the definition of child to consistent with the NSLA and clarify that children through age 18 are eligible to receive snacks through the NSLP Afterschool Snack Service. These proposed changes are not expected to impact program costs, as children through age 18 are currently eligible to receive snacks, but instead provide clarification and correct erroneous citations and definitions.

Add Guam and Hawaii to the List of Outlying Areas Permitted To Serve Vegetables Such as Yams, Plantains, or Sweet Potatoes To Meet the Grains Component

Regulations currently permit schools in American Samoa, Puerto Rico and the U.S. Virgin Islands to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component. These foods are traditional foods and may be easier to procure than grains in outlying areas. This proposed change includes Guam and Hawaii in the list of outlying areas permitted to serve vegetables such as yams, plantains, or sweet potatoes to meet the grains requirement. This proposed change is not anticipated to impact program costs, but provide local Program operators in Guam and Hawaii the ability to develop menus that include traditional foods that align with local preferences.

Change Vitamin A and Vitamin D Units for Fluid Milk Substitutions

This proposed change aligns USDA regulations with the FDA published final rule that changed the labeling requirements for vitamin A and vitamin D: both now must be listed in micrograms (mcg) rather than International Units (IUs). As a conforming amendment, this rule proposes to change the vitamin A requirement for fluid milk substitutes from 500 IUs to 150 mcg per 8 fluid ounces. This rule also proposes to change the units for the vitamin D requirement for fluid milk substitutes from 100 IUs to 2.5 mcg per 8 fluid ounces. This proposed change aligns the labeling requirements with the final FDA rule, so there are negligible impacts to program costs associated with this change.

Proposed Rule Is Seeking Public Input To Determine Change

USDA is seeking public comments to determine any changes on the following areas. Any impacts to program costs will have to be assessed after public comments are received.

Substituting Vegetables for Fruits at Breakfast

This proposed rule requests public comments on whether or not to permanently allow SFAs to credit any vegetable offered, including potatoes and other starchy vegetables, in place of fruit in the SBP, without including vegetables from the specific subgroups in the weekly menus.

Competitive Foods: Definition of Entrée and Expanding Entrée Exemption to All SBP/NSLP Foods

As described earlier, USDA is soliciting public input on whether the whole grain-rich/whole grain as a first ingredient requirement should be removed from the definition of ''Entrée'' included in 7 CFR 210.11(a)(3)(i), and whether or not to extend the competitive food entrée exemption to all food items offered in SBP and NSLP reimbursable meals.

Transparency for Administrative Review Results

NSLA directs USDA to ensure that State agencies report the final results of administrative reviews to the public in an accessible, easily understood manner. To satisfy this statutory requirement, State agencies must post a summary of the most recent administrative review results for each SFA on the State agency's public website, and make a copy of the final administrative review report available to the public upon request. The summary must be posted no later than 30 days after the State agency provides the results of the administrative review to the SFA. This proposed rule requests public comments on how to simplify this transparency requirement, including the process of posting results, the summary content, and the 30-day timeframe.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities.

Pursuant to that review, the Secretary certifies that this rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have an adverse impact on small entities in the National School Lunch Program and School Breakfast Program; it would ease Program operations by adding flexibilities for State monitoring staff and menu planners in small local educational agencies.

Factual Basis: The provisions of this proposed rule would apply to small LEAs with less than 2,500 students operating the National School Lunch Program and School Breakfast Program, and to State agency staff who have to monitor school food authorities in remote locations. These entities meet the definitions of ''small governmental jurisdiction'' and ''small entity'' in the Regulatory Flexibility Act. These entities would benefit from the meal pattern and monitoring flexibilities proposed in this rule.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is expected to be an E.O. 13771 deregulatory action. The changes

[63] The *School Nutrition Meal Cost Study* found that milk consumption among school meal participants declined to 66% in SY 2014–2015 compared to 75% in SY 2004–2005.

proposed by this rule aim to simplify meal pattern, monitoring, and reporting requirements in the National School Lunch and School Breakfast programs. This rule is estimated to reduce school meal administrative burden by 171,372 hours, which is $11.4 million in annualized savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, SMP, SBP, CACFP, and the SFSP are listed in the Catalog of Federal Domestic Assistance under NSLP No. 10.555, SMP No. 10.556, SBP No. 10.553, CACFP No. 10.558, and SFSP 10.559 respectively, and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since the Child Nutrition Programs are State-administered, USDA's Food and Nutrition Service (FNS) Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding Program requirements and operations. Discussions also take place in response to technical assistance requests submitted by the State agencies to the FNS Regional Offices. This regular interaction with State and local operators provides FNS valuable input that informs rulemaking. Based on the inquiries and information from State agencies disclosing challenges with Program requirements, FNS is proposing specific flexibilities to address the requirement issues in a manner that promotes program efficiency and effectiveness.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under Section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex, or disability. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the proposed rule, including an analysis of participant data and provisions contained in the rule. The CRIA indicated the regulatory changes contained in the proposed rule simplify oversight and offer flexibilities that simplify local operations. These proposed flexibilities aim to: (1) Facilitate schools offering wholesome meals that fit the operational constraints of schools across the Nation, (2) support operational efficiency, and (3) ease the States' monitoring responsibility. The proposed changes also codify meal modification updates making it easier for Program participants who require meal modifications (that fall outside the meal patterns) to obtain the necessary documentation. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of protected classes of individuals to participate in the NSLP, SMP, SBP, CACFP, and SFSP or have a disproportionate adverse impact on the protected classes.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. FNS has assessed the impact of this proposed rule on Indian Tribes and determined that this rule does not, to the best of its knowledge, have Tribal implications that require Tribal consultation under E.O. 13175. FNS provided opportunity for consultation on the issue but received no feedback. If a tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

This rule proposes changes to simplify meal pattern and monitoring requirements in the National School Lunch and School Breakfast Programs. The proposed changes, including optional flexibilities, are customer-focused and are intended to help State and local Program operators overcome operational challenges that limit their ability to manage these Programs efficiently.

Explanatory Note on Existing Information Collection Requirements (OMB# 0584–0006)

As explained above, this proposed rule would revise the National School Lunch Program (NSLP) requirements, including recordkeeping and reporting requirements, to ease administrative burden for State agencies and School Food Authorities (SFAs), while continuing to ensure Program integrity. However, in two areas, these existing information collection requirements are not accurately reflected under OMB# 0584–0006. These errors were corrected in a revision of this collection submitted in September 2019. However, for transparency and to provide clarity regarding the impact of the changes proposed in this rulemaking, we are describing the burden of these existing requirements here:

• *Administrative Review Cycle:* This rule proposes to allow State agencies to revert from the current 3-year review cycle to a longer review cycle of 5 years, which would reduce the current reporting and recordkeeping burden by increasing the length of the review cycle. However, the burden associated with these reviews, which have been a regulatory requirement since 2016, has not reflected in the approved collection under #0584–0006. The needed change in recordkeeping burden estimates to correct this error is described in the table below:

RECORDKEEPING UNDER OMB# 0584–0006

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours	Hours currently approved	Corrected burden hour estimate
SA completes and maintains documentation used to conduct Administrative Review.	210.18 (c–h)	56	113	6,347	48	304,640	0	304,640
Total SA Recordkeeping	.....	.....	.....	.....	.....	.....	.....	.....
Total Recordkeeping	.....	.....	.....	.....	.....	.....	.....	304,640

• *Reporting on Performance-Based Reimbursement:* This rule proposes that the performance-based reimbursement quarterly reporting requirement specified in § 210.5(d)(2)(ii) be changed to an annual reporting requirement. However, the burden associated with the existing quarterly review requirement was inadvertently omitted from the renewal of #0584–0006 approved on November 13, 2016. The needed change in reporting burden estimates to correct this error is described in the table below:

REPORTING UNDER OMB# 0584–0006

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours	Hours currently approved	Corrected burden hour estimate
SAs submit an annual report to FNS detailing the disbursement of performance-based reimbursement to SFAs.	210.5(d)(2)(ii)	56	4	224	.25	56	0	56
Total SA Reporting	.....	.....	.....	.....	.....	.....	.....	56
Total Reporting	.....	.....	.....	.....	.....	.....	.....	56

Relative to these corrected burden estimates specifically, FNS estimates that this proposed rule will decrease the reporting burden by 42 hours and decrease the recordkeeping burden by 121,856 hours. Specific changes proposed to the existing burdens above are explained in Table for 0584–NEW below.

The rule makes other changes to recordkeeping and reporting that results in additional reductions in burden of 49,474 fewer hours. The currently approved burden inventory for the requirements outlined in this proposed rule, inclusive of pending corrections to #0584–0006, is 469,986 hours. The average burden per response and the annual burden hours are explained below and summarized in the charts that follow.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule will create information collection requirements and revise existing information collection requirements that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the information collection burden that would result from adoption of the proposals in the rule. Some information collection requirements being amended by the rule are currently approved under OMB# 0584–0006 7 CFR part 210 National School Lunch Program. Others are new burdens resulting from this rulemaking. Because OMB# 0584–0006 is under review by OMB, FNS is requesting a new OMB Control Number for the new and existing information requirements which are impacted by this proposed rule in order to ensure that the review of this proposed rule does not interfere with this renewal. After OMB has approved the information collection requirements submitted in conjunction with the final rule, FNS will merge these requirements and their burden into OMB# 0584–0006.

These changes are contingent upon OMB approval. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval. Comments on this proposed rule and changes in the information collection burden must be received by March 23, 2020.

Comments on this proposed rule must be received by March 23, 2020. Comments are invited on: (a) Whether

the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs.

OMB Control Number: 0584–NEW.

Expiration Date: [Not Yet Determined.]

Type of Request: New collection.

Abstract: This is a new information collection that revises existing information collection requirements from OMB Number 0584–0006 7 CFR part 210 National School Lunch Program which are being impacted by this rulemaking, as well as imposing new information collection requirements. This proposed rule would revise the National School Lunch Program (NSLP) administrative review requirements to ease administrative burden for State agencies and SFAs, while continuing to ensure Program integrity. This rule proposes to allow State agencies to revert from the current 3-year review cycle to a longer review cycle of 5 years. This proposed rule would require State agencies to conduct a comprehensive administrative review of each SFA participating in NSLP, School Breakfast Program, and other Federal school nutrition programs at least once during a 5-year cycle and require State agencies to identify high-risk SFAs for additional oversight. State agencies would continue to have the option to review SFAs more frequently. These changes to the administrative review cycle are intended to reduce reporting and recordkeeping burden currently approved under OMB# 0584–0006 by increasing the length of the review cycle, which FNS estimates will reduce the number of responses submitted by the State agencies. The change to the frequency of the review cycle will reduce the recordkeeping burdens associated with the requirements that State agencies maintain documentation of Local Education Agency/SFA compliance with nutrition standards for competitive foods, maintain records of all reviews (including Program violations, corrective action, fiscal action and withholding of payments), and maintain documentation of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews, and USDA audits. The change to the frequency of the review cycle will also reduce reporting burden associated with the requirements that State agencies notify SFAs in writing of review findings, corrective actions, deadlines, and potential fiscal action with grounds and right to appeal as well as the reporting burden associated with the requirement that SFAs submit to their State agency a written response to reviews documenting corrective action for Program deficiencies. The burden for the public notification requirement—that State agencies must post a summary of the most recent administrative review results of SFAs on the SA website and make a copy available upon request—is also reduced by the change in the frequency of the review cycle.

The rule also proposes to change the frequency of the performance-based reimbursement reporting requirement from quarterly to annually. These proposed changes are expected to simplify operational requirements, increase efficiency, and make it easier for State and local Program operators to feed children. This proposed rule will also add recordkeeping burdens for high-risk SFAs that would receive a targeted follow-up review within two years of being designated high-risk.

Unless adjustments are made to these requirements during the final rulemaking stage, FNS estimates that this proposed rule will decrease the burden for 0584–0006 by 171,372 burden hours (reporting burden by 44,834 hours, recordkeeping burden by 125,754 hours, and public notification burden by 784 hours). The total burden inventory for this new information collection as a result of this proposed rule is 298,614 hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Affected Public: School Food Authorities and State Agencies.

Estimated Number of Respondents: 3,864.

Estimated Number of Responses per Respondent: 7.25.

Estimated Total Annual Responses: 28,000.

Estimated Time per Response: 10.66.

Estimated Total Annual Burden on Respondents: 298,614.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours	Hours currently approved* under OMB# 0584–0006	Estimated change in burden hours due to rulemaking
Reporting								
SA notifies SFAs in writing of review findings, corrective actions, deadlines, and potential fiscal action with right to appeal.	210.18(i)(3)	56	68	3,808	8	30,464	52,864	−22,400
SAs submit an annual report to FNS detailing the disbursement of performance-based reimbursement to SFAs.	210.5(d)(2)(ii)	56	1	56	.25	14	56 (0)*	−42
Total SA Reporting		56		3,864		30,478		−22,442
SFA submits to the SA a written response to reviews documenting corrective action for Program deficiencies.	210.15(a)(3) & 210.18(k)(2).	3,808	1	3,808	8	30,464	52,856	−22,392
Total SFA Reporting		3,808		3,808		30,464		−22,392
Total Reporting		3,864		7,672		60,942		−44,834

ESTIMATED ANNUAL BURDEN FOR 0584–NEW—Continued

Description of activities	Regulation citation	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Estimated total annual burden hours	Hours currently approved* under OMB# 0584–0006	Estimated change in burden hours due to rulemaking
Recordkeeping								
SA maintains documentation of LEA/SFA compliance with nutrition standards for competitive foods.	210.18(h)(2)(iv)	56	68	3,808	.25	952	1,652	−700
SA maintains records of all reviews and audits (including Program violations, corrective action, fiscal action and withholding of payments). (FNS–640).	210.20(b)(6) & 210.18(o)(f)(k,l,m) & 210.23(c).	56	68	3,808	8	30,472	52,878	-22,406
SA maintains documentation of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, reviews, and USDA audits.	210.20(b)(7) & 210.19(c) & 210.18(o).	56	68	3,808	.50	1,904	3,304	−1,400
SA completes and maintains documentation used to conduct Administrative Review.	210.18 (c-h)	56	68	3,808	48	182,784	*304,640 (0)	−121,856
SA completes and maintains documentation used to conduct targeted Follow Up Administrative Review..	210.18(c)	56	23	1,288	16	20,608	0	+20,608
Total SA Recordkeeping		56		16,520		236,720		−125,754
Total Recordkeeping		56		16,520		236,720		−125,754
Public Notification								
State agencies must post a summary of the most recent administrative review results of SFAs on the SA website and make a copy available upon request.	210.18(m)(1)	56	68	3,808	.25	952	1,736	-784
Total SA Public Notification		56		3,808		952		−784
Total Public Notification		56		3,808		952		−784

*Denotes corrected estimate of current burden hours; parenthetical indicates actual approved hours (before pending corrections).

Total Number of Respondents: 3,864.

Average Number of Responses per Respondent: 7.246.

Total Annual Responses: 28,000.

Average Hours per Response: 10.664791.

Total Burden Hours: 298,614.

In summary, although the Information Collection Request for this proposed rule is being submitted as a new information collection, this proposed rule actually impacts existing information and imposes new information collection requirements for OMB# 0584–0006. The current inventory under OMB# 0584–0006 for the information requirements outlined in this proposed rule is 469,986 (165,290) hours.* Once the final rule has been published and the final ICR is approved, these proposals will be merged into OMB# 0584–0006. FNS estimates that these proposed changes will decrease the burden hours by 171,372 hours.

E-Government Act Compliance

The Department 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.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant program—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

State administrative expense funds, Administrative practice and procedure, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220, 226, and 235 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2:
■ a. Revise the definition of ''Child'';
■ b. In the definition of ''School'', redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2) and (3); and
■ c. Add a definition for ''State licensed healthcare professional'' in alphabetical order.

The revision and addition read as follows:

§ 210.2 Definitions.

* * * * *

Child means—

(1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of ''School,'' including students who are mentally or physically disabled as defined by the State and who are participating in a

school program established for the mentally or physically disabled; or

(2) A person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of ''School;'' or

(3) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 18 years of age or under at the start of the school year, or a mentally or physically disabled individual, as defined by the State, enrolled in an agency or a child care facility serving a majority of persons 18 years of age or younger.

* * * * *

State licensed healthcare professional means an individual who is authorized to write medical prescriptions under State law. This may include, but is not limited to, a licensed physician, nurse practitioner, and physician's assistant, depending on State law.

* * * * *

§ 210.4 [Amended]

■ 3. Amend paragraph (b)(3) introductory text by removing the words ''§ 210.10(n)(1)'' and adding, in its place ''§ 210.10(o)(1)''.

■ 4. In § 210.5, revise paragraph (d)(2)(ii) to read as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(2) * * *

(ii) Each State agency must also submit an annual report detailing the disbursement of performance-based cash assistance described in § 210.4(b)(1). Such report must be submitted no later than 30 days after the end of each fiscal year. State agencies will no longer be required to submit the annual report once all school food authorities in the State have been certified. The report must include the total number of school food authorities in the State and the names of certified school food authorities.

* * * * *

§ 210.7 [Amended]

■ 5. Amend paragraph (e) by removing ''§ 210.10(n)(1)'' and adding, in its place ''§ 210.10(o)(1)''.

§ 210.9 [Amended]

■ 6. Amend paragraph (c) introductory text by removing ''§ 210.10(n)(1)'' and adding, in its place ''§ 210.10(o)(1)''.

■ 7. In § 210.10:

■ a. At the end of paragraph (a)(1)(i) add a sentence;

■ b. In paragraph (a)(3), add ''through June 30, 2021'' at the end of the third sentence;

■ c. In paragraph (b)(1)(ii), remove ''Food'' and in its place add ''Through June 30, 2021, food'';

■ d. Revise paragraph (c) introductory text and table;

■ e. Revise paragraph (c)(1);

■ f. At the end of paragraph (c)(2) introductory text, add a sentence;

■ g. Revise the last two sentences of paragraph (c)(2)(iii) introductory text;

■ h. Revise paragraph (c)(3);

■ i. Revise paragraph (d)(3);

■ j. Revise the table in paragraph (f)(1);

■ k. In the first sentence of paragraph (f)(4), remove ''Food'' and add in its place ''Through June 30, 2021, food'';

■ l. In paragraph (g), revise the first sentence;

■ m. In paragraph (h)(2) introductory text, add ''Through June 30, 2021,'' at the beginning of the first sentence; and

■ n. Revise paragraphs (j) and (m).

The additions and revisions read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

(a) * * *

(1) * * *

* * * * *

(i) * * * Potable water must be calorie-free, noncarbonated, and may be unflavored or naturally flavored.

* * * * *

(c) *Meal pattern for school lunches.* Schools must offer the food components and quantities required in the lunch meal pattern established in the following table, except as permitted in paragraph (m) of this section:

Food components	Lunch meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of food[a] per week (minimum per day).		
Fruits (cups)[b]	2½ (½)	2½ (½)	5 (1)
Vegetables (cups)[b]	3¾ (¾)	3¾ (¾)	5 (1)
Dark green[c]	½	½	½
Red/Orange[c]	¾	¾	1¼
Beans and peas (legumes)[c]	½	½	½
Starchy[c]	½	½	½
Other[c d]	½	½	¾
Additional Vegetables to Reach Total[e]	1	1	1½
Grains (oz eq)[f]	8–9 (1)	8–10 (1)	10–12 (2)
Meats/Meat Alternates (oz eq)	8–10 (1)	9–10 (1)	10–12 (2)
Fluid milk (cups)[g]	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal)[h]	550–650	600–700	750–850
Saturated fat (% of total calories)[h]	<10	<10	<10
Sodium Target 2 (mg)[e]	≤935	≤1,035	≤1,080
Trans fat[h i j]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving (through June 30, 2021).		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.

[b] One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

[c] Larger amounts of these vegetables may be served.

[d] This category consists of ''Other vegetables'' as defined in paragraph (c)(2)(iii)(E) of this section. For the purposes of the NSLP, the ''Other vegetables'' requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable sub-groups as defined in paragraph (c)(2)(iii) of this section.

[e] Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.
[f] At least half of the grains offered weekly must be whole grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched.
[g] All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.
[h] The average daily calories for a 5-day school week menu must be within the range (at least the minimum and no more than the maximum values). Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat (through June 30, 2021), and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent are not allowed.
[i] Sodium Target 1 is effective from July 1, 2014 (SY 2014–2015) through June 30, 2024 (SY 2023–2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024–2025).
[j] Through June 30, 2021, food products and ingredients must contain zero grams of trans fat (less than 0.5 grams) per serving.

(1) *Age/grade groups.* Schools must plan menus for students using the following age/grade groups: Grades K–5 (ages 5–10), grades 6–8 (ages 11–13), and grades 9–12 (ages 14–18), except as permitted in paragraph (m) of this section. If an unusual grade configuration in a school prevents the use of these established age/grade groups, students in grades K–5 and grades 6–8 may be offered the same food quantities at lunch provided that the calorie and sodium standards for each age/grade group are met.

(2) * * * Allowable modifications, exceptions, and variations are listed in paragraph (m) of this section. * * *

* * * * *

(iii) * * * Cooked dry beans and peas (legumes) offered as a meat alternate may also count toward the weekly legumes requirement, but may not count toward the minimum amount of vegetables that must be offered daily and weekly. Vegetable offerings at lunch over the course of the week must include the following five vegetable subgroups, as defined in this section, in the quantities specified in the meal pattern in this paragraph (c), except as permitted in paragraph (m) of this section:

* * * * *

(3) *Food components in outlying areas.* Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve vegetables such as yams, plantains, or sweet potatoes to meet the grains component.

* * * * *

(d) * * *

(3) *Fluid milk substitutions for non-disability reasons.* If a school food authority chooses to offer one or more substitutions for fluid milk for non-disability reasons, the nondairy beverage(s) must provide the nutrients listed in the following table. Fluid milk substitutions must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school food authority need only offer the nondairy beverage(s) that it has identified as allowable fluid milk substitutions according to the following chart.

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

* * * * *

(f) * * *

(1) * * *

	Calorie ranges for lunch		
	Grades K–5	Grades 6–8	Grades 9–12
Min-max calories (kcal) [a] [b]	550–650	600–700	750–850

[a] The average daily amount for a 5-day school week must fall within the minimum and maximum levels.
[b] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for trans fat (through June 30, 2021), calories, saturated fat, and sodium.

* * * * *

(g) * * * The State agency and school food authority must provide technical assistance and training to assist schools in planning lunches that meet the meal pattern in paragraph (c) of this section; the *trans* fat (through June 30, 2021), calorie, saturated fat, and sodium specifications established in paragraph (f) of this section; and the meal pattern requirements in paragraphs (o), (p), and (q) of this section as applicable. * * *

* * * * *

(j) *Responsibility for monitoring meal requirements.* Compliance with the meal requirements in paragraph (b) of this section, including dietary specifications for *trans* fat (through June 30, 2021), calories, saturated fat, and sodium and paragraphs (o), (p), and (q) of this section, as applicable, will be monitored by the State agency through administrative reviews authorized in § 210.18.

* * * * *

(m) *Modifications, exceptions, and variations allowed in reimbursable meals*—(1) *Reasonable modifications for disability requests.* School food authorities must make reasonable modifications, including substitutions, to lunches and afterschool snacks for students who have a disability under Federal law and 7 CFR 15b.3 and whose disability restricts their diet. The modification requested must be related to the disability or limitations caused by the disability and must be offered at no additional cost to the student or household. In order to receive reimbursement when a modified meal does not meet the meal pattern requirements specified in paragraph (c) of this section, households must submit to school food authorities a written medical statement from a State licensed healthcare professional that provides sufficient information about the impairment and how it restricts the student's diet. Modified meals that meet the meal pattern requirements in paragraph (c) of this section are reimbursable with or without a medical statement. School food authorities must ensure that parents/guardians and students have notice of the procedure for requesting meal modifications and the process for resolving disputes related to modifications for disabilities. See 7 CFR 15b.6(b) and 15b.25. Expenses incurred when making reasonable modifications that exceed program reimbursement rates must be paid by the school food authority; costs may be paid from the nonprofit food service account.

(2) *Variations for non-disability requests*—(i) *Dietary preferences.* School food authorities should consider cultural, ethical, Tribal, and religious preferences when planning and preparing meals. For example, school food authorities are encouraged to provide meals to accommodate students' religious needs and practices, unless modifications cannot be made for legitimate, non-discriminatory reasons, such as operational constraints. Any variations must be consistent with the meal pattern requirements specified in paragraph (c) of this section. Expenses incurred from meal pattern variations that exceed program reimbursement rates must be paid by the school food authority; costs may be paid from the nonprofit food service account.

(ii) *Option to provide fluid milk substitutions for non-disability reasons.* A school food authority opting to provide fluid milk substitutions for non-disability reasons has discretion to provide the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional requirements outlined in paragraph (d) of this section. A school food authority must obtain a written request from a State licensed healthcare professional or a student's parent or legal guardian that identifies the need for the substitute prior to providing a fluid milk substitution. A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutions for non-disability reasons. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(4) *Variations for operational reasons.* Schools should consider operational factors when planning and preparing meals. With prior State agency written notification, FNS allows variations as described in this paragraph (m) on an experimental or continuing basis in the food components for the meal pattern in paragraph (c) of this section for operational reasons. Variations allowed under this paragraph (m) must be necessary to meet operational needs.

(i) *Age/grade group variations for operational reasons*—(A) *Age/grade group variations for schools with unique grade configurations.* Schools with unique grade configurations that do not align with the grade groups established in paragraph (c)(1) of this section may use the meal pattern appropriate for the majority of students to one grade above and/or below the established grade groups. For example, a school with students in grades 5–9 may use the grades 6–8 meal pattern for all student meals.

(B) *Age/grade group variations for schools with unique grade configurations in small school food authorities.* In school food authorities serving fewer than 2,500 students, schools with unique grade configurations that do not align with the grade groups established in paragraph (c)(1) of this section may use one or two meal patterns to plan meals for all students. For example, a school with students in grades K–12 in a small school food authority may use the grades 6–8 meal pattern for all student meals.

(ii) *Vegetable subgroups variations for operational reasons.* School food authorities that experience operational challenges offering varied amounts of vegetable subgroups over a school week, as specified in paragraph (c) of this section, may offer ½ cup of each vegetable subgroup to all age/grade groups over a school week. The total amount of vegetables offered daily and weekly for each age/grade group must reflect the meal pattern in paragraph (c) of this section.

* * * * *

■ 8. In § 210.11:

■ a. In the first sentence of paragraph (c)(3)(i), remove ''the school day'' and in its place add ''two school days'';

■ b. In paragraph (f)(2), remove ''trans fat'' and in its place add ''*trans* fat (through June 30, 2021)'';

■ c. In the first sentence of paragraph (f)(3)(i), remove ''trans fat'' and in its place add ''*trans* fat (through June 30, 2021)'';

■ d. In the first sentence of paragraph (f)(3)(ii), remove ''trans fat'' and in its place add ''*trans* fat (through June 30, 2021)'';

■ e. In paragraph (f)(3)(iii), remove ''trans fat'' and in its place add ''*trans* fat (through June 30, 2021)'';

■ f. In paragraph (g), remove ''The'' and add in its place ''Through June 30, 2021, the'';

■ g. In paragraph (h)(2)(i), remove '', trans fat'' and add in its place add ''*trans* fat (through June 30, 2021)'';

■ h. In paragraph (h)(2)(ii), remove ''trans fat'' and add in its place add ''*trans* fat (through June 30, 2021)'';

■ i. In paragraph (m)(1)(iv), remove ''and'' after the semicolon;

■ j. Revise paragraph (m)(1)(v);

■ k. Add paragraph (m)(1)(vi);

■ l. In paragraph (m)(2)(iv), remove the word ''and'' after the semicolon;

■ m. Revise paragraph (m)(2)(v); and

■ n. Add paragraph (m)(2)(vi).

The additions and revisions read as follows:

§ 210.11 Competitive food service and standards.

* * * * *

(m) * * *

(1) * * *

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces); and

(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces).

(2) * * *

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces); and

(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces).

* * * * *

■ 9. In § 210.18:

■ a. In paragraph (b), revise the definition of ''Administrative reviews'';

■ b. Revise paragraph (c) introductory text;

■ c. In paragraph (c)(1), remove the two occurrences of ''3'' and in their place add ''5'';

■ d. Revise paragraph (c)(2);

■ e. Revise paragraph (e)(5);

■ f. In paragraph (f) introductory text, add a new second sentence;

■ g. Revise paragraph (f)(3);

■ h. In paragraph (g) introductory text, add a new third sentence;

■ i. In paragraph (g)(1)(ii) introductory text, add a sentence at the end;

■ j. Add paragraph (g)(2)(i)(B)(*4*);

■ k. In paragraph (h) introductory text, add a new second sentence;

■ l. In paragraph (h)(1) introductory text, revise the first sentence;

■ m. Add paragraph (h)(2)(xi);

■ n. In paragraph (l), revise the first sentence;

■ o. Remove paragraph (l)(2)(ii) and redesignate paragraphs (l)(2)(iii), (iv), and (v) as paragraphs (l)(2)(ii), (iii), and (iv), respectively;

■ p. Revise newly redesignated paragraphs (l)(2)(ii) and (l)(2)(iii) introductory text; and

■ q. In newly redesignated paragraph (l)(2)(iv), remove ''through (iv)'' and in its place add ''and (iii)''.

The additions and revisions read as follows:

§ 210.18 Administrative reviews.

* * * * *

(b) * * *

Administrative reviews. Administrative reviews means the comprehensive off-site and/or on-site evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. The term ''administrative review'' refers to a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program. The administrative review may include other areas of program operations determined by the State agency to be important to program performance. In addition, the Secretary shall establish criteria that provides State agencies the option to omit designated areas of the administrative review when a State or school food authority utilizes FNS-specified monitoring efficiencies outside of the administrative review, or adopts FNS-specified error reduction strategies.

* * * * *

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 5-year review cycle, provided that each school food authority is reviewed at least once every 6 years. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

* * * * *

(2) *Targeted follow-up reviews.* The State agency must identify school food authorities that are high-risk. High-risk school food authorities include any school food authorities that have had previous findings on an administrative review, findings found through the oversight of Federal procurement regulations, and as otherwise prescribed by the Secretary. Within two years of being designated high-risk, such school food authorities must receive a targeted follow-up review. Targeted follow-up review areas include the critical areas found in (g) and (h)(1) of this section, and as otherwise prescribed by the Secretary. Nothing in this section shall preclude the State agency from conducting additional reviews. The State agency may conduct targeted follow-up and additional reviews in the same school year as the administrative review.

* * * * *

(e) * * *

(5) *Noncompliance with eligibility determinations, meal counting and claiming, and meal pattern requirements.* If the State agency determines there is significant noncompliance with eligibility determinations or meal counting and claiming requirements set forth in §§ 210.8 and 245.6, or the meal pattern and nutrition requirements set forth in §§ 210.10 and 220.8 of this chapter, as applicable, the State agency must select the school food authority for an administrative review early in the review cycle.

(f) * * * State agencies may omit designated areas of review, in part or entirely, where a school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. * * *

* * * * *

(3) *Audit results.* To prevent duplication of monitoring efforts, the State agency may use any recent and currently applicable results from federally required audit activity or from State-imposed audit requirements. In addition, State agencies may use recent and currently applicable results from local audit activity to assess compliance. Such results may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority, that they are relevant to the review period, and that they adhere to audit standards contained in 2 CFR part 200, subpart F. The State agency must document the source and the date of the audit.

(g) * * * However, State agencies may omit designated critical areas of review, in part or entirely, where a school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. * * *

(1) * * *

(ii) * * * The State agency may omit the on-site visit for breakfast in extenuating travel circumstances, such that lodging is not available within 50 miles of the reviewed school, and with prior notice to FNS.

(2) * * *

(i) * * *

(B) * * *

(*4*) The State agency may omit the observation of the on-site breakfast review in extenuating travel circumstances, such that lodging is not available within 50 miles of the reviewed school, and with prior notice to FNS.

* * * * *

(h) * * * However, State agencies may omit designated general areas of review, in part or entirely, where the school food authority or State agency has implemented FNS-specified error reduction strategies or utilized FNS-specified monitoring efficiencies. * * *

(1) * * * The State agency must conduct an assessment of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements as prescribed in the FNS Administrative Review Manual. * * *

(2) * * *

(xi) *Buy American.* The State agency shall ensure that the school food authority complies with the Buy American requirements set forth in § 210.21(d), as specified in the FNS Administrative Review Manual for the general areas of review.

* * * * *

(l) * * * The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review, including targeted follow-up or other reviews, as specified in this section. * * *

(2) * * *

(ii) For repeated violations involving food quantities, whole grain-rich foods, milk type, and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed;

(B) If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed;

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed.

(D) If an unallowable milk type is offered or no milk variety is offered, any of the deficient meals selected may be disallowed/reclaimed; and

(E) If one vegetable subgroup is not offered over the course of the week reviewed, the reviewer should evaluate the cause(s) of the error and may determine the appropriate fiscal action. All meals served in the deficient week may be disallowed/reclaimed.

(F) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and

(G) If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed.

(iii) For repeated violations of *trans* fat (through June 30, 2021), calorie, saturated fat, and sodium dietary specifications cited under paragraph (g)(2)(ii) of this section, the State agency has discretion to apply fiscal action to the reviewed school as follows:

* * * * *

§ 210.19 [Amended]

■ 10. In § 210.19, in paragraph (a)(5), remove ''3'' and in its place add ''5''.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 11. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 12. In § 215.7a, revise paragraph (b) to read as follows:

§ 215.7a Fluid milk and non-dairy milk substitute requirements.

* * * * *

(b) *Fluid milk substitutes.* Non-dairy fluid milk substitutions that provide the nutrients listed in the following table and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled children who cannot consume fluid milk due to medical or special dietary needs when requested in writing by the child's parent or guardian. A school or day care center need only offer the non-dairy beverage that it has identified as an allowable fluid milk substitute according to the following table.

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

■ 13. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 14. In § 220.2:

■ a. Amend the definition of ''Breakfast'' by removing ''§§ 220.8 and 220.23'' and adding ''§ 220.8'' in its place;

■ b. Amend the definition of ''Fiscal year'' by removing ''the period of 15 calendar months beginning July 1, 1976, and ending September 30, 1977; and'' and by removing ''1977'' and adding, in its place ''2019'';

■ c. Revise the definition of ''Menu item'';

■ d. Remove the definition of ''Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning''; and

■ e. Amend the definition of ''School week'' by removing ''and § 220.23''.

The revision reads as follows:

§ 220.2 Definitions.

* * * * *

Menu item means a food offered as part of the reimbursable meal.

* * * * *

■ 15. In § 220.8:

■ a. In paragraph (a)(1), add a sentence at the end;

■ b. In paragraph (a)(3), revise the third sentence;

■ c. In paragraph (b)(1)(ii), remove ''Food'' and in its place add ''Through June 30, 2021, food'';

■ d. In paragraph (b)(1)(iii), add '', except as allowed in paragraph (m)'' before the period;

■ e. Revise the table in paragraph (c) introductory text;

■ f. In paragraph (c)(1), revise the last sentence;

■ g. Revise paragraph (c)(2)(i);

■ h. Revise the first sentence of paragraph (c)(2)(ii);

■ i. Remove paragraph (c)(2)(iv);

■ j. Revise paragraph (c)(3);

■ k. Revise the table in paragraph (f)(1);

■ l. In the first sentence of paragraph (f)(4), remove ''Food'' and in its place add ''Through June 30, 2021, food'';

■ m. Revise the first sentence of paragraph (g);

■ n. In paragraph (h)(2) introductory text, add ''Through June 30, 2021,'' at the beginning of the sentence; and

■ o. Revise paragraph (m).

The addition and revisions read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(a) * * *

(1) * * * Potable water must be calorie-free, noncarbonated, and may be unflavored or naturally flavored.

* * * * *

(3) * * * Through June 30, 2021, labels or manufacturer specifications for food products and ingredients used to prepare school meals for students in grades K through 12 must indicate zero grams of *trans* fat per serving (less than 0.5 grams). * * *

* * * * *

(c) * * *

Food components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
	Amount of food [a] per week (minimum per day)		
Fruits (cups) [b c]	5 (1)	5 (1)	5 (1)
Vegetables (cups) [c]	0	0	0
Dark green	0	0	0
Red/Orange	0	0	0
Beans and peas (legumes)	0	0	0
Starchy	0	0	0
Other	0	0	0
Additional Vegetables to Reach Total [e]	0	0	0
Grains (oz eq) [d] and/or Meats/Meat Alternates (oz eq) [e]	7–10 (1)	8–10 (1)	9–10 (1)
Fluid milk (cups) [f]	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week			
Min-max calories (kcal) [g h]	350–500	400–550	450–600
Saturated fat (% of total calories) [h]	<10	<10	<10
Sodium Target 2 (mg) [h i]	≤485	≤535	≤570

Food components	Breakfast meal pattern		
	Grades K–5	Grades 6–8	Grades 9–12
Trans fat [h] [j]	Nutrition label or manufacturer specifications must indicate zero grams of *trans* fat per serving (through June 30, 2021).		

[a] Food items included in each group and subgroup and amount equivalents. Minimum creditable serving is ⅛ cup.
[b] One quarter cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
[c] Schools must offer 1 cup of fruit daily and 5 cups of fruit weekly, except for service variations allowed under paragraph (m) of this section. Vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or "Other vegetables" subgroups, as defined in § 210.10(c)(2)(iii) of this chapter. Schools offering breakfast in a non-cafeteria setting may offer ½ cup of fruits daily, as permitted in paragraph (m) of this section.
[d] At least half of the grains offered weekly must be whole-grain-rich as specified in FNS guidance, and the remaining grain items offered must be enriched.
[e] There is a combined grains and/or meat/meat alternate component. Schools may offer meats/meat alternates and/or grains interchangeably to meet the daily and/or weekly ounce equivalents requirement.
[f] All fluid milk must be fat-free (skim) or low-fat (1 percent fat or less). Milk may be unflavored or flavored provided that unflavored milk is offered at each meal service.
[g] The average daily calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).
[h] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat (through June 30, 2021), and sodium. Fluid milk with fat content greater than 1 percent milk fat is not allowed.
[i] Sodium Target 1 (shown) is effective from July 1, 2014 (SY 2014–2015) through June 30, 2024(SY 2023–2024). Sodium Target 2 (shown) is effective July 1, 2024 (SY 2024–2025).
[j] Through June 30, 2021, food products and ingredients must contain zero grams of *trans* fat (less than 0.5 grams) per serving.

(1) * * * Age/grade group variations are allowed as specified in § 210.10(m) of this chapter.

(2) * * *

(i) *Grains and/or meats/meat alternates component.* Schools may offer grains and/or meats/meat alternates interchangeably to meet the daily and weekly ounce equivalents for this component requirement.

(A) *Grains*—(*1*) *Enriched and whole grains.* All grains offered must be made with enriched and/or whole grain meal or flour. Whole grain-rich products must contain at least 50 percent whole grains and the remaining grains in the product must be enriched.

(*2*) *Daily and weekly servings.* The grains component is based on minimum daily servings plus total servings over a 5-day school week. Schools serving breakfast 6 or 7 days per week must increase the weekly grains quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than 5. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in FNS guidance. At least half of the grains offered weekly must meet the whole grain-rich criteria specified in FNS guidance, and the remaining grain items offered must be enriched.

(B) *Meats/meat alternates*—(*1*) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to part 210 may be used to meet part of the meats/meat alternates requirement when used as specified in appendix A to part 210. An enriched macaroni product with fortified protein as defined in appendix A to part 210 may be used to meet part of the meats/meat alternates component or the grains component but may not meet both food components in the same lunch.

(*2*) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts may not be used because of their low protein and iron content. Nut and seed meals or flours may be used only if they meet the requirements for Alternate Protein Products established in appendix A to part 220. Nuts or seeds may be used to meet no more than one-half (50 percent) of the meats/meat alternates component with another meats/meat alternates to meet the full requirement.

(*3*) *Yogurt.* Yogurt may be used to meet all or part of the meats/meat alternates component. Yogurt may be plain or flavored, unsweetened or sweetened. Noncommercial and/or non-standardized yogurt products, such as frozen yogurt, drinkable yogurt products, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meats/meat alternates requirement.

(*4*) *Tofu and soy products.* Commercial tofu and soy products may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance. Noncommercial and/or non-standardized tofu and products are not creditable.

(*5*) *Beans and peas (legumes).* Cooked dry beans and peas (legumes) may be used to meet all or part of the meats/meat alternates component. Beans and peas (legumes) are identified in this section and include foods such as black beans, garbanzo beans, lentils, kidney beans, mature lima beans, navy beans, pinto beans, and split peas.

(*6*) *Other meat alternates.* Other meat alternates, such as cheese and eggs, may be used to meet all or part of the meats/meat alternates component in accordance with FNS guidance.

(ii) * * * Schools must offer daily the fruit quantities specified in the breakfast meal pattern in this paragraph (c), except for fruit service variations allowed under paragraph (m) of this section.

* * * * *

(3) *Food components in outlying areas.* Schools in American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands may serve a vegetable such as yams, plantains, or sweet potatoes to meet the grains component.

* * * * *

(f) * * *

(1) * * *

CALORIE RANGES FOR BREAKFAST—EFFECTIVE SY 2013–2014

	Grades K–5	Grades 6–8	Grades 9–12
Minimum-maximum calories (kcal) [a] [b]	350–500	400–550	450–600

[a] The average daily amount for a 5-day school must fall within the minimum and maximum levels.
[b] Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat (through June 30, 2021), and sodium.

* * * * *

(g) * * * The State agency and school food authority must provide technical assistance and training to assist schools in planning breakfasts that meet the meal pattern in paragraph (c) of this section, the dietary specifications for *trans* fat (through June 30, 2021), calories, saturated fat, and sodium established in paragraph (f) of this section, and the meal pattern in paragraphs (o) and (p) of this section, as applicable. * * *

* * * * *

(m) *Exceptions and variations allowed in reimbursable meals.* (1) With State agency approval, schools that offer breakfast in a non-cafeteria setting may serve students ½ cup of fruit as part of the reimbursable meal.

(2) The modifications, exceptions, variations, and requirements in § 210.10(m) of this chapter also apply to this Program.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 16. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 17. In § 226.2, add a definition for ''State licensed healthcare professional'' in alphabetical order to read as follows:

§ 226.2 Definitions.

* * * * *

State licensed healthcare professional means an individual who is authorized to write medical prescriptions under State law. This may include, but is not limited to, a licensed physician, nurse practitioner, and physician's assistant, depending on State law.

* * * * *

■ 18. In 226.20, revise the paragraph (g) subject heading and paragraphs (g)(1) introductory text and (g)(1)(i), (g)(2) introductory text, (g)(2)(i), and (g)(3) to read as follows:

§ 226.20 Requirements for Meals.

* * * * *

(g) *Modifications, exceptions, and variations allowed in reimbursable meals*—(1) *Reasonable modifications for disability requests.* Reasonable modifications, including substitutions, must be made on a case-by-case basis for foods and meals described in paragraphs (a), (b), and (c) of this section for individual participants who have a disability under Federal law and 7 CFR 15b.3 and whose disability restricts their diet. The modification requested must be related to the disability or limitations caused by the disability and must be offered at no additional cost to the child or adult participant. Institutions and facilities must ensure that parents, guardians, adult participants, and persons on behalf of adult participants have notice of the procedure for requesting meal modifications and the process for resolving disputes related to modifications for disabilities. See 7 CFR 15b.6(b) and 15b.25. Expenses incurred when making reasonable modifications that exceed program reimbursement rates must be paid by the institution or facility; costs may be paid from the institution's nonprofit food service account.

(i) In order to receive reimbursement when a modified meal does not meet the meal pattern requirements specified in paragraphs (a), (b), and (c) of this section, households must submit to the institution or facility a written medical statement from a State licensed healthcare professional that provides sufficient information about the impairment and how it restricts the child or adult participant's diet. Modified meals that meet the meal pattern requirements in paragraph (a), (b), or (c) of this section are reimbursable with or without a medical statement.

* * * * *

(2) *Variations for non-disability requests*—(i) *Dietary preferences.* Institutions and facilities should consider cultural, ethical, tribal, and religious preferences when planning and preparing meals. For example, institutions and facilities are encouraged to provide meals to accommodate participants' religious needs and practices, unless modifications cannot be made for legitimate, non-discriminatory reasons, such as operational constraints. Any variations must be consistent with the meal pattern requirements specified in paragraphs (a), (b), and (c) of this section. Expenses incurred from meal pattern variations that exceed program reimbursement rates must be paid by the institution or facility. These costs may be paid from the institution's nonprofit food service account.

* * * * *

(3) *Fluid milk substitutions for non-disability reasons.* Non-dairy fluid milk substitutions that provide the nutrients listed in the following table and are fortified in accordance with fortification guidelines issued by the Food and Drug Administration may be provided for non-disabled child and adult participants when requested in writing by a State licensed healthcare professional, the child's parent or guardian, or by, or on behalf of, an adult participant. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the participating institution, family or group day care home, or sponsored center. An institution or facility need only offer the non-dairy beverage that it has identified as an allowable fluid milk substitute according to the following table.

Nutrient	Per cup (8 fl oz)
Calcium	276 mg.
Protein	8 g.
Vitamin A	150 mcg.
Vitamin D	2.5 mcg.
Magnesium	24 mg.
Phosphorus	222 mg.
Potassium	349 mg.
Riboflavin	0.44 mg.
Vitamin B–12	1.1 mcg.

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 19. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 20. In § 235.5:

■ a. Revise the third sentence of paragraph (d);

■ b. Revise the second sentence of paragraph (e)(1); and

■ c. In paragraph (e)(2), remove ''unexpended'' and add in its place ''unobligated''.

The revisions read as follows:

§ 235.5 Payments to States.

* * * * *

(d) * * * Based on this information or on other available information, FNS shall reallocate, as it determines appropriate, any funds allocated to State agencies in the current fiscal year which will not be obligated in the following fiscal year and any funds carried over from the prior fiscal year which remain unobligated at the end of the current fiscal year. * * *

(e) * * *

(1) * * * In subsequent fiscal years, up to 20 percent may remain available for obligation and expenditure in the second fiscal year. * * *

* * * * *

Dated: January 8, 2020.

Stephen L. Censky,

Deputy Secretary.

[FR Doc. 2020–00926 Filed 1–17–20; 4:15 pm]

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Part IV

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 732, 734, 736, et al.

Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 736, 740, 742, 743, 744, 746, 748, 758, 762, 772, and 774

[Docket No. 191107–0079]

RIN 0694–AF47

Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: On May 24, 2018, the Department of Commerce published a proposed rule in conjunction with a Department of State proposed rule to revise Categories I (firearms, close assault weapons and combat shotguns), II (guns and armaments), and III (ammunition/ordnance) of the USML and transfer items that no longer warrant control on the USML to the Commerce Control List (CCL). This final rule responds to and adopts changes based on the comments received on the Commerce proposed rule and is being published simultaneously with a final rule by the Department of State that will revise Categories I, II, and III of the USML to describe more precisely the articles warranting continued control on that list. These revisions complete the initial review of the USML that the Department of State began in 2011 and the conforming changes made to the EAR to control these items not warranting control under the International Traffic in Arms Regulations (ITAR).

DATES: This rule is effective March 9, 2020.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482–1641 or email *steven.clagett@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2018, the Department of Commerce (referred to henceforth as ''the Department'') published the proposed rule, *Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML)* (83 FR 24166) (referred to henceforth as the ''Commerce May 24 rule'') in conjunction with a Department of State proposed rule to revise Categories I, II, and III of the USML (referred to henceforth as the ''State May 24 rule''). The Department of Commerce is issuing this final rule that describes how articles the President determines no longer warrant control under USML Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance will be controlled on the CCL of the Export Administration Regulations (EAR) and is being published in conjunction with a final rule on Categories I, II, and III from the Department of State, Directorate of Defense Trade Controls (DDTC), completing the initial review of the USML that began in 2011 and making conforming changes to the EAR to control these items on the Commerce Control List (CCL).

The changes described in this final rule and in the State Department's companion final rule on Categories I, II, and III of the USML are based on a thorough interagency review of those categories, after which the Department of State concluded that the items added to the CCL in this final rule do not provide a critical military or intelligence advantage to the United States and, in the case of firearms, do not have an inherently military function. The Departments of Defense, State, and Commerce have, therefore, determined that the EAR is the appropriate source of authority to control these firearms, ammunition, and other articles previously controlled under Categories I–III of the USML. There is a significant worldwide market for items in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities.

This final rule does not deregulate the transferred items. BIS will require authorization to export or reexport to any country a firearm or other weapon that is being moved from the USML to the CCL by this final rule, including releases of related technology and software to foreign persons in the United States. Rather than decontrolling firearms and other items, in publishing this final rule, BIS, working with the Departments of Defense and State, is continuing to ensure that appropriate regulatory oversight will be exercised over exports, reexports, and transfers (in- country) of these items while reducing the procedural burdens and costs of export compliance on the U.S. firearms industry and allowing the U.S. Government to make better use of its export control resources.

Certain software and technology capable of producing firearms when posted on the internet under specified circumstances is being controlled under this final rule in order to protect important U.S. national security and foreign policy interests; however, communication of ideas regarding such software or technology is freely permitted. Moreover, nothing in this final rule prohibits U.S. persons within the United States from acquiring firearms of any type—there are other laws and regulations that control the acquisition of firearms in the U.S.

Structure of 600 Series

BIS has created Export Control Classification Numbers (ECCNs), referred to as the ''600 series,'' to control items that will be removed from the USML and controlled under the CCL, or items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that are already controlled elsewhere on the CCL.

These ECCNs are referred to as the ''600 series'' because the third character in each of the new ECCNs is ''6.'' The first two characters of the ''600 series'' ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular ''600 series'' ECCN. Category II of the USML and category ML2 of the WAML cover large caliber guns and other military weapons such as: Howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, and recoilless rifles.

Items that are currently controlled in Category II of the USML will be controlled on the CCL under four new ''600 series'' ECCNs. Placement of the items currently in USML Category II into the CCL's 600 series is consistent with existing BIS practice of using 600 series ECCNs to control items of a military nature.

Items currently controlled in Categories I and III of the USML will be controlled in new ECCNs in which the third character is a ''5.'' These items are not appropriate for 600 series control because, for the most part, they have

civil, recreational, law enforcement, or other non-military applications. As with 600 series ECCNs, the first character represents the CCL category, the second character represents the product group, and the final two characters represent the WAML category that covers items that are the same or similar to items in the ECCN.

Relation to USMIL

Pursuant to section 38(a)(1) of the Arms Export Control Act (AECA), all defense articles controlled for export or import, or that are subject to brokering controls, are part of the USML under the AECA. All references to the USML in this final rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, 22 CFR parts 120 through 130, and not to the list of AECA defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL for purposes of export controls does not affect the list of defense articles controlled on the USMIL under section 38 of the AECA, 22 U.S.C. 2778, for purposes of permanent import or brokering controls.

Overview

For the Commerce May 24 rule, BIS received nearly 3,000 comments and posted 1,540 unique comments and 135 bulk comments, which were representative of issues raised by 1,256 commenters. BIS appreciates the constructive comments it received to improve the Commerce May 24 rule and incorporated changes where appropriate. BIS also received many comments that were outside the scope of the Commerce May 24 rule and thus that are not addressed here. The Commerce May 24 rule and this final rule address U.S. export controls. BIS does not regulate the domestic sale or use of firearms in the United States, or the transfer of firearms or related software or technology between U.S. persons within the United States.

BIS reviews the comments it received in the preamble to this final rule in three parts. First, BIS describes the comments of general applicability. Then, it describes the comments received on specific proposed provisions included in the Commerce May 24 rule. Finally, this final rule describes the changes being adopted from the proposed rule and revisions being made to what was proposed in the Commerce May 24 rule. As this final rule is being published in conjunction with the companion Department of State rule, the preamble may also reference the State Department's analysis related to these changes.

Comments of General Applicability

USML Review Criteria

Comment 1: Multiple commenters took issue with the proposed transfer from the USML to the CCL of weapons that the Department of State determined, in conjunction with its interagency partners (including BIS), are not inherently for military end use, citing the fact that military and law enforcement personnel regularly use them. Many commenters asserted that being commercially available is not a good indicator of whether these weapons merit the oversight of the Department of State. In addition, several commenters disputed that the U.S. market should be the basis for assessing the commercial availability of firearms, as this is not the market to which the proposed rule would be directed. Many commenters also asserted that semi-automatic weapons should not be seen as just another product to be promoted, bought, and sold like washing machines or any other consumer product. Commenters supportive of the rule, however, agreed that export controls of commercial firearms and ammunition which are not inherently military, have no critical military or intelligence advantage, and have predominant commercial applications correctly belong under the EAR.

BIS response: The fact that a military uses a specific piece of hardware is not a dispositive factor when determining whether it has an inherently military function. Given that the majority of the items referenced in these comments that will transfer to the CCL through this final rule are widely available in retail outlets in the United States and abroad, and widely utilized by the general public in the United States, it is reasonable for the Department of State to determine that they do not serve an inherently military function, absent specific characteristics that provide military users with significantly enhanced utility, such as automatic weapons, sound suppressors, and high capacity magazines.

With respect to revisions of Categories I–III, the review was focused on identifying the defense articles that are now controlled on the USML that are either (i) inherently military and otherwise warrant control on the USML or (ii) if of a type common to non-military firearms applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States. If a defense article satisfies one or both of those criteria, it remained on the USML. For example, while the U.S. military supplies some of its service members with sidearms for military use, a sidearm also has many uses outside of the military, such that its function is not inherently military and therefore a sidearm does not warrant control on the USML. Alternatively, squad automatic weapons do not generally have such non-military uses and will remain controlled on the USML. Any single non-military use, however, does not negate such a weapon's inherently military function.

BIS notes that the scope of items ''subject to the EAR,'' includes basic commercial items, dual-use items, and military items not warranting ITAR control. The EAR control structure is well-suited to control this range of items, and BIS has particular historical expertise in controlling dual-use items. The Departments of State and Commerce also recognize that there are variations in commercial availability of firearms, but these variations do not overcome the Department of State's assessment that the subject firearms do not provide a critical military or intelligence advantage such that they warrant control under the ITAR. In addition, all exports of firearms are subject to the laws of the importing country, and the U.S. Government does not issue licenses for exporters to ship firearms to countries where the end use is illegal.

Comment 2: Many commenters asserted that many semi-automatic rifles are easily converted to fully automatic firearms and for this reason semi-automatic firearms and the parts and components needed to do this should be retained on the USML.

BIS response: BIS agrees that certain components may be used to convert a semi-automatic firearm into a fully automatic firearm. A fully automatic weapon is subject to the ITAR. The component(s) needed to turn a semi-automatic into a fully automatic are also retained on the USML. Therefore, the export of the component needed to turn the semi-automatic into a fully automatic would require an ITAR license or other approval. In addition, if the ITAR component was incorporated into the semi-automatic firearm, the now automatic weapon would be

regulated by the ITAR as an automatic weapon and because of the inclusion of the ITAR component within the firearm. To address exports of semi-automatic firearms intended to be made automatic with a foreign-origin component that was not subject to the ITAR, BIS as a result of this comment has revised § 740.2 in this final rule to restrict the use of EAR license exceptions involving these components or parts, as described below in the regulatory changes made in this final rule.

Commerce's Mission and the Regulation of Firearms

Comment 3: Many commenters expressed concerns about the role and function of BIS regarding the items that are transferred from the USML to the CCL. Some commenters expressed concerns that BIS has neither the appropriate resources nor the appropriate expertise or mission to process associated applications for exports of firearms. Several commenters asserted BIS is not set up for the proper vetting of those parties in export transactions to ensure that they are not acting as middlemen for terrorists or other subversive entities that will use them against our troops or our allies or, even worse, civilian populations. Several other commenters asserted that BIS's enforcement office, with no staff in Latin America, Africa, or many other parts of the world, is not equipped to take the same level of preventive measures for end-use controls. Many commenters asserted that the transfer of these firearms to Commerce control is inconsistent with the statutory framework enacted by Congress to regulate the export of arms.

BIS response: The mission of BIS is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. BIS controls many items on the CCL that implement U.S. commitments to the Wassenaar Arrangement and other multilateral regimes related to national security. These controls are supplemented by U.S. controls on additional items as well as broad catch-all controls targeting end uses and end users of concern.

BIS licenses are subject to an interagency review process that includes review by the Departments of State, Defense, and Energy, which allows BIS to supplement its technical expertise with that of its interagency partners on matters of national security, foreign policy, regional stability, and national defense. The interagency review process for Commerce licenses is specified in Executive Order 12981 and in part 750 of the EAR. The well-established and transparent interagency review process (including specifying the timelines for each step of the review process) ensures that a variety of perspectives and expertise from these U.S. Government agencies are able to inform the Commerce license review process to ensure only those exports that are consistent with U.S. export control interests will be approved. BIS also emphasizes that it has flexibility in how it approves licenses and can include additional safeguards as may be warranted. The interagency review process also helps to inform how licenses are approved.

BIS has decades of experience licensing firearms and related items that has prepared it well for licensing these additional firearms and related items that this final rule moves to the CCL. BIS is also prepared because of its experiences with licensing other items that have moved from the USML to the CCL, including such sensitive items as components ''specially designed'' for use in military aircraft, and certain ''spacecraft,'' including satellites, and space vehicles. In addition, BIS estimates that existing staff will be able to manage the anticipated increased workload of approximately 6,000 additional license applications.

In addition to its experience in the licensing arena, BIS has substantial law enforcement experience. BIS's Export Enforcement (EE) is a dedicated law enforcement organization recognized for its expertise, professionalism, integrity, and accomplishments. EE accomplishes its mission through preventive and investigative enforcement activities and then, pursuing appropriate criminal and administrative sanctions against export violators. EE works with the Department of Justice to impose criminal sanctions for violations, including incarceration and fines, and with the Office of Chief Counsel for Industry and Security to impose civil fines and denials of export privileges. EE also works closely with other federal law enforcement agencies, including the Federal Bureau of Investigation and the Department of Homeland Security, when conducting investigations or preventative actions.

EE has Export Control Officers (ECOs) in offices that cover different regions of the world and are not limited to the specific country in which the EE personnel are located. The ECOs are supplemented by other personnel who engage in enforcement-related activities. For example, BIS regularly sends BIS enforcement agents on temporary duty assignments overseas under the Sentinel Program where they go to areas not easily covered by existing ECOs. BIS also works with certain foreign governments on enforcement as well as transshipment issues. In conducting pre-license checks or post shipment verifications, BIS also uses the resources the Department has with various Foreign Commercial Service (FCS) officers that are located at embassies and consulates around the world. Upon BIS's request, Department of State Foreign Service Officers at embassies and consulates often assist BIS with pre-license checks when the FCS is not present.

BIS has resources it and the other agencies use to identify parties of concern to transactions, not all of which are public. The information BIS and other agencies use to vet licenses and transactions is not static and is being continuously improved to better target and exclude entities or individuals that should not be receiving items subject to the EAR.

BIS also notes that this final rule imposes a requirement to file Electronic Export Information (EEI) in Automated Export System (AES) for nearly all exports of firearms being moved to the CCL. The EAR includes robust recordkeeping requirements that have been enhanced further for the firearms being moved to the CCL. BIS can and does on a regular basis contact parties to a transaction to request all records related to a particular export or reexport or series of exports or reexports. These record requests may also involve in-person visits from representatives of EE.

BIS does not agree that the controls will be inconsistent with the statutory framework enacted by Congress to regulate the export of firearms. The firearms that warrant ITAR control will continue to be subject to the AECA and its requirements as applicable. The firearms not warranting ITAR control that this final rule will control under the EAR will be subject to the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). For example, BIS has regulated long barrel shotguns (a type of firearm) under the statutory framework enacted by Congress in the earlier Export Administration Act (EAA) and now under ECRA. The same will be true for the firearms that this final rule adds to the CCL. Congress stated that one of the purposes of ECRA is ''[t]o control the release of items for use in—(i) the proliferation of . . . conventional weapons; (ii) the acquisition of destabilizing numbers or types of conventional weapons; (iii) acts of terrorism . . .'' 50 U.S.C. 4811(2)(A).

Comment 4: One commenter asserted that BIS does not have resources to enforce export controls, even before the

addition of 30,000 firearms export licenses as a result of this rule predicted by the Commerce May 24 rule.

BIS response: BIS clarifies here that the reference to 30,000 licenses in the Commerce May 24 rule represented the increase as a result of the total USML to CCL review process, not solely the USML Categories I–III items. The estimate of 10,000 licenses is the number of anticipated State licenses that will be impacted by the transfer to Commerce in the Commerce May 24 rule. The larger 30,000 number was included for context for the overall USML to CCL review process and its implementation. As noted in the response to Comment 3 above, BIS estimates the transfer resulting in approximately 6,000 license applications. BIS has invested considerable effort in assessing the increased licensing and enforcement responsibilities that will be incurred following publication of this final rule and has determined that it is within its means and resources to effectively administer the subject export controls.

The Effect of the Shift in Regulatory Jurisdiction of Certain Firearms

Comment 5: Several commenters asserted that reducing regulations on firearms and ammunition is dangerous. One commenter asserted that moving firearms to the CCL where they would be subject to loosened controls seems inconsistent with enhancing national security. Another commenter asserted that as even the National Rifle Association (NRA) has acknowledged, ''items on the USML controlled under ITAR are generally treated more strictly, whereas regulation under the CCL is more flexible.'' Many commenters asserted that the proposal weakens controls over semi-automatic assault weapons including AR–15s and AK–47s, 50 caliber sniper rifles, and high-capacity ammunition magazines.

BIS response: The EAR control structure is more flexible and will reduce the burden on the regulated, but the items will still be controlled. For example, the EAR is a more flexible control structure because it does not require a purchase order for a license. This is more efficient and flexible than the ITAR but does not undermine U.S. national security. The applicant still needs to specify the parties to the license, end use, and items to be authorized, but not having to present a purchase order allows a more flexible licensing arrangement. The ability under the EAR to create country-based license exceptions, *e.g.,* License Exception Strategic Trade Authorization (STA), is another example. License Exception STA will only be available for the .x parts and components under 0A501, but this is another example of the more flexible EAR control structure. In other words, greater flexibility under the EAR does not mean decontrol.

Further, having the ITAR control items that are in commercial use and do not have an inherent military function does not help promote U.S. national security, because it takes time and resources away from the Department of State that could be better used to focus on items that do warrant ITAR control. BIS has decades of experience in regulating dual-use items, including long barreled shotguns controlled under 0A984 and certain chemicals and toxins that have commercial applications, but are controlled for chemical and biological weapons reasons, *e.g.,* ricin and sarin gas. *See, e.g.,* 50 U.S.C. 4811(2)(A)(i) (stating that one of the policies of ECRA is to control the proliferation of weapons of mass destruction). BIS also has a proven track record for licensing and enforcing the controls for other items that have moved from USML to the CCL.

BIS further clarifies that the AK–47 automatic firearm and any other automatic firearm are retained on the USML. The semi-automatic firearms this rule adds to the CCL will require a U.S. Government authorization for export.

Comment 6: One commenter noted that according to the State May 24 rule, ''The Department of Commerce estimates that 4,000 of the 10,000 licenses that were required by the [State] Department will be eligible for license exceptions or otherwise not require a separate license under the EAR.'' The commenter noted that the Commerce May 24 rule clarifies, ''The other 4,000 applicants may use license exceptions under the EAR or the ''no license required'' designation, so these applicants would not be required to submit license applications under the EAR.'' The commenter asserted that ''while it recognizes that other forms of oversight may be available, this dramatic difference in the number of licenses raises our concern.''

BIS response: This comment on the meaning of the 4,000 Department of State licenses that will not require a license under the EAR creates a good opportunity for BIS to clarify how the EAR controls are structured. Under the EAR, an exporter does not have a right to export. If the EAR does not impose a license requirement or some other prohibition, the exporter may proceed under the No License Required (NLR) designation. The NLR designation may be available for certain 0x5zz.y exports, but otherwise all other exports will require a U.S. Government authorization. Therefore, the reference to 6,000 being authorized under licenses and 4,000 under license exceptions and a small subset as NLR, is not a dramatic change. When BIS imposes a license requirement under the EAR, this means the exporter will need to meet all of the applicable requirements of a license exception, or obtain a license from BIS to proceed with the export. The license exceptions or portions of license exceptions that will be available for these items moved to the CCL, including some of the new requirements and limitations added, will be sufficient to protect U.S. export control interests.

3D Printing of Firearms

Comment 7: Three-dimensional (3D) printing is a type of additive manufacturing based on the principle of combining numerous, extremely thin layers of a physical material (including plastics, metals, and even living cells) in a controlled build process and joining them to gradually build up a physical, three-dimensional object. Computer controlled manufacturing may be either subtractive or additive. Subtractive manufacturing includes traditional manufacturing methods such as turning, grinding or milling, where metal or other material is removed from the base shape to form the final product. For example, you take a steel block and remove material until it becomes the final item. In additive manufacturing, which is often referred to as 3D printing, material such as metal or plastic is laid down in very thin layers one upon the other fusing together until the final net shape is achieved. In both instances, the adding or removing of the material is controlled by a computer without human intervention. 3D printers utilize electronic digital files to process the materials into a physical object, and these files can be distributed over the internet. A 3D printer or computer numerically-controlled (CNC) equipment uses Computer Aided Manufacturing (CAM) files in G-code or AMF format as executable code to produce certain items. There are currently technological limitations for the effectiveness of 3D printing of firearms, but the concept has been demonstrated and the ability to manufacture commercially viable firearms is inevitable given the increasing improvements of 3D printing equipment and 3D printing materials. Congress directed that the export control system under ECRA is intended to have ''the flexibility to be adapted to address new threats in the future,'' and this final rule implements that instruction. 50 U.S.C. 4811(8).

Technology and software are required for 3D printing of firearms and are critical for the 3D printing manufacturing process. Publicly posting such technology and software online without restriction creates the risk that foreign persons and countries, including countries of concern, will be able to obtain technology and software for 3D printing of firearms. In the absence of controls on the export, reexport, or in-country transfer of such technology and software, such items could be easily used in the proliferation of conventional weapons, the acquisition of destabilizing numbers of such weapons, or for acts of terrorism. As noted earlier, Congress expressly directed that ECRA should be used to address these risks. 50 U.S.C. 4811(2)(A).

Like 3D printing, CNC milling or machining is an automated manufacturing process controlled by technology and software. CNC milling/turning/grinding are all subtractive manufacturing processes in which the computerized equipment removes layers of material from a base—known as the workpiece or the blank—to produce a manufactured part or item. As with 3D printing, the posting online of CNC technology and software needed to create working firearms creates export control concerns.

Under the ITAR, the unrestricted public dissemination of technical data (as defined in section 120.10 of the ITAR) in a manner that allows access by foreign persons—including through the internet—is an export requiring appropriate authorization. For purposes of the CCL, Commerce has historically taken the approach (with limited exceptions) that material is not subject to export control if it has been ''published'' within the meaning of 15 CFR 734.7, including through posting on the internet. The proposed rules published by the Departments of State and Commerce took these differences in the ITAR and EAR control structures into account, and the Commerce proposed rule acknowledged these differences to ensure commenters had an opportunity to fully take these differences into account when submitting their comments on the Commerce rule. *See* page 24167 of the Commerce May 24 rule and 15 CFR 734.7.

Comments on the Commerce proposed rule reflected the commenters' understanding of these differences between the ITAR and EAR control structures. BIS received many comments expressing concerns about 3D printing of firearms and whether appropriate controls would be in place under the EAR. It also received a small number of commenters that supported the part 734 criteria. The commenters critical of the part 734 criteria provided the following input:

(1) Part 734 criteria should be changed to regulate 3D printing, even if the information would otherwise be publicly available. These commenters were concerned that the application of the part 734 criteria appears to give rise to the possibility of widespread and openly sanctioned circulation of open source, non-proprietary instructions for using computer-aided design (CAD) files to produce operable firearms via 3D-printing technology, or text files to produce such firearms via CNC milling of the firearms. Commenters requested BIS to weigh the fact that the part 734 criteria would make posting on the internet of ECCN 0E501 technology (*e.g.,* 3D printer specs) for the production of an ECCN 0A501 firearm publicly available information that is no longer subject to the EAR.

(2) Allowing 3D-printed gun technology and software to be posted freely online for use with 3D printers will make it easier to obtain firearms in the U.S. and abroad. These commenters were concerned that the combination of internet dissemination and do-it-yourself 3D production is problematic because the government would have no oversight of the producer, the end use or the end user of the firearm. Other commenters in this area were greatly concerned about the perceived loss of controls on 3D gun-printing plans, which these commenters asserted has increasingly assisted bad actors in enhancing their capabilities to inflict atrocities around the world. Several commenters cited *Defense Distributed* v. *Department of State,* a lawsuit filed in the U.S. District Court for the Western District of Texas and appealed to the U.S. Court of Appeals for the Fifth Circuit,, in support of the State Department's decision to restrict the 3D printing of firearms under the ITAR (*i.e.,* requiring appropriate authorization under the ITAR prior to allowing unrestricted posting on the internet).

(3) Unregulated 3D printing would undermine U.S. efforts, as well as governments overseas, to vet parties obtaining firearms, and to track 3D printed firearms. These commenters noted that with access to 3D printing machines and plans on how to build a gun, anyone could circumvent U.S. laws that seek to prevent known criminals from obtaining U.S. firearms. Other commenters in this area were particularly concerned that these changes would result in an increase in the number of untraceable firearms in circulation because as 3D printing technology becomes more widely available, the likelihood that it may be used to construct operable firearms that are exempt from serialization requirements would increase.

(4) The transfer of control of these items to the CCL would undermine longstanding U.S. efforts to counter proliferation of small arms in the world. Commenters in this area noted that they couldn't understand how allowing untraceable 3D printing of firearms would serve U.S.-recognized goals to combat illicit trafficking of firearms. Commenters in this area also noted that the United States is the world's largest donor, as the commenter understands it, to helping countries build their ability to trace weapons, secure weapons stockpiles, and to destroy those stocks when warranted. However, according to the commenter, this transfer of authority to Commerce appears to open the door to unfettered 3D printing of firearms, which threatens to undermine nearly all those efforts.

One commenter asserted that the proposed changes may result in increased circulation of plans for non-automatic weapons produced by 3D printing technology, and this may be at odds with the Wassenaar Arrangement.

A small number of commenters supported the application of the criteria in part 734 and emphasized that the information is so widely available in various formats that trying to control it would not be practical or warranted. One commenter noted that America boasts hundreds of millions of privately-owned firearms and has produced countless books, magazine articles, videos, websites, and online forums that exhaustively detail firearm technology and use. Thus, this commenter asserted it is difficult to imagine any information about the design, development, production, manufacturing, and use of firearms that is not already within the public domain and this same information is commonly available overseas. Other commenters that supported the part 734 criteria asserted that they had concerns generally over their First Amendment rights being possibly violated unless the criteria in part 734 applied equally to information posted online. These commenters requested an end to any harassing or censorship of firearm instructors within the U.S., as well as bloggers, writers, and those posting online guides or tutorials discussing technology about defense items because these activities seem to be a clear violation of the First Amendment right to free speech. Given the foreign policy and national security interests at stake, Commerce believes that the restrictions imposed by this rule

are appropriately tailored. Commerce is also aware of, and has taken into account, the constitutional and statutory concerns raised by the plaintiffs in the *Defense Distributed* case and by the plaintiffs in *Washington* v. *Dep't of State,* No. 2:18–cv–01115–RSL (W.D. Wash.). Commerce also notes that it has received correspondence from members of Congress concerning the issues raised in *Defense Distributed.*

BIS response: The Commerce May 24 proposed rule addressed the application of part 734, including § 734.7, for items (specifically for certain information and software) proposed for transfer from USML Categories I–III (*see* 83 FR 24167). These criteria support the free exchange of public information and, as a general matter, do not warrant being changed. However, the concerns commenters raised about the specific application of part 734 criteria to 3D printing of firearms suggests that modification to the proposed controls is warranted.

With the transfer of certain firearms from the USML to the CCL, rifles, pistols, revolvers and related parts and components will fall within ECCN 0A501, and BIS will be responsible for their licensing. This transfer adds to Commerce's existing licensing jurisdiction over most shotguns and shotgun shells as well as optical sighting devices. The items that remain on the ITAR include fully automatic and selective fire weapons, weapons for caseless ammunitions, silencers and certain high capacity (50 rounds or greater) magazines, and certain military-specific ammunition such as tracers.

BIS recognizes that several commenters, including a large number of private citizens, expressed concern over global access to 3D printing technology and software with the transfer of certain firearms to the CCL. BIS also recognizes that several commenters and plaintiffs in *Washington* v. *Dep't of State* raised concerns about risks to public safety related to domestic access to 3D printing technology and software. BIS shares the concerns raised over the possibility of widespread and unchecked availability of the software and technology internationally, the lack of government visibility into production and use, and the potential damage to U.S. counter proliferation efforts. In this final rule, BIS addresses the concerns raised about 3D printing of firearms by making certain technology and software capable of producing firearms subject to the EAR when posted on the internet under specified circumstances. This control will help ensure that U.S. national security and foreign policy interests are not undermined by foreign persons' access to firearms production technology. Although the Department of State determined that such technology and software do not warrant continued control under the USML, maintaining controls over such exports under the EAR remains in the national security and foreign policy interests of the United States, as described below. As noted in other places in the Commerce final rule, the movement of items from the USML is not a decontrol, and appropriate controls must be in place to protect U.S. national security and foreign policy interests, such as by maintaining Commerce licensing authority over certain technology and software capable of producing firearms subject to the EAR when posted on the internet under specified circumstances as described in this final rule. And although the domestic transfer of commodities is outside the purview of BIS jurisdiction, the concerns related to the unrestricted posting of CAD files on the internet, more accurately described in this final rule as CAM files, have been addressed in this final rule and nothing in this final rule affects existing federal or state laws that pertain to the manufacture, possession, use, or commercial sale of firearms.

BIS provides more information about the specific changes below under the Description of Regulatory Changes under the heading Revision of ''Published.''

BIS does not agree with the commenter that stated that the part 734 criteria are at odds with the Wassenaar Arrangement. As described both in the proposed rule and this final rule, part 734 remains consistent with the Wassenaar Arrangement. BIS's changes in this final rule, however, ultimately addressed this commenter's concern.

In response to commenters who favored the part 734 criteria as outlined in the proposed rule, BIS notes that information regarding firearms, including information for production of firearms, is often widely available, and nothing described below would restrict persons from publishing books or magazines, such as those that could be found in a local public library, and that the changes made to part 734 described below are limited to addressing a specific fact pattern (posting on the internet of certain types of files) that warrants U.S. Government oversight to ensure unrestricted releases are not being made to persons of concern outside the United States or to foreign persons in the United States. BIS also took into account these commenters' support for the part 734 criteria and their First Amendment concerns but did not adopt the approach that they advocated. Given concerns regarding First Amendment restrictions the control is appropriately tailored to only impact technology and software in an electronic format, such as AMF or G-code, that is ready for direct insertion into a computer numerically controlled machine tool, additive manufacturing equipment to produce the firearm frame or receiver or complete firearm. This technology and software are functional in nature, having the capability to cause a machine to use physical materials to produce a firearm frame or receiver or complete firearm. Limitations on the dissemination of such functional technology and software do not violate the right to free expression under the First Amendment. Nor does the final rule violate the right to keep and bear arms under the Second Amendment. The rule does not prohibit U.S. persons within the United States from acquiring firearms of any type; indeed, nothing in this rule prohibits persons within the United States from developing, discussing, or transferring by hand or mail (*e.g.,* by the U.S. Postal Service or a common carrier) CAM files related to 3D-printing technology and software. The domestic transfer of commodities is outside of the scope of BIS jurisdiction and would be within the purview of domestic law. The release of controlled technology in the United States would only be regulated to the extent it would constitute a deemed export (*i.e.,* release to a foreign person). This means transfers between U.S. persons within the United States are not regulated under the EAR so long as there is no release to a foreign national. The ITAR takes a similar approach. BIS's approach in using targeted changes is not intended to otherwise change the other criteria in part 734 that these commenters assert they strongly support.

In response to the comments received on the proposed rule, BIS has reflected on the need to take into account various interests in regulating technology and software for the 3D printing of firearms. At the time of the proposed rule, BIS believed that its existing framework struck the appropriate approach in providing for national security and foreign policy control of firearms that would transfer to the CCL. Since that time, BIS has had considerable time to review the comments related to 3D printing of firearms. Although the military usefulness of 3D printed firearms is not significant, there are other U.S. national security and foreign policy interests, as described by commenters, in regulating the unlimited

access to certain files for the 3D printing of firearms that the framework of BIS regulations as described in the proposed rule did not adequately address. As the State Department noted in the *Defense Distributed* litigation, unrestricted export of such files abroad could have a potential detrimental effect on aspects of U.S national security and foreign policy, including by undercutting efforts to combat the illicit trafficking of firearms or possession of firearms by hostile parties or dangerous organizations, as well as other efforts to assist other countries in protecting domestic and international security. BIS believes this potential detrimental effect on U.S. national security and foreign policy warrants the control of the export of certain files for the 3D printing of firearms set forth in this rule.

At the same time, BIS recognizes that there is a longstanding tradition to encourage the free exchange of ideas as already acknowledged in BIS regulations, such as in 15 CFR 734.7. The agency takes seriously its responsibility to regulate judiciously, seeking to assert jurisdiction only as needed and consistent with its statutory authority. As set forth in the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852, Commerce's policy is to use export control only to the extent necessary to restrict the export of items that would make a ''significant contribution to the military potential of another country . . . which would prove detrimental to the national security of the United States'' or ''further significantly the foreign policy of the United States or to fulfill its declared international obligations.'' 50 U.S.C. 4811(1)(A)–(B). Further, Commerce must ensure that its controls are ''tailored to focus on those core technologies and other items that are capable of being used to pose a serious national security threat to the United States.'' 50 U.S.C. 4811(2)(G).

Because of the national security and foreign policy risks associated with the unlimited access and unrestricted production of 3D printed firearms, BIS is offering a tailored approach, consistent with its statutory obligations, that places restriction on the posting on the internet of files for the printing of certain firearms and their critical elements. As set forth in § 734.7(c) in this final rule, only technology or software for the complete firearm, its frame, or its receiver are subject to BIS licensing requirements, aligning BIS controls with existing statutory concepts set forth in the definition of ''firearm'' under the Gun Control Act (GCA), 18 U.S.C. 921(a)(3). Recognizing that libraries and academic institutions within the United States may already carry books or other materials related to firearms manufacturing, BIS does not seek to regulate this existing landscape of activity for the items transferred from the USML to CCL, consistent with its treatment of firearms it controlled on the CCL prior to this final rule. Instead, since the harm identified with unrestricted dissemination has been tied to the easy and untraceable distribution in electronic format that the internet provides, BIS has crafted its rule to regulate dissemination in this space as it poses a significant risk to U.S. national security and foreign policy.

As a result, Commerce has reached the conclusion that U.S. national security and foreign policy necessitate that BIS maintain controls over the 3D printing of firearms when such software and technology is posted on the internet. The potential for the ease of access to the software and technology, undetectable means of production, and potential to inflict harm on U.S. persons and allies abroad present a grave concern for the United States. Without regulatory oversight, U.S. foreign relations and national security interests could be seriously compromised. For these reasons, this final rule provides that technology and software ready for insertion into an automated manufacturing tool that makes use of the software or technology to produce a firearm frame, receiver, or complete firearm is subject to the EAR, consistent with the regulation of such software and technology when previously controlled under the USML.

Vetting Transaction Parties and Monitoring Exports

Comment 8: Many commenters were concerned about a possible reduction in the monitoring of the end users of exported firearms and publicly available information about this monitoring. These commenters asserted that public reporting of Blue Lantern information is mandatory and there are readily available statistics about the results. Some commenters requested that if the proposed rules move forward, the BIS program be strengthened to address the need to monitor the end users of exported firearms.

BIS response: BIS does not publish end-user monitoring information in the same format as the Department of State, but the same type of information is available publicly from BIS. The new ECRA maintains an annual reporting requirement to Congress that provides an additional layer of transparency. Specifically, under Section 1765(a)(6) of ECRA, the Secretary of Commerce shall submit a report to Congress that includes a summary of export enforcement actions, including of actions taken to implement end-use monitoring of dual-use, military, and other items subject to the EAR. BIS already has practices in place to continuously evaluate its end-use monitoring program and to improve it as opportunities to do so are identified. BIS intends to continue those efforts for the firearms that are moved to the CCL with this final rule.

Registration Requirement for Screening

Comment 9: Several commenters expressed concerns that BIS will not have access to the same databases and background information that the Department of State uses to evaluate license applications since the EAR does not require registration. These commenters asserted that not including a registration requirement will deprive regulators of an important source of information and decrease transparency and reporting regarding gun exports. Some commenters recommended removing or limiting the registration fee for manufacturers but keeping the requirement for registration. Another commenter suggested waiving the fee for manufacturers who do not, in reality, export these items.

BIS response: BIS, along with the Department of State, considered these concerns and determined that the interagency license review process maintains appropriate oversight of the items at issue. BIS's export licensing requirements and process are calibrated both to the sensitivity of the item and the proposed destination. Additionally, all requests for export licenses for firearms remain subject to interagency review, including by the Department of State.

BIS does not need the information included in the ITAR registration requirement to regulate those items under the EAR. To apply for a license under the EAR, the applicant is required to create a free account in BIS's online submission system called SNAP–R. The SNAP–R account includes basic information about the exporter. In addition, each party identified on the license application is reviewed. The requirements to file EEI in AES is another important way that BIS obtains information needed to effectively track exports.

BIS agrees that if there were a registration requirement, removing or limiting the fee for registration would ease the burden on small businesses and individuals. However, as noted above, BIS does not believe that the information included in the registration requirements is necessary for BIS to

effectively license and enforce the EAR. Therefore, registration requirements, even if they are free, would impose an unnecessary burden on individuals, small companies, and manufacturers.

Brokering

Comment 10: Many commenters asserted that the proposed changes to USML Categories I–III would mean that brokers of semi-automatic weapons and related ammunition will be exempt from registration and licensing that is currently triggered by their inclusion as defense articles on the USML. Other commenters correctly understood that State would continue to impose brokering controls for items which moved to the CCL that are also listed on the USMIL. One of these commenters asserted that they are pleased to see that the State May 24 rule attempts to maintain effective oversight of arms brokers by ensuring that brokers must register with the Department of State and seek a license. This commenter asserted that these provisions are critical in helping mitigate illegal arms trafficking to major conflict zones and transnational criminal organizations.

BIS response: BIS clarifies that the Department of State in its May 24 rule and its final rule retains brokering controls for items which are now listed on the CCL that are also listed on USMIL. BIS directs the public to review the State final rule for information on the brokering controls under the ITAR. The Department of State in its companion rule noted it does not intend to impose a double licensing requirement for individuals undertaking activities on behalf of another to facilitate a transaction that will require licensing by the Department of Commerce. In practical terms, this means the vast majority of exporters who only export firearms on the CCL directly from the U.S. or reexport U.S.-origin firearms on the CCL are not ''brokers'' and will not have to register with DDTC.

Congressional Oversight

Comment 11: Multiple commenters expressed concerns that this final rule would reduce congressional oversight of arms transfers because BIS does not have to notify Congress of firearms sales in excess of $1 million, as the Department of State does. These commenters asserted that: (1) Congress needs to be able to review these types of firearms sales to ensure large risky exports do not proceed; (2) Congress has played an important role in stopping several risky firearms sales because of the congressional notification requirement (commenters provided examples of sales from 2017 to Turkey and the Philippines that they asserted were blocked by Congress); (3) congressional notifications are a valuable tool for the public to be able to see when large firearms sales are being proposed; and (4) certain members of Congress have asserted their concern that not including a congressional notification requirement under the EAR would be counter to congressional intent.

BIS response: The Department of State in its companion rule also acknowledges those concerns and notes that those firearms that the U.S. Government deemed through the interagency review process to warrant continued control under the ITAR as defense articles will remain subject to congressional notification requirements in conformity with section 36 of the AECA and Executive Order 13637. In this response, BIS also puts the congressional notification issue into context under the EAR and the statutes that the regulations implement for items ''subject to the EAR.''

BIS notes that at the time of publication of the Commerce May 24 rule, the Export Administration Act (EAA) did not include a congressional notification requirement for firearms, nor did any other statute that the EAR implements for firearms. Therefore, BIS did not include a congressional notification requirement because it did not want to prejudge congressional intent in this area. On August 13, 2018, the President signed the National Defense Authorization Act for Fiscal Year 2018, which included ECRA. Congress did not include in ECRA any requirements for congressional notification for firearms and related items exports. Therefore, BIS is not including a congressional notification requirement in the final rule.

Overseas Trafficking, Proliferation, and Diversion of Firearms

Comment 12: Multiple commenters expressed a general concern that the transfer to the CCL increases the risk of overseas trafficking, proliferation, or diversion. Multiple commenters also expressed concerns about the BIS end-use monitoring (EUM) capabilities and the impact the companion Department of State rule has on the Department of State's EUM programs. Many commenters asserted that the decision to relax controls on the export of firearms will make it easier for terrorists to obtain the same dangerous firearms that have been used in mass shootings in the United States. Many commenters also asserted that these firearms are weapons of choice for criminal organizations, narcotics traffickers, and gun traffickers, and making it easier for them to get firearms will make their activities worse and further fuel armed conflict abroad.

BIS response: This final rule does not deregulate the export of firearms. All firearms and major components being transferred to the CCL will continue to require a U.S. Government authorization. Further, BIS has both a robust EUM program and a law enforcement division sufficiently capable of monitoring foreign recipients' compliance with their obligations regarding the transfer, use, and protection of items on the CCL. Additionally, the Federal Bureau of Investigation and the Department of Homeland Security will continue to investigate and enforce civil and criminal violations of the export control laws as appropriate.

BIS does not agree that moving these firearms to the CCL will mean less oversight to prevent gun trafficking. Exporting these firearms will require a U.S. Government authorization. The EAR also includes a robust set of end-use and end-user controls that will supplement the CCL based license requirements. Similar to the ITAR, BIS will impose appropriate conditions as needed on authorizations or not approve certain transactions if there is a concern over risk of diversion. BIS also will maintain a robust end-use verification program for the firearms and other items moved to the CCL from USML Categories I–III. In addition, most firearms will require submission of a license, and the license review policies would lead to a denial for exports to terrorists. The EAR also includes sections in part 744, *e.g.,* § 744.14 for Foreign Terrorist Organizations (FTO), that impose additional restrictive license requirements and license review policies for terrorists identified under certain designations on the Department of Treasury's Specially Designated Nationals (SDN) list. This is significant because it excludes the use of any EAR license exceptions; imposes a license requirement for all items subject to the EAR, including the firearms being moved to the CCL; and acts as an additional safeguard for transactions involving EAR items located outside the U.S. that the Department of Treasury controls are not able to reach.

BIS included provisions in the Commerce May 24 rule and in this final rule to address this issue by including a presumption of denial license review policy under the regional stability reason for control for these types of end users. Specifically, in this final rule, the license review policy in § 742.6(b)(1)(ii)

is a policy of denial when there is reason to believe the transaction involves criminal organizations, rebel groups, street gangs, or other similar groups or individuals, that may be disruptive to regional stability, including within individual countries.

Comment 13: One commenter, a human rights organization, asserted that ''it has for many years called attention to the risks associated with untrammeled export of small arms and light weapons around the world.'' This commenter asserted that ''these arms have been associated with the deployment of child soldiers and the rise of insurgent groups.'' This commenter also asserted that ''these firearms are easier to divert than larger weapons and often end up in the illicit market.''

BIS response: BIS does not agree that there is anything in the EAR that will make the possibility of diversion any greater than it was under the ITAR. These concerns of diversion are taken into consideration by the export control system and underlie the basis for some of the agency's controls. BIS also notes that the U.S. Government continuously monitors the export control system to determine where the most likely points of diversion are and takes actions to prevent potential diversion points by using existing license review policies, rescinding or revoking prior authorizations, or imposing new license requirements or other prohibitions.

Impact on Foreign Law Enforcement

Comment 14: One commenter expressed concern that foreign law enforcement personnel in particular are at risk of having the firearms and ammunition that would be transferred to the CCL used against them. Another commenter asserted that moving these firearms to the CCL will make it hard for foreign law enforcement to counter gun trafficking.

BIS response: These assertions are mitigated by the fact that, as stated previously: (1) These articles remain subject to BIS's EUM programs that vet potential end users of concern, and (2) applications for firearms and ammunition licenses will be approved only if the end use is permitted under the laws and supervision of the importing country.

BIS notes that this final rule is consistent with U.S. multilateral commitments, *e.g.,* to the Wassenaar Arrangement and the United Nations for conventional arms reporting. The support documentation requirements are consistent with Organization of American States (OAS) requirements to require an import certificate issued by the importing country. This support document requirement applies to other countries that also impose a requirement for an import certificate prior to allowing an import of a firearm, permitting these other countries to better control the flow of firearms coming into their countries. In addition, U.S. law enforcement agencies, including BIS's Office of Export Enforcement, also coordinate with law enforcement agencies outside the U.S., as was referenced above in the BIS response to Comment 3. The area of preventing illegal transshipments is a good example of where various countries have worked together, including law enforcement agencies, regulators, and policy makers, to come up with standards and protocols to reduce illegal transshipments, and this work will continue.

Human Rights Issues

Comment 15: A number of commenters suggested the proposed rule, if made final, may have a negative impact on human rights in foreign countries. BIS also received many comments asserting ''it is now recognized that rape and sexual assault are systematically used as weapons of war in conflicts around the world.'' One of these commenters asserted that ''in interviews with women and girls who have survived sexual violence during conflict, a very high number of their stories include descriptions of the torture they endured at the point of a gun. Although the particular models of firearms involved are seldom identified, there is no doubt that a military-style weapon contributed to gross violations of their human rights.'' Many commenters asserted that even after a conflict has officially ended, the weapons left behind are used all too often by perpetrators of domestic violence.

BIS response: BIS will use its resources and expertise in this area to vet parties involved in transactions subject to the EAR for human rights concerns. Similarly, as part of the aforementioned continuing interagency review of export licenses for firearms, the Departments of State and Defense will remain active in the interagency review process of determining how an item is controlled and will review export license applications on a case-by-case basis for national security and foreign policy reasons, including the prevention of human rights abuses. As stated previously in this final rule and in the companion rule published by the Department of State, the Department of State will continue vetting potential end users when reviewing Commerce licenses, to help prevent human rights abuses.

BIS does not anticipate authorizing exports of firearms to regions involved in active conflicts because of the presumption of denial license review policy for regional stability. Commerce on its licenses as well as in its license exceptions includes certain requirements and conditions to ensure subsequent disposition or use of the item will continue to be in accordance with U.S. export control interests. These requirements are enhanced by the EAR end-use controls in part 744, which in many cases apply to transfers (in-country). Ultimately, the issue raised by this commenter is one of the reasons why the license review process is done in a careful and deliberative way to ensure as much as possible that the items authorized for export will not subsequently be used in ways not in accordance with the regulations, as well as larger U.S. national security and foreign policy interests.

Effect on Other Countries

Comment 16: Some commenters asserted moving these firearms to the CCL would increase the likelihood for greater destabilization and conflict worldwide as well as for these weapons to be trafficked back into the U.S. for nefarious uses here. Some commenters asserted that ''military-style semi-automatic rifles and their ammunition, are weapons of choice for criminal organizations in Mexico and other Latin American countries that are responsible for most of the increasing and record levels of homicides in those countries.'' These commenters asserted that this will only send more asylum seekers fleeing to U.S. borders.

BIS response: BIS does not agree that the transfer of items to the CCL would increase the likelihood of greater destabilization and conflict worldwide, or specifically in Mexico or other Latin American countries. As described above, each foreign government decides what firearms may be imported into its country. In addition, as noted above, these items will be controlled for regional stability, so each license application will be reviewed to evaluate whether the export of these firearms may contribute to destabilizing that foreign country or other regional stability concerns.

U.S. Nationals and Interests Overseas

Comment 17: Some commenters asserted that this change in licensing jurisdiction could lead to an unfortunate future situation where our own combat troops face troublemakers armed with American-made weaponry.

BIS response: The U.S. export control system, whether that is the export controls implemented under the EAR or the ITAR, is focused on protecting U.S. national security and foreign policy interests. Effective controls are in place under the EAR to ensure as much as possible that items subject to EAR do not endanger U.S. troops, U.S. nationals, or other U.S. interests is one of the key objectives of EAR controls. This final rule is intended to ensure that items being moved to the EAR will not endanger U.S. interests. BIS, as well as the Department of State, works to ensure that diversions do not occur, but it is a concern not unique to firearms moved to the CCL, and something the U.S. export control system is designed to counter.

Consistency With U.S. Multilateral Commitments

Comment 18: Other commenters suggested that this rule contravenes international commitments the United States has made through mechanisms such as the Wassenaar Arrangement. One commenter asserted that the U.S. has already alienated many of our allies, and this rule change will further aggravate relations by pushing more firearms into their countries.

BIS response: The transfer of the concerned items to the CCL does not contravene U.S. international commitments, as the U.S. Government will continue to apply a high level of control to these items and require U.S. Government authorization for all exports of firearms and major components. Further, the controls being implemented under the EAR with this final rule are consistent with U.S. multilateral commitments, *e.g.,* to the Wassenaar Arrangement, the United Nations, and the OAS. BIS notes that foreign governments decide what items may be imported into their countries and how such items will be regulated within that country. Regardless of the U.S. export control system, an exporter must still meet the requirements of an importing country and if the importing country does not allow the importation of these items or requires certain requirements to be met, those foreign regulatory or other legal parameters set the parameters and scope for what may be imported, who may use such items, and for what end uses.

Reporting Requirement for Political Contributions and Fees to the EAR To Prevent Corruption in the Arms Trade

Comment 19: One commenter asserted that the transfer of certain Categories I–III items from ITAR to EAR control will mean the loss of the reporting requirements outlined in 22 CFR part 130. This commenter asserted that part 130 requires exporters to report payment of certain political contributions, fees, and commissions related to the sale of defense articles and services to the armed forces of a foreign country or international organization to the DDTC and because the EAR does not have the same type of reporting requirement, this may result in increased corruption in arms sales. The same commenter asserted that ''in many countries around the world, corruption is rampant within their arms procurement systems, as foreign officials seek to steal funds from their national budgets for their personal gain,'' so not including a reporting requirement in the EAR may make the corruption worse. The same commenter asserted that under the Commerce May 24 rule, BIS would limit its ability to obtain useful information on U.S. defense companies and prosecute bribery.

BIS response: BIS does not agree with these assertions. The Foreign Corrupt Practices Act (FCPA) already prohibits this type of corruption activity and provides a robust regulatory scheme. FCPA applies to all items subject to the EAR, including items that will be moved from the USML to the CCL. Therefore, imposing a separate reporting requirement is not needed under the EAR to prevent this type of illegal activity. BIS highlights here in the preamble of this final rule that any party involved in a transaction ''subject to the EAR'' must also follow any other applicable U.S. laws, including the FCPA. Questions on the FCPA should be directed to the Department of Justice and the U.S. Securities and Exchange Commission (SEC).

Commenters Asserting Burdens Will Be Reduced (for Purposes of E.O. 13771)

Comment 20: A firearms trade association commenter asserted that ''it has reviewed the proposed rule thoroughly with its membership . . . and most members have told it that the final versions of the rules would eventually be beneficial because they would significantly reduce the overall burden and cost of complying with controls on the export of commercial firearms and ammunition.'' This trade association noted that ''[a]ll who responded told us that there would be an initial short-term increase in burden and cost because of the need to re-classify thousands of commodity, software, and technology line items and SKUs affected by the new rules, but that the long-term regulatory burden reduction would significantly outweigh the short-term need to adjust internal compliance programs and practices.'' One firearms industry trade association commenter noted that most of ''its members, particularly the small- and medium-sized companies, believe that the changes will be economically beneficial for them because the eventual regulatory simplification and cost reductions will allow them to consider exporting when they might not have otherwise.'' Additionally, many small independent gunsmiths commented about the disproportionate negative impact the costs of ITAR compliance had on their businesses. Several commenters asserted that by moving such items to the EAR, many domestic manufacturers who do not export would be relieved of the significant financial burden of registering under the ITAR. One trade association commenter asserted that the costs for their members would be reduced because under the Commerce system, there are no fees to apply for licenses. This commenter also asserted that their burdens would be reduced because the Commerce license application forms are vastly simpler compared to the Department of State license application forms.

One commenter asserted that ''one of the benefits under the EAR will be that controls on less sensitive and widely available basic parts, components, and technology are more tailored and allow for less burdensome trade with close allies through license exceptions.'' This same commenter also asserted that ''sales with regular customers can be combined in to fewer license applications, thus reducing overall paperwork to achieve the same policy objectives.''

One trade association commenter asserted that these changes ''will lead to growth for U.S. companies, more jobs in the United States, and related economic benefits for the cities and states where the members reside while accomplishing the same national security and foreign policy objectives they have always had.'' One commenter asserted that the items being moved to the CCL are manufactured in many parts of the world and that by engaging more with the world, U.S. firearms manufacturers will improve their knowledge and capability. One commenter that identified himself as a U.K. citizen, who often travels to the U.S. and visits sporting goods stores, asserted that the price of certain items, *e.g.,* cartridge cases and bullets, are less than half the price charged in the U.K. The commenter asserted, ''fix this and U.S. manufacturers will see a significant increase in demand from U.K. based firearms owners.''

BIS response: BIS agrees that the Commerce May 24 rule would reduce the overall regulatory burden of complying with U.S. export controls, including through regulatory simplification and cost reductions that may allow certain persons, *e.g.,* small independent gunsmiths, to consider exporting when they might not have otherwise because of the economic burden of complying with the ITAR. One of the strengths of the EAR control structure is its focused approach on exports without unduly burdening persons that are not a party to an export transaction. Not requiring domestic manufacturers to register with BIS is a good example of the more focused EAR controls. The fact that BIS does not charge a registration fee to be able to apply for a Commerce license is another financial benefit.

The EAR is a more tailored control structure, and this more flexible control structure will reduce burdens and create more opportunities to export. One of the key benefits of the more flexible Commerce licensing processes is the ability for applicants to combine multiple transactions on license applications for sales to regular customers. Because BIS does not require a purchase order, the overall number of licenses an exporter may need to submit is reduced.

The changes included in this final rule may lead to increased sales opportunities for U.S. exporters and related economic benefits for the United States, while also accomplishing the same national security and foreign policy objectives of the U.S. export control system. Because of the more flexible EAR control structure, parties outside the U.S. may want to purchase more items, such as ECCN 0A501.x parts or components that were previously avoided because of no *de minimis* eligibility under the ITAR. This rule might also lead to increased export activity because parties outside the U.S. may import more U.S. origin firearms because of the more flexible Commerce licenses that do not require a purchase order. Importantly, any additional exports that may occur are the same types of exports that would have been otherwise approved under the ITAR.

As asserted by some of the commenters, the changes made by this final rule may help to foster innovation in the United States by encouraging collaboration with companies outside the United States, and this may lead to better U.S. products. They may also encourage more people to be interested in purchasing items from the United States.

Commenters Asserting Burdens Will Not Be Reduced (for Purposes of E.O. 13771)

Comment 21: One anonymous commenter asserted that moving these items to the CCL would create a small cost-savings for its company in registration and licensing fees, but the commenter did not see a demonstrated equivalent in terms of paperwork reduction or real time savings. This commenter asserted that the issue for small companies having to pay the registration fees due to their manufacturing activities is better resolved by changing the definition of manufacturer to add a minimum size requirement. The same commenter asserted that the EAR does not include a concept of defense services and the technology controls are more narrowly focused and apply in limited contexts as compared to the ITAR, and this change represents an improvement in terms of the commenter's ability to share information needed for marketing firearms and for repairing them internationally. However, this commenter asserted that the same result could be achieved via amendment to the ITAR. The same commenter asserted that ''the improvements and savings are quantified using the 43.8 minutes for BIS application vs. the 60 minutes for DDTC application and that this metric provides no meaningful data from which to extrapolate total process savings or if any is really generated.'' This commenter also asserted that other additional burdens proposed in the Commerce May 24 rule also need to be accounted for, *e.g.,* increasing the quantity and type of data elements which will be required for AES filing. The same commenter asserted that there will be burdens and expenses of transition related to reclassification of all products, re-training of all employees, and advanced training needed for compliance personnel. The commenter acknowledged that it understands this burden is considered short term; however, the commenter asserted that the benefits of moving these items to the CCL still has not been adequately explained to justify these short-term burdens. This same commenter asserted that other than utilizing a different application form and the change in the agency receiving applications, it has not been demonstrated exactly what, if any, process improvement this represents.

BIS response: While this commenter did not anticipate significant cost or burden reduction from the transition to the EAR, most other commenters addressing these issues anticipated more significant benefits. The reform effort is not intended to make the ITAR the same as the EAR; this would not be warranted because the more restrictive ITAR controls are needed to regulate items such as fighter aircraft, submarines, and intercontinental ballistic missiles. BIS agrees that the more focused EAR technology controls will ease burdens, but still appropriately control technology for these items.

BIS does not agree with the assertion that the way the cost savings were calculated in the Commerce May 24 rule provided no meaningful data to extrapolate total process savings. Many commenters asserted that they believed their burden would be reduced by moving these items to the CCL. This commenter is correct that other commenters expressed concerns about individuals being required to file EEI in AES for exports under License Exception BAG of their personally owned firearms, and concerns about including the serial number, make, model number, and caliber of firearms in the EEI in AES. However, this final rule significantly reduces these burdens. For example, this final rule requires the U.S. Customs and Border Protection (CBP) Certification of Registration Form 4457, a form already being used by exporters. Therefore, there will be no additional burden because BIS will be requiring information already submitted by exporters to CBP for other reasons. For licensed exports, BIS also eliminated the requirement to file those additional data elements, except for temporary exports or when the Commerce license includes a condition requiring it, similar to the approach Department of State takes with provisos on its licenses.

BIS acknowledges that there will be some short-term adjustment costs. BIS also acknowledges that the EAR is a more complex control structure because with greater flexibility there is a need for additional nuances in the control structure. BIS disagrees that the rationale for the transition was not clearly demonstrated in the Commerce May 24 rule.

BIS appreciates this same commenter highlighting a key point of commonality. The commenter is correct that the Commerce license applications will continue to be reviewed by the Departments of State and Defense. This well-established interagency review process specified in both Executive Order 12981 and in the EAR helps to protect U.S. export control interests and ensures that a diversity of interests and agency expertise is being used to review license applications. BIS disagrees that the only difference is a different application. For example, the fact that

an applicant does not require a purchase order under the EAR to apply for a license allows for more companies to compete for business opportunities.

Licensing Costs

Comment 22: Many commenters asserted that the Commerce May 24 rule would transfer the cost of reviewing applications and processing licenses from gun manufacturers to taxpayers. Many commenters also asserted that with respect to firearms exports, taxpayers and the public at large should be concerned about pressures to cut corners that could result in authorization of irresponsible transfers of firearms, because BIS will not be charging fees for licensing.

BIS response: By statute, Congress prohibits BIS from imposing fees for any license application, authorization or other requests. This prohibition applies for submissions in connections with all items subject the EAR and is not specific to the firearms industry. BIS has effectively licensed items for several decades based on the fee free license construct that was included in the Commerce May 24 rule and in this final rule.

Comments Specific to the Regulatory Text

Inclusion in the ''600 Series''

Comment 23: One commenter requested BIS include semi-automatic firearms and related items in the ''600 series'' instead of in 0x5zz ECCNs.

BIS response: BIS does not agree. As was stated in the Commerce May 24 rule and discussed above in response to the comments, the semi-automatic firearms this final rule adds to ECCN 0A501.a have a significant worldwide market in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities. For these reasons, the movement of firearms and ammunition from USML Category I and III, similar to the civilian spacecraft and related items moved from the USML and controlled on the CCL under 0x515 ECCNs, do not warrant being controlled under the ''600 series.''

New ECCN 0A501: Firearms and Related Commodities

Comment 24: One commenter identified an inconsistency between the Commerce May 24 rule in the ''Related Controls'' paragraph that stated magazines with a ''capacity of 50 rounds or greater'' are ''subject to the ITAR.'' However, the proposed USML Category I(h)(1) referenced only magazines and drums with a ''capacity greater than 50 rounds.''

BIS response: This final rule corrects the EAR text to make it clear that magazines with a ''capacity of greater than 50 rounds'' are subject to the ITAR.

Comment 25: One commenter asserted there had been past issues of interpretation under the ITAR for what was meant by ''complete breech mechanism'' and therefore the commenter recommended defining the term under the EAR.

BIS response: BIS accepts the change to include a definition of ''complete breech mechanisms.'' This final rule will add a definition for ''complete breech mechanisms'' to part 772 and will add double quotation marks around the term where it is used in ECCNs 0A501 and 0A502.

Comment 26: One commenter took issue with the use of the term ''assault weapons'' or ''close assault weapons.'' This commenter asserted that the terms should be defined, or not used. This commenter requested the term ''semi-automatic'' rifles, pistols, or other firearm be used instead.

BIS response: BIS agrees and has removed the term ''assault weapons'' in this final rule and instead uses the term ''semi-automatic,'' which better aligns with the terms used in the control parameters.

Comment 27: One commenter recommended BIS define ''firearm'' in harmonization with the USML.

BIS response: BIS does not agree the term ''firearm'' needs to be defined in the EAR. The term ''firearms'' is used in this final rule with additional technical parameters or ECCN identifiers, *e.g.,* 0A501.a, that will enable identification of these firearms. BIS does not believe the use of the term ''firearms'' will create confusion with the USML or the USMIL.

Comment 28: One commenter noted an inconsistency in the way calibers are described in the control lists under the Commerce May 24 rule. In USML Categories I and II, firearms and guns are described as ''caliber .50 inclusive (12.7 mm)'' and ''greater than .50 caliber (12.7 mm),'' respectively. In new ECCN 0A501, firearms are described in ''items'' paragraph .a and .b as ''of caliber less than or equal to .50 inches (12.7 mm)'' and ''with a caliber greater than .50 inches (12.7 mm) but less than or equal to .72 inches (18.0 mm),'' respectively. This commenter asserted that the caliber terms not being aligned between the control lists could cause confusion and misinterpretation of the controls between the USML and CCL, particularly in regard to the ammunition controls which follow the respective firearm controls.

BIS response: BIS notes that the intent of this final rule is to transfer those items previously controlled under Categories I–III that no longer warrant ITAR control, to the respective ECCNs as created under this rule to the CCL by using long-accepted industry standards of ''caliber'' as the defining delineation between ammunition types. BIS made changes in this final rule to use the appropriate text in this final rule to be consistent with the text used in the USML, so that .50 caliber ammunition and .50 caliber firearms will transition into their proper 0x5zz ECCNs. For example ECCN 0A501, includes all non-automatic and semi-automatic ''.50 caliber (12.7mm) and less'' firearms under ''items'' paragraph .a.

Comment 29: One commenter was concerned that with the proposed description of caliber in inches in ECCN 0A501, ammunition for .50 caliber Browning Machine Guns (''50 BMG'') would be controlled under both 0A505 and USML Category III creating overlapping controls.

BIS response: BIS clarifies in this final rule that ECCN 0A501 includes all non-automatic and semi-automatic ''equal to .50 caliber (12.7mm) and less'' firearms under ''items'' paragraph .a. Therefore, this final rule also would not control the 50 BMG under ECCN 0A501.a. However, the corresponding ammunition which is used in a number of non-automatic and semi-automatic firearms will be controlled under 0A505.a, when not linked or belted.

Comment 30: Some commenters requested BIS revise Note 3 to 0A501 so that the definition of antique firearms is aligned with the Wassenaar Arrangement controls or alternatively that the date threshold in the definition of antique firearm in Note 3 be changed from 1890 to 1898 to align with the ITAR's exemption.

BIS response: BIS does not agree. Because this rule focuses on the export of firearms, it uses the year 1890 so that the United States remains consistent with its international export control commitments under the Wassenaar Arrangement, which uses 1890 as the cutoff year to identify many firearms and armaments that are not on the control list.

Comment 31: One commenter requested that BIS clarify where combination firearms would be controlled, noting that neither ECCN 0A501 (firearms) nor ECCN 0A502 (shotguns) refer to firearms that are a combination of shotgun and rifle, *i.e.,* that have two barrels.

BIS response: BIS agrees, and in this final rule adds a note to clarify that combination firearms are controlled

under ECCN 0A501.a. This final rule also adds a note under ECCN 0A502 to specify that all shotguns and ''shot-pistols'' are controlled identically.

Comment 32: One commenter sought clarification on the classification of detachable magazines for ECCN 0A501 firearms with a capacity of less than or equal to 16 rounds. The commenter asserted that ECCN 0A501.d explicitly lists magazines with a capacity of greater than 16 rounds, but it was not clear whether magazines with a lesser capacity are designated as EAR99 or controlled under 0A501.x.

BIS response: BIS agrees, and this final rule adds a new note to paragraph .d to clarify that magazines with a capacity of 16 rounds or less are classified under ECCN 0A501.x.

Comment 33: One commenter asserted that as currently proposed, paragraph .x would apply to parts and components specially designed for a commodity classified anywhere on the USML. This commenter recommended revising as follows: ''Parts'' and ''components'' that are ''specially designed'' for a commodity classified under paragraphs .a through .c of this entry or USML Category I and not elsewhere specified on the USML or CCL.

BIS response: BIS does not agree that a change is needed. Because some of the parts and components controlled under ECCN 0A501.x may be for firearms incorporated into a fully automatic firearm that is incorporated into a military vehicle (a USML Category VII commodity), the broader reference to the USML is more appropriate. The USML Order of Review and CCL Order of Review will ensure that only those parts and components intended to be classified under ECCN 0A501.x will be classified under this ''items'' paragraph.

Comment 34: One commenter requested revising paragraph 0A501.y by replacing the period at the end of the paragraph with the phrase ''including'' or ''as follows:'' In order to clarify whether .y is limited to the enumerated .y paragraphs, or itself is a control paragraph in which items can be controlled.

BIS response: BIS clarifies that the .y listings are exhaustive, and to be classified in a .y paragraph, the item needs to meet the identified description and the definition of ''specially designed.''

Comment 35: One commenter requested clarification of whether the .y paragraph itself serves as a catch-all for ''parts,'' ''components,'' ''accessories,'' and ''attachments.'' For example, a set of fiber-optic sights for a pistol are not ''iron sights'' as listed in .y.3, but may be a ''specially designed'' ''attachment.''

BIS response: BIS agrees that the introductory text of ECCN 0A501.y needs to be revised to clarify that the ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor for the .y items are also controlled in the .y paragraphs. This final rule makes this change. BIS had previously made this same correction to the other .y paragraphs on the CCL to ensure, for example, that ''specially designed'' parts used in ''specially designed'' galleys classified under ECCN 9A610.y for military aircraft, would not be controlled in 9A610.x.

Comment 36: One commenter asserted that ECCN 0A501.y contains three types of commodities that have been officially determined to be EAR99 for many years: (i) .y.2—scope mounts and accessory rails; (ii) .y.3—iron sights; and (iii) .y.4—sling swivels. This commenter requested that the parts in .y paragraphs .y.2, .y.3, and .y.4 be removed from ECCN 0A501 and a note be added to confirm that they remain EAR99 items.

BIS response: BIS does not accept this change because it only works if the past CJs covered those items and all variants. Paragraph (b)(1) of ''specially designed'' and General Order No. 5 would not be applicable to those items not included within the scope of a CJ—meaning an item may get pulled up into .x. Therefore, to address this issue definitively this final rule keeps these items as .y items.

License Exception LVS

Comment 37: BIS received a number of comments on License Exception LVS eligibility. Some commenters supported its availability, though one commenter suggested that wholesale value rather than actual value should be used while another commenter requested higher value shipments should be authorized to Canada. One commenter recommended pegging the LVS dollar value to inflation to allow for incremental increases to match price increases over time. One commenter requested that Canada should have all of its LVS eligibility specified in its own LVS paragraph in the ECCN, distinguishing Canada's eligibility from other Country Group B countries. Some commenters raised concerns related to License Exception LVS availability, asserting that it would not curb risky exports of pistol grips and magazine clips valued at $500, that it is possible for companies or individuals to export many low-value items in one shipment without a U.S. license, and that it could fuel gun violence in Mexico and Central America. One commenter requested reducing the LVS eligibility under ECCN 0A501 from $500 to $100, and reducing further the commodities that would be eligible.

BIS response: BIS agrees that License Exception LVS will be particularly useful for the firearms industry for low value shipments and believes that the license exception is properly scoped in the dollar value used and the scope of availability for the reasons outlined in the Commerce May 24 rule. BIS emphasizes as specified in the name of the license exception itself, this license exception is limited to low value shipments. This includes the total quantity for consolidated shipments, even if a shipper was consolidating several shipments. BIS also notes that an exporter is limited to twelve orders per year to the same consignee. The terms of License Exception LVS also strictly prohibit the splitting of orders to try to evade the applicable LVS dollar value. In addition, if there are questions whether an exporter has stayed within the required scope of LVS, EE can require exporters to hand over all the required recordkeeping documents related to a transaction under License Exception LVS to identify whether there has been a violation of the EAR. LVS is not currently linked to inflation, but the public may at any time make recommendations for changes to the regulations, including suggestions for revising the LVS dollar values in an ECCN.

BIS notes that only countries identified in Country Group B are eligible to receive commodities under License Exception LVS. These are countries that the U.S. Government does not have export control concerns with for purposes of the commodities that are eligible to be authorized under License Exception LVS. More sensitive commodities, such as firearms and some key components, are excluded from License Exception LVS. As noted in the Commerce May 24 rule, the ITAR has a similar type of exemption. Relatedly, BIS does not believe Canada-specific provisions are necessary in the License Exception LVS paragraph of ECCN 0A501 to specify all LVS eligibility for Canada in one stand-alone paragraph. First, it would deviate from how LVS is described in other ECCNs. Second, there is the potential that an exporter may get confused and believe LVS is available for other Country Group B countries because the same commodities were identified in more than one LVS paragraph.

Finally, it is important to note that the importing country will also have its own requirements for imports and

domestic sale and use, including for commodities such as pistol grips. While someone like a jeweler or other craftsman in the U.S. (*e.g.,* a hobbyist who enjoys engraving pistol grips with western cowboy motifs) could use License Exception LVS, it would not be available for larger transactions, such as someone wanting to export to a retail store in a foreign country.

New ECCN 0A502: Shotguns and Certain Related Commodities

Comment 38: One commenter requested revising the heading of ECCN 0A502 to specify the parts and components enumerated in the heading are shotgun parts and components.

BIS response: BIS agrees, and this final rule revises the heading to specify that parts and components enumerated in the heading of ECCN 0A502 are shotgun ''parts'' and ''components.'' BIS also makes one other change to address the issue of clarity raised by this commenter. This final rule adds a note to ECCN 0A501 to specify that ''shot-pistols'' will be controlled as shotguns.

Comment 39: One commenter requested that rather than having the items controlled contained in the ECCN heading, BIS should enumerate the shotguns in separate ''items'' paragraphs that track with the different reasons for control for the different size shotguns in the ''items'' paragraph to ease the compliance burden for exporting these shotguns.

BIS response: BIS does not agree. The license requirement section in this final rule is already consistent with the current control text, applying CC Column 2 and CC Column 3 as appropriate depending on the destination. BIS already uses this structure for long barreled shotguns, which this final rule moves to ECCN 0A502.

Comment 40: One commenter requested that the final rule define antique shotguns in ECCN 0A502 to capture those guns made ''in or before 1898,'' consistent with the definition of antique rifles and handguns in the Gun Control Act of 1968.

BIS response: BIS agrees, and this final rule adds a new Note 1 to 0A502 specifying that shotguns made in or before 1898 are considered antique shotguns and designated as EAR99.

Comment 41: One commenter requested BIS clarify the control status of accessories of optics, *e.g.,* sunshades or other anti-glare devices.

BIS response: BIS clarifies that sunshades or other anti-glare devices if not enumerated or otherwise described in ECCN 0A502 or any other ECCN are designated as EAR99.

Comment 42: One commenter requested that the description in the ''Related Controls'' paragraph of ECCN 0A502 be made consistent with how such shotguns are referred to in the revised USML Category I.

BIS response: BIS agrees, and this final rule removes the phrase ''combat shotguns'' wherever it appears in ECCN 0A502, including in the ''Related Controls'' paragraph. BIS in this final rule also removes references to ''combat shotguns'' in ECCN 0A505.

Comment 43: One commenter requested in order to have consistent controls and exceptions for similar commodities, that BIS allow the use of License Exception LVS for ECCN 0A502 parts and components to the same extent proposed for 0A501, *e.g.,* for shotgun trigger mechanisms, magazines, and magazine extensions.

BIS response: BIS agrees, and in this final rule revises the LVS paragraph in the License Exceptions section of ECCN 0A502 to add LVS eligibility of $500 for the same types of parts and components for ECCN 0A502 shotguns that are available for LVS under 0A501. Complete shotguns will continue to be excluded.

Comment 44: One commenter asserted that to facilitate the use of License Exception LVS, the ECCN 0A502 heading should be changed to ''Shotguns and related commodities (See List of Items controlled) . . .'' and then under the ''List of Items Controlled'' parts and components should be enumerated to include ''complete trigger mechanisms,'' ''magazines,'' and ''magazine extension tubes.''

BIS response: BIS does not agree. BIS in this final rule continues to enumerate ''parts'' and ''components'' in the heading, but in the interest of clarity it also includes the specific eligible commodities in the LVS paragraph.

New ECCN 0A504: Optical Sighting Devices and Certain Related Commodities

Comment 45: One commenter asserted that the proposed Note 1 to 0A504.f states that ''0A504.f does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights.'' This commenter asserted there are a variety of boresighting devices that are placed over the muzzle of the barrel instead of inside the bore or chamber and perform the same function as those described in the note. For these reasons, the commenter requested that this Note be revised to read as follows: ''0A504.f does not control laser boresighting devices that provide a reference for aligning the firearms sights. This includes any laser boresighting device, regardless of how it attaches to the firearm (*e.g.,* boresights that fit over the muzzle of the barrel), which performs the same function.''

BIS response: BIS does not agree. Revising Note 1 to 0A504.f would make it difficult to distinguish between what the commenter is proposing and a laser pointer. The note included in this final rule makes it clear that those commodities that are placed inside a bore or chamber would preclude its subsequent use as or with a firearm.

Comment 46: One commenter requested License Exception LVS should be made available for ECCN 0A504.g commodities that are similarly insignificant as those commodities eligible in ECCN 0A501.

BIS response: BIS agrees, and this final rule includes License Exception LVS eligibility for ''parts'' and ''components'' classified under ECCN 0A504.g.

New ECCN 0A505: Ammunition and Certain Related Commodities

Comment 47: One commenter recommended revising ECCN 0A505.a to include ammunition for firearms controlled in USML Category I that may not otherwise be captured by adding the phrase ''or USML Category I'' to clarify that ammunition for these type of firearms is also controlled under ECCN 0A505.a.

BIS response: BIS agrees, and this final rule incorporates the suggested text to clarify that ammunition for firearms in both ECCN 0A501 and USML Category I will be controlled under 0A505.a, provided it is not enumerated elsewhere in 0A505 or in USML Category III.

Comment 48: One commenter requested BIS revise ECCN 0A505 to include a note similar to the Note to 0A018.b to specify that dummy ammunition is designated EAR99.

BIS response: BIS agrees, and this final rule adds a Note 4 to 0A505 to specify that all dummy and blank (unless linked or belted) ammunition, not incorporating a lethal or non-lethal projectile(s) is designated EAR99.

Comment 49: One commenter asserted that there are several magazine manufacturers in the U.S. producing magazines of greater than 50 rounds that would benefit from also having their magazine moved to the CCL. This commenter asserted that limiting this magazine capacity to 50 rounds or less does not protect any special U.S. or allied military advantage, but magazines

of greater than 50 rounds are commonly found and manufactured worldwide.

BIS response: BIS does not agree. Magazines with a capacity of 50 rounds or less are appropriate on the CCL, and magazines greater than 50 rounds warrant ITAR control.

Comment 50: One trade association commenter noted that proposed ECCN 0A505 included an allowance for License Exception LVS of $100 for 0A505.x ''parts'' and ''components,'' but that firearm parts and components under 0A501 have an LVS allowance of $500. This commenter asserted that its members feel this is an inconsistency in the treatment of related commodities. The commenter asserted that in recent years, costs related to ammunition components have been increasing, with the largest increases affecting larger caliber cartridges. This commenter asserted that the ''$100 limit on LVS will be quickly met with small amounts of components, making this exception not as useful as intended.'' Another commenter asserted that the ITAR allows for $500 per shipment, so $100 net under EAR would be more restrictive than ITAR exemption.

BIS response: While the ITAR does not have an exemption for exports of ammunition parts and components, BIS agrees, and this final rule raises the LVS dollar value from $100 to $500 for ECCN 0A505.

New ECCN 0A602: Guns and Armament

Comment 51: One commenter suggested revising ECCN 0A606 to clearly identify engines for self-propelled guns and howitzers as controlled therein rather than in 0A602.

BIS response: BIS notes that the USML Order of Review and CCL Order of Review would likely already address this. However, this final rule adds a Related Controls paragraph (3) and a new note to ECCN 0A602.x to clarify the appropriate classification, but it does not add such a note to ECCN 0A606.

New ECCN 0B501: Test, Inspection and Production Equipment for Firearms

Comment 52: One commenter requested guidance on what is the definition of production equipment under ECCN 0B501.e. This commenter asserted that it has ''many hobbyist customers who would not qualify as a gunsmith let alone as a manufacturer and tools and equipment designed for hobbyists are quite different than manufacturing equipment . . . yet we have a concern these tools will be included in 0B501.e because even the hobbyist is 'producing' a firearms part.''

BIS response: The term ''production'' is a defined term in part 772. ''Production'' means all production stages, such as: Product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. Part 772 also includes a definition of ''production equipment'' that includes tooling, templates, jigs, mandrels, moulds, dies, fixtures, alignment mechanisms, test equipment, other machinery and components therefor, limited to those specially designed or modified for ''development'' or for one or more phases of ''production.'' The definition of ''production equipment'' in part 772 applies only in the Missile Technology Control Regime context, but for purposes of this comment, the definition of ''production'' and the definition of ''production equipment'' provides the needed guidance. BIS also emphasizes that the person using the production equipment does not change the classification of the production equipment. Importantly, domestic use—that is use of production equipment in the United States—does not implicate export controls.

Comment 53: One commenter requested BIS ensure there were no gaps for the production equipment controls on the CCL for USML Category I items as well as Category III items.

BIS response: BIS agrees. To ensure there are no gaps in production equipment for USML Category I, this final rule expands ECCN 0B501.e to include all production equipment ''specially designed'' for USML Category I items. It also expands ECCN 0B505.a to include all production equipment ''specially designed'' for USML Category III items.

New ECCN 0B602: Test, Inspection and Production Equipment for Certain Guns and Armament

Comment 54: One commenter requested adding examples of specific tooling that would be controlled under ECCN 0B602, such as a note including ECCN 0B602 boresights and units made specifically for testing purposes.

BIS response: BIS does not agree to this addition. As described above, part 772 defines ''production'' and ''production equipment,'' so these existing definitions already address this comment.

New ECCN 0E501: Technology for Firearms and Certain Related Items

Comment 55: One commenter requested BIS clarify how ''technology'' is defined for 0E501 and whether shooting chronographs or empty brass cartridge annealing machines are included in the definition of ''technology.''

BIS response: BIS clarifies that the definition of ''technology'' in part 772 applies to ECCN 0E501 and any other Product Group E ECCNs on the CCL, including the other Product Group E ECCNs this final rule adds, *e.g.,* 0E505. In addition, BIS clarifies that shooting chronographs or empty brass cartridge annealing machines are end items and generally designated EAR99. Therefore, the examples given fall outside the Commerce definition of ''technology.''

Comment 56: BIS received a number of comments on the concept of ''defense services,'' including concerns about the lack of defense services controls under the EAR, the potential loss of U.S. Government oversight on many types of defense services, and concerns about firearms training being provided to foreign security forces without U.S. Government approval. There were also concerns raised about the ability of U.S. companies to provide a wide range of assistance and training to foreign persons without sufficient U.S. oversight and a suggestion that the definition of ''technology'' be expanded to capture these defense-service type activities, such as private security contractor training of foreign police with firearms. One commenter asserted that ''the proposed rule could also create an unfortunate scenario where U.S. private security contractors are able to provide services to foreign security units or militias that are otherwise prohibited from receiving training through U.S. foreign security aid.''

BIS response: BIS clarifies that defense services is specific to the ITAR, but the EAR maintains controls related to exports, reexports, and in-country transfers of commodities, software, and technology in a number of ways. For example, a U.S. person is prohibited from engaging in exports, reexports, or in-country transfers related to certain end uses (as specified in § 744.6) or a ''knowing'' violation (as specified in §§ 764.2(e) and 736.2(b)(10)). In addition, as part of providing a service, a person must determine whether there will be an export, reexport, or in-country transfer of any commodities, software, or technology requiring an EAR authorization. Accordingly, although the EAR generally does not control services directly, the EAR is still highly effective at protecting U.S. export control interests implicated by the supply of services in connection with exports, reexports, or in-country transfers. The effectiveness comes by controlling the technology—*e.g.,* ''technology'' for how to produce a firearm. The release of technology is the key nexus where providing a service crosses over into a transaction that is

subject to the EAR and that merits control. In most cases, the analysis will focus on whether any technology that is subject to the EAR will be released as part of providing the service. The release of technology moved from USML Categories I–III will require a U.S. Government authorization, except for 0E602 technology being exported to Canada which may be exported No Licensed Required (''NLR'').

For example, providing design and development assistance, testing, and production assistance on firearms and ammunition to foreign persons would be a release of ''technology'' subject to the EAR and require an EAR authorization, unless the information being released fully met the criteria in part 734 for exclusion from the EAR. The EAR requirements would apply if the technology was being exported. The EAR requirements would also apply if the technology was being released in the United States to a foreign national as a deemed export, including technology released through training.

BIS cautions against assuming that no U.S. Government authorization is required to provide training to foreign security forces. Providing military training of foreign units and forces would still be a defense service regulated by the ITAR. Questions on whether a specific service may be a defense service should be directed to the Department of State. For purposes of the EAR, as described above, the question centers on whether any items that are subject to the EAR are provided as part of that service, and if such items are related to firearms, then U.S. Government authorization will be required.

BIS notes that if an item, such as the firearms moved to the CCL in this final rule, is being exported under the Foreign Military Sales (FMS) program, those items are not ''subject to the EAR''—meaning the EAR would not apply and for purposes of the AECA those items being exported under an FMS letter of offer and acceptance are defense articles subject to State Department controls under 22 U.S.C. 2794(3) for the specific transaction. BIS also notes that for non-FMS U.S. foreign security aid, the granting U.S. organization can include provisos as needed as part of the aid agreement that imposes any necessary restrictions the aid granting U.S. agency believes is warranted. In addition, BIS through the licensing process can impose conditions as warranted on licenses to ensure consistency with other requirements as needed. As noted above, the Department of State is a licensing review agency for Commerce licenses and can advise on Commerce export licenses as warranted if additional conditions may be needed in furtherance of a direct commercial sale as part of U.S. foreign security aid.

Comment 57: One commenter asserted that because of the narrowness of the definition of ''required,'' it ''means companies may be able to provide a wide range of training activities, design and development assistance, testing, and production assistance on firearms and ammunition to foreign persons without sufficient scrutiny and oversight.''

BIS response: BIS does not agree. The term ''required'' is an EAR defined term and is a well understood concept used on the control lists of the multilateral export control regimes. The EAR has effectively controlled ''technology'' for various other sensitive and sometimes lethal items using the existing definition and concept of ''required.''

Comment 58: One commenter asserted that ''in 2016, U.S. registration for firearms manufacturing activities was deemed so important that DDTC issued specific guidance providing that a broad range of activities (*e.g.,* use of any special tooling or equipment upgrading in order to improve the capability of assembled or repaired firearms, and rechambering firearms through machining, cutting, or drilling) constitute ''manufacturing'' and required registration.'' This commenter asserted it was concerned because this 2016 guidance will not apply to Category I–III items moving to the CCL.

BIS response: BIS clarifies that individuals have been able to lawfully make their own firearms in the United States, but not for reselling. ATF licenses domestic manufacturers. The types of gunsmithing services described by this commenter are not considered ''production'' under the EAR.

Revision to ECCN 0A018

Comment 59: Some commenters requested removing ECCN 0A018 and transferring those commodities to 0A505, so all commercial firearms, ammunition, and related items could be in one of the series of new 0x5zz ECCNs and not be left behind in legacy xY018 entries. The commenter suggested that once the items in the proposed ECCN 0A018.b are moved to 0A505, and controlled in the same manner, then 0A018 could be removed. Another commenter requested the commodities classified in ECCN 0A018.b for ''specially designed'' components should be controlled under 0A505.x. The commenter also requested that the decontrol note in ECCNs 0A018.b be transferred to 0A505 so that the current EAR99 status of such items is maintained.

BIS response: BIS agrees with these requested changes. This final rule removes the items controlled under ECCN 0A018 and adds these commodities to 0A505 but retains the heading of ECCN 0A018 and adds a cross reference to ECCN 0A505. This final rule removes the commodities controlled under ECCN 0A018, because this final rule controls these commodities under 0A505.d or .x. As conforming changes, this final rule removes ECCN 0E018, because 0E505 is broad enough to control this technology and revises the heading of ECCN 0A988 to remove an outdated reference to ECCN 0A018.d.1. ECCN 0A018.d paragraph is reserved in 0A018, so this reference in 0A988 should have been updated in an earlier rule.

BIS clarifies that the control parameters of ECCN 0A505.x in this final rule are broad enough to control commodities classified in ECCN 0A018.b for ''specially designed'' components controlled under 0A505.x. without further revisions. This final rule adds a Note 4 to ECCN 0A505 to address the commenters' request related to the decontrol note in 0A018.

Conforming Change to General Order No. 5

Comment 60: One commenter requested that licenses already granted under the ITAR should be grandfathered for all outstanding transactions.

BIS response: BIS clarifies here that this was already addressed with the revisions proposed in the Commerce May 24 rule for General Order No. 5, which adds 0x5zz ECCNs to General Order No. 5 and will be adopted in this final rule. The current General Order No. 5 includes grandfathering provisions and allows for applying for Commerce licenses once a final rule is published, but not yet effective.

Revisions to Regional Stability Licensing Policy for Firearms and Ammunition

Comment 61: Several commenters raised concerns that laws against the provision of arms where certain human rights abuses are of concern may not apply to the 0x5zz ECCNs and that the role of the Bureau of Democracy, Human Rights, and Labor (DRL) at the Department of State would be diminished. One commenter asserted that the Department of State would no longer have a statutory basis for vetoing a proposed sale on human rights grounds for firearms, guns, ammunition, and related parts that move to the CCL.

BIS response: As described above, BIS disagrees with the assertion that there

will be less focus on protecting human rights under the EAR. This final rule will control these items for Regional Stability and the license review policy specifies that human rights concerns are considered as part of the license review process. As referenced above, the Department of State is a license review agency for Commerce licenses, and the existing E.O. 12981 and EAR provide that other license review agencies have 30 days for review of Commerce license applications. E.O. 12981 does not specify what parts of those other agencies must review a Commerce license application, but the Department of State has discretion to ensure that DRL receives and reviews Commerce licenses.

This final rule includes a license review policy for regional stability to indicate license applications will also take into consideration human rights concerns, which can be a basis for denial. BIS also notes that there is a presumption of denial policy for license applications involving narcotics traffickers, criminal organizations, and terrorists because of their frequent involvement in human rights abuses, as well as other regional stability concerns.

Crime Control and Detection License Review Policy

The Commerce May 24 rule did not propose changes to the crime control and detection license review policy in part 742, but commenters made recommendations in this area that are described and responded to below.

Comment 62: One commenter recommended that ''in order to bring the proposed regulations into alignment with provisions of the Foreign Assistance Act [22 U.S.C. 2304(a)(2), which makes explicit reference to crime control equipment under the aegis of the (expired) Export Administration Act], ECCN 0A501.a should be controlled for crime control.''

One commenter requested that BIS provide the police profession a greater, better-defined role in the evaluation of firearm export license applications and possibly form a technical advisory committee (TAC). Another commenter requested that licensing officials should consider the effect of proposed exports on local communities, public safety, peace officer safety, crime control, and control of civil disturbances to assure that the rule of law is not impaired by firearm exports.

One commenter asserted that highly destructive weapons should not be exported to civilians. This commenter recommended ''a maximum limit on firepower exported to civilians. Firearms with a muzzle energy higher than 5,000 Joules should be barred from export to non-government end-users.''

BIS response: BIS notes that the NS 1 and FC 1 license requirement included in this final rule for ECCN 0A501.a, as well as ECCN 0A501.b, will ensure U.S. multilateral commitments are met. In addition, the RS 1 license requirement and license review policies is revised in this final rule to further address the types of human rights concerns, as well as imposing a presumption of denial license review policies for certain types of end users of concern, such as narcotics traffickers, will ensure U.S. export control interests are protected and that exports are not approved that would otherwise not be consistent with the Foreign Assistance Act. As was discussed above, the U.S. Government agency granting aid to a foreign country will also have the ability to impose certain provisos as part of that foreign assistance agreement, and all exports made under the FMS programs are authorized by the Department of State. As warranted, there is nothing that will preclude BIS from consulting with other agencies of the U.S. Government regarding a particular license application.

BIS agrees that getting regular input from the police profession and those with expertise from the private sector will be beneficial but notes that this can be accomplished through BIS's existing TACs rather than through the creation of a new TAC. BIS notes that agency rules are regularly reviewed by BIS's EE as well as other agencies with law enforcement components.

BIS does not agree that an outright prohibition is needed to protect U.S. national security and foreign policy interests under the EAR. Imposing such a worldwide prohibition would be more restrictive than how these firearms were regulated under the ITAR and would impose significant burdens on the U.S. firearms industry that may result in significant U.S. job losses in the firearms and related industries. BIS appreciates the time and thought that went into the detailed suggested change, but an outright prohibition was not contemplated in the Commerce May 24 rule, would arbitrarily single out one industry for more restrictive control and is not needed to protect U.S. export control interests, as those interests can be served through the regulatory regime set forth in the EAR.

License Exception TMP

Comment 63: One commenter requested increasing the number of items allowed for temporary export under § 740.9(a)(5) to 100 per shipment to more closely align with commercial expectations and practices. Another commenter asserted that larger film productions such as war movies, will oftentimes require well beyond 75 firearms.

BIS response: BIS does not agree with expanding § 740.9(a)(5) of TMP to allow for 100 firearms per shipment or to address a particular type of export. The exhibition and demonstration authorization under paragraph (a)(5) of License Exception TMP is intended to provide for a sufficient quantity of firearms, and if an exporter needs a larger quantity, *e.g.,* 100 or even 1,000 firearms for exhibition or demonstration, that the exporter may apply for a license to authorize the export. BIS maintains the status quo for how large temporary shipments of firearms are handled under the ITAR, which is through a licensing process that allows BIS to include any additional conditions to ensure the export will not be diverted.

Comment 64: BIS received comments requesting modifications to License Exception TMP, including to allow for the use of License Exception TMP (§ 740.9) under paragraph (a)(10) to transfer firearms to affiliates, such as a foreign parent or subsidiary; to allow TMP paragraph (b)(1) to be used to authorize temporary import and subsequent export of items moving in transit through the United States; and to allow for temporary importation for a period of one year. BIS also received a comment requesting extensions of temporary imports imported under paragraph (b)(5) to not be more restrictive than the ITAR.

BIS response: BIS does not accept these changes. Under this final rule, an exporter may apply for a license to authorize these same types of exports of firearms to affiliates. In addition, BIS notes that License Exception STA is available for parts and components, *e.g.,* those that this rule will control under ECCN 0A501.x, when the export, reexport, or transfer (in-country) is to a Country Group A:5 country, including affiliates. License Exception STA is more restrictive than paragraph (a)(10) of License Exception TMP, but because of the sensitivity of the items involved it is not appropriate to allow for the paragraph (a)(10) authorization to be available. As for firearms transshipped through the United States, § 740.9 (b)(3), (4), and (5) will be available to authorize the export and will be sufficient to address concerns about such authorizations.

BIS does not accept the suggested change to the time limitation in § 740.9(b)(5) to lengthen it from one year (as included in the Commerce May 24

rule) to four years because one year will be sufficient for these types of temporary end uses in the U.S. For the same reason, BIS also does not accept the suggestion to allow for extensions of temporary imports made under paragraph (b)(5) as suggested by one commenter.

Comment 65: One commenter noted that the proposed additions to § 740.9 included an instruction directing temporary importers and exporters to contact CBP at the port of temporary import or export, or at the CBP website, for the proper procedures to provide any data or documentation required by BIS. The commenter suggested that BIS and CBP coordinate to create standardized instructions for all ports that can be made available online, so that each shipment does not have to be specially coordinated.

BIS response: BIS agrees and will take steps, in coordination with CBP, to create standardized instructions for all ports that can be posted online prior to the effective date of this final rule.

Comment 66: One trade association commenter asserted that ''new paragraph (b)(5) in License Exception TMP and the related provisions in § 758.10 that detail the process for temporary import and subsequent export of these items is fair and reasonable.'' This commenter asserted ''it is common practice to cite the regulatory exception for the temporarily imported commodities at the time of import, then reference the import documents at time of return export of the goods'' and does not believe the process in the Commerce May 24 rule will cause any additional burden to exporters.

BIS response: BIS agrees and adopts these provisions in this final rule as proposed.

Comment 67: One commenter requests License Exception TMP be expanded beyond paragraphs (a)(5) and (6) to also allow for use in film production for subsequent permanent return to the United States. Alternatively, one commenter requests that BIS should consider a procedure or license, similar to a DSP–73, to allow for the temporary export and re-importation of firearms. Another commenter asserted that BIS should provide additional guidance on the return of temporary exports under the new paragraph (b)(5) under License Exception TMP.

BIS response: BIS confirms that License Exception TMP under paragraphs (a)(5) and (6) will not be available in that type of a fact pattern, but a Commerce license could be applied for to authorize these types of exports. As noted above, Commerce licenses are flexible enough to authorize temporary exports that are not otherwise eligible for License Exception TMP. The importation into the United States after temporary export will not require a separate EAR authorization. BIS agrees providing guidance for the import of items temporarily exported will be helpful and clarifies that the import of items temporarily exported does not require an EAR authorization for import.

License Exception GOV

Comment 68: One commenter asserted that the phrase ''or other sensitive end-users'' is unclear and recommended deleting the phrase or enumerating the specific types of ineligible entities.

BIS response: BIS includes a parenthetical phrase in the final rule under the new Note 2 to paragraph (b)(2) to include illustrative examples of other sensitive end-users. This final rule adds the parenthetical phrase ''(*e.g.,* contractors or other governmental parties performing functions on behalf of military, police, or intelligence entities)'' after the phrase ''or other sensitive end-users'' to provide greater clarity on the other end-users that are excluded.

License Exception BAG

Comment 69: Several commenters expressed opposition to the requirement for individuals to have to file in AES for personally owned firearms and ammunition exported under License Exception BAG, that was included in the Commerce May 24 rule. The commenters expressed concerns that requiring individuals to file in AES is problematic and unduly burdensome; that there is not a genuine need for this information and would violate the spirit of congressional prohibitions against Federal firearm registries; and that Department of State and CBP already tried requiring AES filing for individuals under the ITAR and it was not workable. Commenters identified a number of issues with the AES filing system for individuals, including the cost to create accounts, the compatibility of the hardware and software, concerns that IRS and Census requirements are in conflict, and the mismatch of required information for individuals with the fields that are currently in AES that are oriented to commercial exports.

For these reasons described above, several commenters requested use of CBP Form 4457 as the permanent solution. Some commenters asserted that CBP Form 4457 serves an important purpose for some foreign governments, but could be improved by harmonizing CBP procedures for Form 4457 between different CBP offices to ensure the forms are being issued consistently. Some commenters asserted that they would support a simplified system that would be based on U.S. passports, possibly linked to an electronic version of the CBP Form 4457.

BIS response: BIS was aware of these types of concerns, including the recent history of this issue under the ITAR. The Commerce May 24 rule stated that whether and how BIS includes this requirement in a final rule would be based on whether CBP is able to update its processes, and other agencies as needed, to allow for individuals to easily file EEI in AES by the time a final rule is published. The Commerce May 24 rule also noted that if CBP is not able to do so, then the final rule may direct exporters to continue to use CBP's existing process, which is the use of the CBP Form 4457, until a workable solution is developed or CBP suggests an alternative simplified solution for gathering such information for temporary exports of personally-owned firearms and ammunition.

At this time, BIS notes that CBP and the U.S. Census Bureau have not made changes to the AES system on the Automated Commercial Environment (ACE) that would address the concerns expressed. Therefore, taking that into account and the comments received on the Commerce May 24 rule, this final rule does not adopt the requirement for individuals exporting their personally owned firearms and ammunition under License Exception BAG to file in AES. Instead, this final rule incorporates the requirement for individuals to file the CBP Form 4457. BIS notes that if CBP and the U.S. Census Bureau later adopt changes that would address the underlying issues, or if CBP adopts changes to the process for submitting the CBP Form 4457, then BIS would make conforming changes to the EAR.

Comment 70: BIS also received comments expressing concern over the availability of License Exception BAG for firearms. One commenter requested that the provision authorizing license-free exports of semi-automatic rifles by citizens and legal permanent residents should be removed, because a sufficient justification was not provided in the Commerce May 24 rule. Another commenter asserted that if a firearm is stolen or lost that is exported under License Exception BAG, there will be little that can be done to recover the weapon. The commenter also asserted it will be easier for smugglers to take advantage of License Exception BAG to facilitate trafficking. One commenter

expressed concern that foreigners temporarily in U.S. will abuse License Exception BAG. One commenter asserted that the May 24 rule would not stop non-resident aliens leaving the United States via commercial airlines from taking firearms ''accessories,'' ''attachments,'' ''components,'' ''parts,'' and ammunition with them.

BIS response: BIS acknowledges these concerns but disagrees that additional changes to this final rule are warranted. The availability of License Exception BAG will be made to be consistent with 22 CFR 123.17(c), which authorizes U.S. persons to take up to three non-automatic firearms and up to 1,000 cartridges therefor abroad for personal use. As far as the potential for items to be lost or stolen, License Exception BAG requires the exporter to maintain control of their personal belongings and to return with those items unless destroyed overseas and the requirements are more straightforward than a commercial transaction in which there are multiple parties. BIS notes that related to loss or theft the concern applies equally if a firearm was exported under a Commerce license. Further, the U.S. Government maintains oversight through the requirement in this final rule for the CBP Form 4457 to be filed, along with the export requirements to present the firearm to CBP prior to export under License Exception BAG. In addition, this final rule requires the serial number, make, model, and caliber of the firearm to be included on the CBP Form 4457. When the U.S. citizen or permanent resident alien returns, the U.S. Government expects and requires that the same firearm to be returned as included on the CBP Form 4457. Failure to comply with these requirements could subject a U.S. citizen or permanent resident alien to administrative and/or criminal penalties depending on the specifics of the potential violation. BIS notes that License Exception BAG for non-resident aliens will be limited to allowing nonresident aliens leaving the United States to take firearms, and ammunition controlled by ECCN 0A501 or 0A505 that they lawfully brought into the United States, under the provisions of Department of Justice regulations at 27 CFR part 478. This is an important safeguard to ensure that the items being exported under License Exception BAG are limited to those that were lawfully brought into the U.S. The availability of License Exception BAG for these non-resident aliens will also be consistent with 22 CFR 123.17(d), which authorizes foreign persons leaving the United States to take firearms and ammunition controlled under Category I(a) of the USML (both non-automatic and semi-automatic) that they lawfully brought into the United States. The export of ''accessories,'' ''attachments,'' ''components,'' and ''parts'' is not eligible for License Exception BAG and would require a separate U.S. Government authorization.

Comment 71: One commenter noted that § 740.14(c)(1) ''Limits on eligibility'' currently states that the items must be ''owned by'' the individuals rather than ITAR § 123.17(c)(3)'s focus on the person's ''exclusive use'' and recommended conforming the EAR with the ITAR's scope.

BIS response: BIS does not agree. The requirements in § 740.14(c)(1) apply to all items that subject to the EAR that are eligible, so these requirements are intended to be broader than the exclusive use limitation in paragraph (e) (Special provisions for firearms and ammunition).

Reporting Requirements

Comment 72: BIS received a number of comments related to reporting requirements. One commenter asserted that it appears that requiring conventional arms reporting for firearms to be controlled under ECCN 0A501.a and .b would add welcomed specificity to reports required by the United Nations and the Wassenaar Arrangement while another commenter was concerned that firearms are being singled out for conventional arms reporting. One commenter asserted that exporters should not have to submit reports under the conventional arms reporting for the Wassenaar Arrangement and the United Nations because BIS already has ways to obtain this information from other U.S. Government sources.

BIS response: BIS agrees that the conventional arms reporting requirements will improve transparency and meet U.S. Government multilateral commitments to the Wassenaar Arrangement and the United Nations. BIS notes that other USML Categories that were revised that moved items to the CCL under ''600 series'' and 9x515 ECCNs were not identified under the Wassenaar Arrangement or United Nations List for requiring reporting for conventional arms. Some of the USML Category I items being moved to the CCL are identified under the Wassenaar Arrangement or United Nations List for requiring conventional arms reporting and thus were included to meet U.S. Government commitments.

To ease reporting requirements on exporters as suggested by one commenter and provide greater flexibility for industry, BIS clarifies that for the reporting required in this final rule can be accomplished in one of two ways. First, the exporter can follow the process outlined in part 743 by sending in reports to BIS with the required information. However, because of the EEI filing requirements in § 758.1(g)(4)(ii) for the firearms that require conventional arms reporting, all conventional arms reporting requirements for firearms should be able to be met by using the alternative submission method described below in the regulatory changes. Under the alternative method, the U.S. Government will rely on the EEI record in AES for firearms classified under 0A501.a and 0A501.b, by the exporter being required to always include as the first text in the Commodity Description field in AES the first six characters of the ECCN number, *i.e.,* ''0A501.a'' or ''0A501.b.''

Comment 73: One commenter raised questions whether the requirements of the Paperwork Reduction Act (PRA) were met for imposing a new requirement and whether this information would be needed by BIS.

BIS response: BIS had created this reporting requirement in the April 16, 2013, initial implementation rule, including providing estimates for the anticipated burden at that time in anticipation of the full completion of the USML to CCL review process and these end item firearms being moved to the CCL. BIS makes this clearer in this final rule, as well as describing the alternative method that will eliminate the need for any type of additional reporting and instead use the data that will be reported in the EEI filing in AES.

Comment 74: One commenter asserted that BIS reporting provides even less data than the Department of State 665 report and requested that BIS improve its reporting.

BIS response: In the past, BIS has provided similar data that is included in the Department of State 655 report in the BIS annual foreign policy report and in reports on the BIS website detailing exports by country and largest quantity of ECCNs being exported to the respective countries. Going forward under ECRA, BIS will be required to submit an annual report to Congress that will include the information specified in Section 1765 of ECRA, including implementation of end-use monitoring of military items on the EAR. BIS notes because this final rule will require EEI filing in AES for the firearms moved to the CCL and CBP Form 4457 for License Exception BAG, BIS will have data

available on exports of firearms moved from USML Category I to the CCL.

Serial Numbers, Make, Model, and Caliber in AES (§ 758.1(g)(4))

Comment 75: Several commenters asserted they were opposed to the expanded data elements (*i.e.,* serial numbers, make, model, and caliber) required as part of the EEI filing to AES for firearms that would be transferred from the USML to the CCL, suggesting that the expanded data elements would exacerbate the problems for private travelers forced to use the system and violate the spirit of congressional prohibitions against Federal firearm registries. BIS also received comments asserting that filing in AES poses an undue burden on exporters to file information that is otherwise available to U.S. Government, such as through the Gun Control Act and ATF regulations, and that it may violate the PRA because the burden is redundant. Another commenter asserted that because of AES character limitations it may be difficult or impossible to include the serial number, make, model, and caliber information. In addition, one commenter asserted that the manufacturer, model number, and caliber does not assist law enforcement verify the export because the Foreign Trade Regulations (FTR) and EAR already require that the item description entered in the EEI filing in AES conform to that shown on the license. One commenter asserted it generally supports strong oversight measures for arms transfers and from that perspective, it welcomes detailed digital record-keeping requirements. Another commenter recommended using the term ''model'' or ''model designation'' rather than ''model number,'' consistent with ATF regulations.

BIS response: BIS has included filing requirements only when necessary to ensure that export control concerns will be protected, including export enforcement and transparency concerns. As noted above, BIS in this final rule addresses the concerns about exports under License Exception BAG by not requiring an EEI filing in AES for such exports, though CBP Form 4457 will require information on the serial numbers, make, model, and caliber for the firearms being exported. This much more focused requirement will also be responsive to assertions that the information proposed to be collected was an undue paperwork burden on exporters.

While other Federal regulations may require similar information, BIS would not have the legal authority to subpoena or otherwise request the same information unless the records are required to be kept under the EAR. If different regulations require the same information, then there should be no additional burden on exporters or other relevant parties for maintaining this information to meet their various regulatory requirements. Typically, the EAR is flexible in how specific records are maintained since it regulates a variety of industries with different norms.

For items that are exported under a U.S. Government authorization for temporary export, it is still warranted to require that information to be filed as EEI in AES. This final rule adopts a revised requirement in § 758.1(g)(4) to limit it to temporary exports from the United States or when the license or other approval contains a condition requiring all or some of this information to be filed as EEI in AES. This final rule clarifies that a temporary export for purposes of § 758.1(g)(4) is any export whereby the EAR authorization requires subsequent return to the United States (*e.g.,* License Exception TMP or a license authorizing a temporary export). BIS notes that this revised approach scales back the reporting requirement significantly, focuses it on exports of the primary concern for ensuring the U.S. Government can confirm what was temporarily exported is what will be returned, and importantly still retains the ability of BIS to impose this condition when warranted on a case-by-case for any particular license where BIS and the other license review agencies believe requiring the filing of this information as EEI in AES is warranted. BIS is aware that the Department of State sometimes includes such a requirement as a proviso on some of its licenses or approvals for firearms, so the requirement that is included in this final rule that retains the ability of BIS to impose such a condition on Commerce licenses is consistent with licensing practices under the ITAR.

BIS has confirmed with CBP and the U.S. Census Bureau that AES on the ACE platform can accommodate EEI filers to submit the serial number, make, model, and caliber information. Under the current ITAR licensing practices, sometimes provisos are included on a State license or other approval that requires this information to be entered as EEI in AES, and BIS is not aware of the current system not permitting the proper filing of this information as EEI in AES.

BIS generally supports strong oversight. It also accepts the recommendation to adopt the term ''model'' instead of the proposed ''model number.''

Comment 76: Two commenters asserted that the only place where the reporting requirement of serial numbers, make, model, and caliber may be warranted was for License Exception TMP. One of these commenters noted that ''such a requirement of mandatory serial number reporting in AES might make sense only for temporary exports and imports under TMP in particular, to allow re-import procedures to be followed and verified.'' However, the requirements proposed in new §§ 758.10(b)(1)(ii) and 740.9(b)(5)(iv)(B) already cover this by requiring serial numbers as part of a complete list to be submitted to CBP at the time of import and/or export.

BIS response: BIS clarifies that the reference in License Exception TMP in new §§ 758.10(b)(1)(ii) and 740.9(b)(5)(iv)(B) are for information to be provided at the time of temporary import and export of firearms temporarily in the United States. The proposed requirements in § 758.10(b)(1)(ii) in the phrase ''or other appropriate import documentation (or electronic equivalents)'' and the reference to ''or electronic equivalents'' was referring to the possibility that such information could be provided to CBP in person or electronically by using the ACE portal at the time of temporary import and subsequent export, so BIS does not see an inconsistency with the proposed requirement and therefore will include the requirement in this final rule as originally proposed. BIS agrees with the commenter's assertion that for firearms temporarily exported under License Exception TMP under paragraph (a)(6), there is a possibility that in certain cases the returned firearm may not be the same. This final rule includes a Note 3 to paragraph (g)(4) in § 758.1 to provide guidance on that issue.

Entry Clearance Requirements for Temporary Imports

Comment 77: BIS received comments asserting that foreign visitors exporting personal firearms after temporary import should not have to file in AES for many of the same reasons why filing in AES for exports authorized under License Exception BAG is not appropriate. Another commenter asserted that such AES declaration requirement would discourage foreign participants from coming to the U.S. for hunting and competitive shooting.

BIS response: BIS does not agree with these assertions. As noted above, one of the permissible identifiers in filing in AES is a foreign passport, so the most substantive concern for individuals filing in AES does not apply for these

filings. In addition, those using License Exception TMP will generally be companies, so the concerns expressed about AES being more oriented to companies compared to individuals also does not apply. For these reasons, BIS in this final rule publishes the changes as proposed. In addition, as noted above, each country, including the United States, imposes requirements that it believes are warranted to regulate the importation and use of firearms in its country. U.S. hunters and competitive shooters that travel overseas and foreign hunters and competitive shooters who come to the United States understand that firearms are regulated.

Comment 78: One commenter asserted that the ATF Form 6NIA can confirm that the individual is returning with the same firearm that was brought to the U.S., so there is no need to require EEI filing in AES.

BIS response: BIS does not accept this change. To properly administer and enforce export controls, BIS must have access to basic information about an item and cannot solely rely on information collected by another agency, though this information, as appropriate, could supplement information collected by BIS.

Comment 79: One commenter asserted that the ITAR does not have the same type of EEI filing in AES requirement, so including this under the EAR would be more restrictive.

BIS response: BIS clarifies here that under the ITAR, the Department of State is licensing the temporary import and export, which required much of the same information requirements. The Commerce May 24 rule did not change the basic construct for how the EAR regulates imports, but BIS needed a means to track firearms temporarily entering the U.S. for subsequent export.

Comment 80: One commenter requested text be added to § 758.10(a)(2) to exempt from the entry clearance requirements temporary imports by nonresident aliens who temporarily import firearms under the provisions of 27 CFR 478.115(d).

BIS response: BIS clarifies here the purpose of § 758.10. Because a nonresident alien, *e.g.,* a foreign hunter, will need an approved Form 6NIA (ATF Form 5330.3D Application/Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens) from ATF prior to bringing the USMIL firearm or ammunition into the U.S., the ATF controls will account for the temporary import. Therefore, License Exception BAG does not need to be referenced in § 758.10. The subsequent export out of the U.S. will require an EAR authorization and would need to be done in accordance with License Exception BAG, or some other U.S. Government authorization if License Exception BAG was not available.

Comment 81: One commenter asserted that the new § 758.10 ''Entry clearance requirements for temporary imports'' appears to apply to all temporary imports at the time of temporary import. This commenter asserted that as the requirements of § 758.10 should not apply to nonresident aliens temporarily importing firearms under the separate provisions of the ATF, and recommended clarifying this in the final rule.

BIS response: BIS agrees. This final rule clarifies that the requirements of § 758.10 do not apply to temporary imports for nonimmigrant aliens under the provisions of the Gun Control Act of 1968 and administered in part with the ATF Form 6NIA.

Comment 82: One commenter was concerned that the new § 758.10 ''Entry clearance requirements for temporary imports'' does not address the potential use of License Exception RPL. Specifically, proposed § 758.10(b)(1)(i) requires a statement to CBP certifying ''. . . This shipment will be exported in accordance with and under the authority of License Exception TMP,'' which would be a false certification if RPL were being used.

BIS response: BIS agrees and accepts adding License Exception RPL as a valid purpose for a temporary import under § 758.10. For the same reason, this final rule adds BIS licenses as a valid purpose for a temporary import under § 758.10. In addition, this final rule clarifies that a temporary import for repair or servicing in the United States does not require an EAR authorization, but the subsequent export must be authorized either as eligible for License Exception RPL or authorized under a BIS license at the time of entry. For example, a BIS license would be required at the time of entry if the repair or servicing of a temporarily imported firearm would result in enhanced capability of the item because License Exception RPL is not available for such enhancements. Instead, under this final rule, the exporter could obtain a BIS license to authorize such an export that was brought into the United States as a temporary import. Section 758.10(a)(1) addresses these types of imports for repair and servicing. For additional information, please see section Entry clearance requirements for temporary imports (§ 758.10) below that details the requirements for use of these authorizations.

Relationship Between EAR and ATF Regulations

Comment 83: One commenter requested the ATF Ruling 2004–2 be amended to account for this USML to CCL transition, in order to not be more restrictive under the EAR compared to the ITAR. The commenter asserted that the ITAR draws a clear distinction between permanent and temporary import jurisdiction in 22 CFR 120.18, although certain items regulated under the Gun Control Act or National Firearms Act, if authorized for import under those laws, continue to require transactional import approval from ATF for temporary imports unless ATF Ruling 2004–2 (April 7, 2004) permits the DSP–61 or ITAR exemption to substitute for this approval.

BIS response: The changes included in the Commerce May 24 rule under §§ 740.9 and 758.10 were intended to address issues related to temporary importation under the EAR. As noted above, this final rule adds License Exception RPL and BIS licenses to § 758.10 to further address issues related to temporary imports under the EAR. Other agencies will review, and if necessary, address, any effects of these final rules.

Comment 84: One commenter recommended coordinating proposed changes with ATF so that the corresponding changes are made to the USMIL at the same time, which would prevent businesses from having to consult both the USML and USMIL when deciding whether a transaction involves brokering.

BIS response: The USML and the USMIL are separate lists of AECA defense articles with both shared as well as different AECA objectives, and as such warrant the retention as separate lists.

Comment 85: One commenter was concerned that removing license requirements for temporary imports of the items removed from the USML would create another channel for criminal elements to obtain weapons in the U.S.

BIS response: BIS disagrees. Temporary imports will be addressed by BIS, and the same type of U.S. Government authorization requirement will apply for exports of items temporarily imported as other exports under the EAR.

Comment 86: One commenter was concerned that the Commerce May 24 rule did not provide a mechanism, such as a DSP–73, for certain firearms to be temporarily exported and subsequently returned to the U.S., given the firearm importation prohibitions under 18

U.S.C. 922(l) and 925(d)(3). This commenter asserted that unlike many other items that have transitioned from the USML to the CCL, firearms are subject to unique restrictions on the permanent import side under the jurisdiction of the ATF. This commenter asserted that the Department of State's jurisdiction over temporary exports and temporary imports has played an important role by providing companies with a viable method of bringing their guns back into the U.S. without running afoul of ATF's strict importation prohibitions and similar treatment should be retained under the EAR.

BIS response: BIS clarifies that BIS will require a U.S. Government authorization for temporary exports. The EAR authorizations most likely to be used to authorize temporary exports include License Exceptions BAG and TMP, as well as Commerce licenses. Therefore, BIS does have similar authorization requirements and approval mechanisms as under the ITAR. BIS notes that the import back into the U.S. will not require an EAR authorization.

Comment 87: One commenter asserted that a DSP–73 license is vital because it covers both the U.S. export and U.S. import requirements and the commenter is concerned without adding a similar type of authorization under the EAR that certain temporary exports for use in filming will not be possible because the return of the exported firearms would be subject to ATF's permanent import process which restricts many types of firearms pursuant to Federal law, *e.g.,* short barreled shotguns. This commenter asserted that because most firearms temporarily exported for the movie industry are either military surplus, non-sporting, or National Firearms Act weapons, of which importation is prohibited under the ATF regulations, that this is an importation issue to be addressed to ensure these types of temporary exports can still proceed under the EAR and ATF construct, similar to the ITAR and ATF construct.

BIS response: A Commerce license to authorize a temporary export would authorize the temporary export and require the item's return. A separate EAR authorization is not required for the import back into the United States after the temporary export since this would be covered under the scope of the authorizing export license.

Comment 88: One commenter requested clarification for permanent import after temporary export for repair or servicing under License Exception TMP under paragraph (a)(6). This commenter asserted it agreed with the proposed changes but requested that the subject of temporary export of firearms, specifically vintage shotguns with barrel lengths over 18 to Canada, be clearly addressed.

BIS response: BIS notes that the long barrel shotguns this final rule will move from ECCN 0A984 to 0A502 may require a U.S. Government authorization depending on the specifics of the export, in particular the destination for the export. Regardless of the EAR authorization used to authorize the export, a separate EAR authorization will not be required for the subsequent import into the United States.

Comment 89: One commenter asserted that ATF 27 CFR 478.92 includes a requirement to mark firearms being imported with the importer's name and address. This commenter was concerned that this destroys the originality and affects the value of the firearm that was temporarily exported. This commenter asserts because these long barreled shotguns fall under the EAR, the ATF will not clarify the requirement on shotguns and it creates confusion. This commenter requests the final rule to clarify this issue regarding markings for shotguns being moved from ECCN 0A984 to ECCN 0A502, as well as for the other firearms being moved from the USML to the CCL.

BIS response: BIS clarifies here that the EAR does not require any types of physical markings to be made on a firearm or any other commodity being temporarily exported for repair or servicing for return to the United States. For a licensed transaction in an exceptional case, a condition could potentially be placed on a Commerce license that required the exporter to make some type of physical marking on the commodity, but this would be extremely rare under BIS licensing. If additional safeguards were needed, BIS licenses would typically require additional documentation to confirm delivery verification or to require the exporter to get other written affirmations from the other parties to the transaction.

EAR Recordkeeping Requirements

Comment 90: One commenter asserted that the GCA requires all Federal Firearm Licensees to maintain firearm records for 20 years after the date of disposition and that the proposed change requiring records under the EAR is redundant and may cause confusion because of the different record retention periods. This commenter asserted in complying with the EAR, companies may inadvertently violate the GCA.

BIS response: BIS does not agree. The EAR does not require records to be destroyed after five years, just that the records be kept for at least that long. Nothing in the EAR prohibits maintaining the records for longer periods.

Comment 91: One commenter asserted that the recordkeeping requirement for warranty certificates for people outside the U.S. would be more restrictive than the ITAR. The commenter asserted that BIS has not provided a coherent explanation for why the new recordkeeping burden makes sense, is related to exports, or would be of benefit to the enforcement of the export control laws.

BIS response: BIS does not agree with the requested change to remove the warranty certificate requirement as a recordkeeping requirement. As noted above by many commenters, BIS has an interest in ensuring the firearms and related items on the CCL are used by the intended end user for the intended end use, and BIS needs any information that may be relevant to the ultimate disposition of those firearms to safeguard U.S. national security. The recordkeeping requirements for the warranty certificates included in the Commerce May 24 rule and in this final rule will be an additional safeguard for EE to have further insights into where a firearm exported under a U.S. Government authorization may have ultimately ended up after export. A warranty certificate that is submitted by a person located outside the United States to a U.S. exporter is relevant to the U.S. Government for export control enforcement purposes. The ITAR and EAR control structures are not the same, so in certain cases a restriction may be more restrictive under the EAR compared to the ITAR and this is an example of where the EAR will be more restrictive, but it is still warranted in the context of the EAR.

Comment 92: One commenter asserted that warranties are issued by the manufacturer, not the exporter and that many manufacturers do not always issue specific ''warranty certificates'' to individuals. This commenter asserted that most manufacturers provide warranty statements in a broad boilerplate statement included in an instruction manual, or on their website. This commenter also asserted that there is thus no way to know when that information is accessed by a foreign person or sent to an address outside the U.S. One commenter asserted that a potential issue is with the recordkeeping requirement of warranty certificates is that an exporter may not have a manufacturer's (or any other)

warranty certificate as part of the transaction. This commenter requested some clarification on the requirements.

BIS response: BIS clarifies here that the EAR recordkeeping requirements generally do not impose an affirmative duty to create a record. The recordkeeping requirements typically apply if in the normal course of your business activities related to an export, reexport, or transfer (in-country) a record is created or received that is within the scope of records that must be retained for purposes of the EAR recordkeeping requirements.

BIS confirms here that if the manufacturer is not the exporter, it is not required to keep the warranty certificate for purposes of part 762. Section 762.1(b) (Persons subject to the part) identifies the persons that are required to keep records for purposes of part 762 of the EAR.

Comment 93: One commenter asserted that there is the possibility that retaining such information that would be contained in a warranty certificate may violate the privacy laws of other countries, such as the General Data Protection Regulation (GDPR) (European Union (EU)).

BIS response: BIS is not in a position to opine on the applicability of the GDPR here but notes that parties transacting in items subject to the EAR are subject to U.S. laws and regulations, including recordkeeping requirements.

Alignment With the Wassenaar Arrangement Munitions List

Comment 94: One commenter asserted that the proposed changes do not appear to be in line with established WAML I–III, suggesting that the inclusion of semi-automatic weapons in WAML1 explicitly as munitions demonstrates an intentional differentiation between military and security items, on one hand, and dual-use items on the other.

BIS response: On the general question of whether the changes included in the Commerce May 24 rule align with the WAML, BIS notes that Wassenaar Arrangement member countries implement the WA control lists in accordance with their own national export controls. The items being moved from USML Category II are controlled under four new ''600 series'' ECCNs. The items moved from USML Categories I and III are not controlled in the ''600 series,'' but importantly are still subject to the same NS 1 license requirement that would apply if these WAML items were added to the ''600 series.'' In addition, although not derived from the Wassenaar Arrangement, the end item firearms are subject to a license requirement for the Firearms Convention (FC)—meaning that the end item firearms are subject to an even more restrictive license requirement under the EAR compared to the ''600 series,'' 9x515 items, and other items controlled for NS reasons on the CCL. In addition, the final rule also includes other provisions, such as requiring conventional arms reporting, that reflects U.S. Government commitments to the Wassenaar Arrangement and to the United Nations. Thus, the changes are consistent with the U.S. Government's commitments to the Wassenaar Arrangement.

Comment 95: One commenter asserted semi-automatic weapons used by peacekeepers, military, and police are intended to be controlled as munitions. The proposal to move semi-automatic firearms and large caliber rifles to ECCN 0A501 on the CCL does not appear to be in line with this designation.

BIS response: For the reasons noted above in the BIS response to Comment 1, BIS does not agree. BIS notes that the export of semi-automatic weapons used by peacekeepers, military, and police will still require U.S. Government authorization and in most cases will require an approved license under the EAR, except when destined to the U.S. Government or it is a semi-automatic weapon that was legally exported or reexported under U.S. export controls that is being returned after servicing or repair under License Exception RPL.

Comment 96: One commenter provided several comments related to the combined ITAR and EAR amendments to U.S. Government commitments to multilateral controls, that included 33 numbered topics listed in the order that topic appears in the WAML and then subdivided into three parts, with the following number of examples: 27 U.S. and multilateral texts are either identical or substantially equivalent; 74 US controls omit what WAML controls (or WAML omits U.S. decontrols); and 165 WAML omits what U.S. controls (or U.S. omits WAML decontrols).

BIS response: BIS notes that this one commenter submitted a large number of comments regarding the alignment with the WAML. For the comments where BIS does not believe any changes are needed to align with the WAML, BIS has not summarized each of those comments in this final rule because of the length of the comments, but does confirm that BIS did review each of the comments. For many of these comments, the items were already controlled prior to the effective date of this final rule or will be controlled for NS reasons on the CCL on the effective date of this final rule, and for certain comments the ITAR retains control of the items that the commenter thought would not be adequately controlled under the USML. For the alignment with the WAML comments where the commenter has raised an issue that BIS believes warranted a change to ensure the changes in the final rule align with the WAML, those suggested changes, *e.g.,* the revisions described above to ECCN 0A018 and 0A505, are described above in greater detail, along with the BIS responses.

Delayed Effective Date for a Final Rule

Comment 97: BIS received a number of recommendations on the appropriate length for the delayed effective date for the final rule, ranging from 90 to 180 days for delayed effective dates. The rationale for the shorter length was to allow small businesses to immediately benefit while those recommending longer or split effective dates suggested the time period would allow time for updates to IT systems, policies, and processes. Other commenters asserted that they supported a split implementation period (180 days for certain provisions, effective immediately or short as possible for other provisions).

BIS response: BIS has determined that a 45-day delayed effective date is appropriate. To address concerns that a longer delayed effective date and transition period may be warranted, BIS highlights here the importance of the various grandfathering provisions included in General Order No. 5 in Supplement No. 1 to part 736 of the EAR and in the previously published State transition guidance, that is supplemented with information on the DDTC website.

Comment 98: One commenter requested that BIS delay publishing a final rule until the Government Accounting Office (GAO) or the Library of Congress has publicly reported to the Congress their impact on numerous statutes referring to ''defense articles,'' because of the potential loss of so many U.S. arms export controls and likely negative impact on curbing irresponsible and illegal arms transfers.

BIS response: BIS welcomes the publication of the GAO report. However, the timing of the publication of a final rule and its effective date are not contingent on the publication of the GAO report.

Description of Regulatory Changes

This final rule creates 17 new ECCNs on the CCL to control items that are being removed from the USML as

described in a final rule issued concurrently by the Department of State. BIS did not receive any comments on the proposed addition of ECCNs 0A503, 0B602, 0D501, 0D505, 0D602, 0E502, 0E504, 0E505, and 0E602 in the Commerce May 24 rule, so this final rule adopts these ECCNs as proposed, except for one clarification made to ECCN 0B602.a.8 and minor clarifications to the Related Controls paragraphs to ECCNs 0D501, 0D505, 0D602, 0E502, and 0E505. In ECCN 0B602, this final rule replaces ''gun straightening presses'' with the more specific control parameter ''barrel straightening presses.'' This change is made to clarify that the straightening presses controlled under ECCN 0B602.a.8 are those for barrels. In the Related Controls paragraphs for ECCNs 0D501, 0D505, 0D602, and 0E505, this final rule removes the parenthetical phrase that references 22 CFR 121.1 and the related USML category because this information is duplicative of existing text in these Related Controls paragraphs. This final rule also revises the Related Controls paragraph in ECCN 0E502 by removing ''N/A'' and adding that ''[t]echnical data required for and directly related to articles enumerated in USML Category I are 'subject to the ITAR.' '' This clarification does not change the scope of ECCN 0E502 and simply alerts the public to review the ITAR for such technical data. BIS does not make any additional changes to proposed ECCN 0E501 and adopts it as proposed. See the Commerce May 24 rule for additional background on these provisions. BIS received comments on seven proposed ECCNs for which the agency is adopting additional changes: 0A501, 0A502, 0A504, 0A505, 0A602, 0B501, and 0B505. The summary below describes each of these ECCNs and the controls that apply to them.

New ECCN 0A501: Firearms and Related Commodities

This final rule adds new ECCN 0A501 and applies national security (NS Column 1), regional stability (RS Column 1), Firearms Convention (FC Column 1), United Nations (UN), and anti-terrorism (AT Column 1) reasons for control to the non-automatic and semi-automatic firearms, including rifles, carbines, revolvers or pistols listed in the ECCN entry in the regulatory text to this final rule, enumerated parts and components and to ''specially designed'' ''parts,'' ''components,'' ''accessories'' and ''attachments'' for those firearms and ''parts'' and ''components.''

This final rule adds ECCN 0A501.y and only imposes an anti-terrorism (AT Column 1) and United Nations (UN) reasons for control and covers such items as scope mounts or accessory rails, iron sights, sling swivels, butt plates, recoil pads, bayonets, and stocks or grips that do not contain any fire control ''parts'' or ''components.''

This final rule adds a technical note to ECCN 0A501 stating that ''parts'' and ''components'' include ''parts'' and ''components'' that are common to firearms described in ECCN 0A501 and to firearms ''subject to the ITAR.''

It also adds another note to ECCN 0A501 to state that certain firearms and similar items are EAR99. Those items are: Antique firearms (*i.e.,* those manufactured before 1890) and reproductions thereof, muzzle loading black powder firearms except those designs based on centerfire weapons of a post 1937 design, BB guns, pellet rifles, paint ball, and all other air rifles.

In addition, for purposes of new ECCN 0A501 and the rest of the new ECCNs described below, items previously determined to be ''subject to the EAR'' under a commodity jurisdiction determination issued by the U.S. Department of State that were designated as EAR99 will generally not be classified in any of the new ECCNs that are being created with this final rule. As a conforming change, this final rule revises paragraph (e)(3) of General Order No. 5 to add a reference to the ''0x5zz'' ECCNs this final rule adds to the CCL.

This final rule adopts the following additional changes to ECCN 0A501 to respond to the comments received on the Commerce May 24 rule:

This final rule revises Related Controls paragraph (1) to clarify that the magazines that are ''subject to the ITAR'' are those with a capacity ''greater than 50 rounds.'' The Commerce May 24 rule used terminology in the control parameter that created ambiguity because it was slightly different than as proposed in the State May 24 rule, so this final rule revises the EAR text based on the comments received to align with the terminology used on the ITAR.

This final rule revises ''items'' paragraph (a) to remove the phrase ''of caliber less than or equal to .50 inches (12.7 mm)'' and add in its place the phrase ''equal to .50 caliber (12.7 mm) or less.'' In making this change, BIS uses the same control text of ''.50 caliber (12.7 mm)'' as used in the Department of State companion rule.

This final rule adds a Note 1 to paragraph 0A501.a. This note clarifies that combination pistols are controlled under items paragraph .a. The note also defines the term 'combination pistol' for purposes of this ECCN. A combination pistol has at least one rifled barrel and at least one smoothbore barrel. Because of the hybrid nature of these firearms, commenters requested that this type of clarifying note be added.

This final rule adds a Note 2 to 0A501.d to address a question, raised by the commenters, whether magazines with a capacity of 16 rounds or less are controlled under 0A501.x or designated EAR99. The new note specifies that magazines with a capacity of 16 rounds or less are controlled under 0A501.x. BIS notes this was the intent of the Commerce May 24 rule, but because commenters were not sure, this rule specifies where these magazines are controlled.

This final rule revises ''items'' paragraph (e) to add the phrase ''or machined items'' to specify that ECCN 0A501.e includes those machined items even if they are not casted, forged, or stamped.

This final rule revises the introductory text of 0A501.y to add the phrase ''as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor'' to clarify, consistent with the other .y paragraphs on the CCL, that the ''specially designed'' ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for .y items will also be controlled under this .y paragraph and not controlled under 0A501.x.

This final rule adds a new paragraph y.7 to control firearms manufactured from 1890 to 1898 and reproductions thereof. This final rule makes this change to address commenters that asserted that the year 1890 should be changed to 1898 in Note 3 to 0A501 for defining antique firearms. BIS did not accept the change because the year 1890 is based on the Wassenaar Arrangement, but does address this concern by controlling these firearms under a new .y paragraph. As a conforming change, this final rule adds a new License Requirement Note to ECCN 0A501 to specify that a license is required for exports and reexports to China of 0A501.y.7 firearms.

This final rule adds a new Note 4 to 0A501, to clarify the classification of certain muzzle loading (black powder) firearms. This is a conforming change as part of the removal of the control text of ECCN 0A018 in this final rule.

New ECCN 0A502: Shotguns and Certain Related Commodities

This final rule adds new ECCN 0A502 to control both the shotguns being moved from the USML that are being added to the CCL (barrel length less than 18 inches) and the shotguns and the enumerated ''parts'' and

''components'' controlled in ECCN 0A984 (barrel length 18 inches or greater) prior to this final rule. This final rule controls shotguns with a barrel length less than 18 inches under NS Column 1, CC Column 1, FC, UN, and AT Column 1 plus regional stability (RS Column 1). Shotguns controlled in ECCN 0A984 that are transferred to ECCN 0A502 by this final rule will retain Firearms Convention (FC), crime control (CC Column 1, 2, or 3 depending on barrel length and end user), and United Nations (UN) reasons for control. Such shotguns will not be controlled for national security reasons because they are not on the WAML.

This final rule adopts the following additional changes to ECCN 0A502 to respond to the comments received on the Commerce May 24 rule:

This final rule revises the heading of ECCN 0A502 to add the phrase ''shotguns ''parts'' and ''components,'' consisting of'' to clarify that the parts and components controlled under 0A502 are for shotguns in response to one commenter's request.

This final rule revises the LVS paragraph in the License Exception section to add License Exception LVS eligibility of $500 for certain parts and components under ECCN 0A502. The Commerce May 24 rule proposed N/A for LVS for ECCN 0A502. This final rule makes this change to create equivalent treatment for License Exception LVS for purposes of ECCNs 0A501 and 0A502. Similar to LVS eligibility in ECCN 0A501, the LVS eligibility will include all Country Group B countries and an additional paragraph that identifies other parts and components that are eligible for LVS if the ultimate destination is Canada.

This final rule revises the Related Controls paragraph to remove the phrase ''combat shotguns and'' because it is not needed as a modifier of fully automatic shotguns and the phrase is not used on the USML. This final rule also simplifies the Related Controls paragraph to use a single sentence to identify shotguns that are fully automatic as ''subject to the ITAR.''

This final rule adds a Note 1 to 0A502 to clarify that shotguns made in or before 1898 are considered antique shotguns. This note clarifies that these antique shotguns are designated as EAR99.

Lastly, in ECCN 0A502, this final rule adds a Technical Note to specify the classification of shot pistols or shotguns that have had the shoulder stock removed and a pistol grip attached. The technical note specifies these are controlled by ECCN 0A502. The technical note also specifies that slug guns are controlled under ECCN 0A502.

New ECCN 0A504: Optical Sighting Devices and Certain Related Commodities

This final rule adds new ECCN 0A504 to replace ECCN 0A987, which controlled optical sighting devices for firearms. This final rule revises the reasons for control table to state specifically that the Firearms Convention (FC) reason for control applies to all paragraphs in the ECCN except 0A504.f, which controls laser pointing devices. In addition, BIS adds an RS control for certain riflescopes, which are identified in their own paragraph in the ECCN under 0A504.i in this final rule. The riflescopes in this paragraph are limited to those ''specially designed'' for use in firearms that are ''subject to the ITAR.'' This final rule includes an exclusion in the criteria of this paragraph to ensure less sensitive riflescopes that are being moved from ECCN 0A987 to 0A504 on the effective date of this final rule, that currently are not RS controlled under the EAR, will not be controlled under this paragraph. This final rule also adds a note to this paragraph (i) to specify that paragraph (a)(1) of the definition of ''specially designed'' in § 772.1 of the EAR is what is used to determine whether a riflescope is ''specially designed'' for purposes of this paragraph of ECCN 0A504.i—meaning paragraph (a)(2) and the paragraph (b) releases are not reviewed to make the ''specially designed'' determination.

This change makes clear, consistent with BIS's existing interpretation, that such devices are not optical sights and are not subject to the FC reason for control. The new number is intended to make identifying items on the CCL easier by grouping similar or related items closer to each other.

This final rule adopts the following additional changes to ECCN 0A504 to respond to the comments received on the Commerce May 24 rule:

This final rule revises the LVS paragraph in the License Exceptions section of ECCN 0A504 to add LVS eligibility of $500 for 0A504.g. Commenters requested that LVS eligibility be added for these less sensitive lenses and other optical elements controlled under 0A504.g. These commenters also requested adding LVS eligibility for consistency with the types of parts and components eligible for LVS under ECCN 0A501 in the Commerce May 24 rule. BIS agrees and adds LVS eligibility of $500 for 0A504.g in this final rule.

New ECCN 0A505: Ammunition and Certain Related Commodities

This final rule adds new ECCN 0A505 and imposes national security (NS Column 1), regional stability (RS Column 1), Firearms Convention (FC), United Nations (UN), and anti-terrorism (AT Column 1) controls on ammunition not enumerated on the USML, for firearms that will be classified under ECCN 0A501, and for most ''parts'' and ''components'' of such ammunition. Such ammunition included in this final rule are for small arms, in most cases, firearms of caliber not exceeding 0.50 inches, although some ammunition for firearms of caliber up to 0.72 inches is included. This final rule retains the CCL reasons for control currently found in ECCNs 0A984 and 0A986 for shotgun shells. Buckshot shotgun shells will be subject to the CC Column 1, FC Column 1, and UN reasons for control under this final rule. Other shotgun shells are subject to the FC, UN, and AT (North Korea only) reasons for control in this final rule. Only ''parts'' and ''components'' will be eligible for License Exception LVS. Ammunition for larger caliber weapons such as howitzers, artillery, cannon, mortars, and recoilless rifles will remain in USML Category III in this final rule. Ammunition that has little or no civil use or that is inherently military such as ammunition that is preassembled into links or belts, caseless ammunition, tracer ammunition, ammunition with a depleted uranium projectile or a projectile with a hardened tip or core and ammunition with an explosive projectile also remains in USML Category III. Blank ammunition for firearms controlled by ECCN 0A501 and not enumerated in Category III of the USML will be controlled for United Nations and anti-terrorism reasons only in this final rule.

This final rule adds three notes to clarify the scope of ''parts'' and ''components'' for ammunition classified under ECCN 0A505. Note 1 to 0A505.c clarifies the relationship between ECCNs 0A505 and 1A984 for shotgun shells, stating that shotgun shells that contain only chemical irritants are controlled under 1A984 and not 0A505. Separately, Note 2 to 0A505.x includes an illustrative list of the controls on ''parts'' and ''components'' in this entry, such as Berdan and boxer primers. Note 3 to 0A505.x clarifies that the controls in ECCN 0A505 include ''parts'' and ''components'' that are common to ammunition and ordnance described in this entry and to those enumerated in USML Category III.

This final rule adopts the following additional changes to ECCN 0A505 to respond to the comments received on the Commerce May 24 rule:

This final rule revises the LVS paragraph in the License Exceptions section of ECCN 0A505 to increase the LVS eligibility from $100 to $500. The Commerce May 24 rule had proposed $100, but commenters noted that the cost of these parts and components would undermine the usefulness of LVS eligibility if the $100 limitation was maintained. Some commenters provided detailed price lists to support their position that $100 of LVS eligibility would be of limited usefulness. BIS took this into account and in this final rule increases the LVS eligibility to $500 for ECCN 0A505.x. As a conforming change, because this final rule moves ECCN 0A018.b to 0A505, this final rule adds grandfathering provisions to retain LVS eligibility of $3,000 for any commodity that was classified under 0A018.b prior the effective date of this final rule.

This final rule revises ECCN 0A505.a to add the phrase ''or USML Category I'' to clarify that ammunition for firearms controlled under USML Category I is also controlled under 0A501.a, provided the ammunition is not otherwise excluded by the control parameters in 0A501.a, *i.e.,* being enumerated in 0A505.b, .c, .d, or in USML Category III.

This final rule adds a Note 4 to 0A505 to specify that certain types of ammunition (*i.e.,* Lead shot smaller than No. 4 Buckshot, empty and unprimed shotgun shells, shotgun wads, smokeless gunpowder, 'Dummy rounds' and blank rounds (unless linked or belted)), not incorporating a lethal or non-lethal projectile(s) are designated EAR99. This final rule also defines the terms 'dummy round or drill round.' The new note clarifies that these rounds are completely inert—meaning they contain no primer, propellant, or explosive charge. The note specifies that these types of rounds are typically used to check weapon function and for crew training.

New ECCN 0A602: Guns and Armament

This final rule adds new ECCN 0A602 and imposes national security (NS Column 1), regional stability (RS Column 1), United Nations (UN) and anti-terrorism (AT Column 1) controls on guns and armament manufactured between 1890 and 1919 and for military flame throwers with an effective range less than 20 meters. It imposes those same reasons for control on parts and components for those commodities and for defense articles in USML Category II if such parts or components are not specified elsewhere on the CCL or USML. Note 3 to 0A602 confirms that black powder guns and armament manufactured in or prior to 1890 and replicas thereof designed for use with black powder propellants are designated EAR99. The guns controlled in this ECCN are between 99 and 128 years old. The parts, components, accessories, and attachments controlled in this ECCN include some that are for modern artillery. Modern artillery remains on the USML, along with the most sensitive ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for these USML items. This final rule adds a note to clarify that ''parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory II(j) are not subject to the EAR. The USML Order of Review and CCL Order of Review already provide guidance for making such a jurisdictional and classification determination, but to highlight that these ''parts,'' ''components,'' ''accessories,'' and ''attachments'' are not classified under paragraph .x of 0A602, this final rule adds a note.

This final rule adopts the following additional changes to ECCN 0A602 to respond to the comments received on the Commerce May 24 rule:

This final rule revises the Related Controls paragraph of ECCN 0A602 to add a Related Controls paragraph (3). This new Related Controls paragraph provides a cross reference to ECCN 0A606 for engines that are ''specially designed'' for a self-propelled gun or howitzer subject to control under 0A606.a or USML Category VII. The Department of State final rule includes a similar cross reference for purposes of the USML and commenters requested the same type of note or related control pointer be added to the EAR. The Department agrees and adds Related Controls paragraph (3). As a conforming change, this final rule redesignates Note 1 to 0A602 and Note 2 to 0A602 as Notes 2 and 3, respectively.

New ECCN 0B501: Test, Inspection, and Production Equipment for Firearms

This final rule adds new ECCN 0B501 to cover ''Test, inspection, and production 'equipment' and related commodities for the 'development' or 'production' of commodities enumerated or otherwise described in ECCN 0A501 or USML Category I.'' This new ECCN applies the national security (NS Column 1), regional stability (RS Column 1), United Nations (UN), and anti-terrorism (AT Column 1) reasons for control to four specific types of machinery and to one class of items as proposed in the Commerce May 24 rule. The four specific types of machinery are: small arms chambering machines, small arms deep hole drilling machines and drills therefor, small arms rifling machines, and small arms spill boring machines. The class of items covers dies, fixtures, and other tooling ''specially designed'' for the ''production'' of items in the State Department final rule for USML Category I or ECCN 0A501. In addition, as described below, this final rule also expands the scope of 0B501.e to include all production equipment ''specially designed'' for USML Category I items.

The NS and RS reasons for control do not apply to equipment for the ''development'' or ''production'' of commodities in ECCN 0A501.y because those reasons for control do not apply to the commodities in ECCN 0A501.y themselves.

The first four specific items noted above were listed in paragraphs .o, .p, .q, and .r of ECCN 2B018 prior to the effective date of this final rule, and are being listed in paragraphs .a, .b, .c, and .d of ECCN 0B501 in this final rule. In addition, the class of items in new 0B501 that was included within ECCN 2B018, paragraph .n (jigs and fixtures and other metal-working implements or ''accessories'' of the kinds exclusively designed for use in the manufacture of firearms, ordnance, and other stores and appliances for land, sea or aerial warfare) prior to the effective date of this final rule, will, if applicable to firearms controlled in 0A501, be subsumed in paragraph .e. Jigs, fixtures, and metal working implements currently in 2B018 that are applicable to larger guns will be controlled in ECCN 0B602 in this final rule and are discussed below.

Moving these items from 2B018 to 0B501 in this final rule retains the national security (NS Column 1), anti-terrorism (AT Column 1), and United Nations (UN) reasons for control and raises the regional stability (RS) reason for control from RS Column 2 to RS Column 1. This causes no change in destination-based license requirements, but allows consideration of whether the export or reexport could contribute to instability in any region, not just the region to which the item is exported or reexported in considering whether to approve a license.

This final rule adopts the following additional changes to ECCN 0B501 to respond to the comments received on the Commerce May 24 rule:

This final rule expands ECCN 0B501.e to include all production equipment ''specially designed'' for USML Category I items. This final rule adds the term production equipment to the beginning

of the control text of ECCN 0B501.e and revises the phrase ''dies, fixtures, and other tooling'' included in the Commerce May 24 rule to ''including dies, fixtures, and other tooling'' to indicate that these items are illustrative and that other types of production equipment that meet the control parameters are also controlled under ECCN 0B501.

New ECCN 0B505: Test, Inspection, and Production Equipment for Ammunition

This final rule adds new ECCN 0B505 to impose national security (NS Column 1), regional stability (RS Column 1), United Nations (UN), and anti-terrorism (AT Column 1) controls on tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment, not enumerated in USML Category III, and ''specially designed'' ''parts'' and ''components'' therefor, that are ''specially designed'' for the ''production'' of ammunition other than for the ammunition specified in 0A505.b, .c, or .d (certain shotgun shells with buckshot and without buckshot and certain blank ammunition). In addition, as described below, this final rule also expands the scope of 0B505.a to include all production equipment ''specially designed'' for USML Category III items. Equipment for manufacturing shotgun shells that do not contain buckshot will be controlled for the AT (North Korea only) and UN reasons for control, which are the reasons for control that applied to this equipment in ECCN 0B986 prior to this final rule. ECCN 0B505 in this final rule does not include equipment for the hand loading of cartridges and shotgun shells, so this final rule specifies this in the heading.

This final rule adopts the following additional changes to ECCN 0B505 to respond to the comments received on the Commerce May 24 rule:

This final rule expands ECCN 0B505.a to include all production equipment ''specially designed'' for USML Category III items. This final rule adds the term production equipment to the beginning of the control text of ECCN 0B505.a and revises the phrase ''tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment'' included in the Commerce May 24 rule to ''including tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment'' to indicate that these items are illustrative and other types of production equipment that meet the control parameters are also controlled under ECCN 0B505.

Revisions to Eight ECCNs

To conform to new *Federal Register Drafting Handbook* requirements, the amendatory instructions in this final rule sets forth the entire text of eight ECCNs to be revised. BIS did not receive any comments on the proposed revisions to the following six ECCNs 0E982, 1A984, 2B004, 2B018, 2D018, and 7A611 in the Commerce May 24 rule, so this final rule revises those ECCNs as proposed. *See* the Commerce May 24 rule for additional background on these revisions.

To help the public understand what specific parts of ECCN 0A018 will be different as a result of the changes in this final rule, the narrative below describes the amendment in detail, including a conforming change made to ECCN 0A988.

Revision to ECCN 0A018, and Conforming Change to ECCN 0A988

With the removal of ECCN 0A984 and the addition of 0A502 described above, the Commerce May 24 rule proposed to make the conforming change of removing and reserving 0A018.c since all the items classified in 0A018.c would be classified under other entries on the CCL once a final rule was published.

This final rule adopts the following additional changes to ECCN 0A018 to respond to the comments received on the Commerce May 24 rule:

This final rule still revises ECCN 0A018, but instead of retaining the commodities under 0A018.b as was proposed in the Commerce May 24 rule, these commodities are being moved to ECCN 0A505. As a conforming change, this final rule replaces the control text of ECCN 0A018 with a statement referring readers to ECCN 0A505.

This final rule adopts the following additional changes to ECCN 0A988 to respond to the comments received on the Commerce May 24 rule:

This final rule as a conforming change revises the heading of ECCN 0A988 to remove an outdated reference to 0A018.d. ECCN 0A018.d had been previously removed and reserved, but the cross reference in 0A988 was not updated. This final rule makes that correction.

Removal of Nine ECCNs

The Commerce May 24 rule proposed removing nine ECCNs. BIS did not receive any comments on proposed removals of ECCNs 0A918, 0A984, 0A985, 0A986, 0A987, 0B986, 0E918, 0E984, and 0E987 in the Commerce May 24 rule, so this final rule removes those ECCNs as proposed. *See* the Commerce May 24 rule for additional background on these removals.

Revision of ''Published''

This final rule adopts the following changes to part 734, and one conforming change to part 732, to respond to the comments received on the Commerce May 24 rule:

Specifically, this final rule adds a paragraph (c) to § 734.7 stating that ''software'' or ''technology'' for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501, that is made available by posting on the internet in an electronic format and that may be directly loaded without further modification by the machine operator into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment that makes use of the ''software'' or ''technology'' to produce the firearm frame or receiver or complete firearm, remains ''subject to the EAR.'' Also in § 734.7, this final rule as a conforming change revises the paragraph (a) introductory text to add a reference to new paragraph (c) for the exclusions that apply to paragraph (a) for what is considered ''published.'' In § 732.2 (Steps regarding scope of the EAR), under the paragraph (b) introductory text for step 2 for publicly available technology and software, this final rule also adds a reference to § 734.7(c) to specify such ''software'' or ''technology'' for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501, as referenced in § 734.7(c)), is ''subject to the EAR.''

Conforming Change to General Order No. 5

BIS does not make any additional changes in this final rule to what was proposed in the Commerce May 24 rule as a result of the comments received, so these changes are adopted as proposed. This final rule amends General Order No. 5, paragraph (e)(3) (Prior commodity jurisdiction determinations), in Supplement No. 1 to part 736, to add a reference in two places to the new 0x5zz ECCNs that are being created by this rule. This change to paragraph (e)(3) is a conforming change and is needed because paragraph (e)(3) now only references the ''600 series'' and 9x515 ECCNs. 0x5zz ECCNs will include new ECCNs 0A501, 0A502, 0A504, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E502, and 0E505.

Revisions to Regional Stability Licensing Policy for Firearms and Ammunition

BIS does not make any additional changes in this final rule to what was proposed in the Commerce May 24 rule as a result of the comments received, so these changes are adopted as proposed. This final rule applies the regional stability licensing policy set forth in § 742.6(b)(1)(i) of the EAR to the items controlled for regional stability reasons in ECCNs 0A501, 0A504, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505. That policy, which also applies to ''600 series'' and 9x515 items is case-by-case review ''to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world.'' This final rule also revises the regional stability licensing policy set forth in paragraph (b)(1)(i) that is specific to the People's Republic of China for 9x515 items. This final rule adds ECCNs 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 to this sentence to specify that these firearms and related items are to be subject to a policy of denial when destined to the People's Republic of China or a country listed in Country Group E:1. Lastly, this final rule adds a sentence to the end of paragraph (b)(1)(i) to make it explicit that applications for exports and reexports of ECCN 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 items are subject to a policy of denial when there is reason to believe the transaction involves certain parties of concern, such as criminal organizations, rebel groups, street gangs, or other similar groups or individuals, that may be disruptive to regional stability.

Availability of License Exceptions

Many of the items in the new ''600 series'' ECCNs generally will be eligible for the same license exceptions and subject to the same restrictions on use of license exceptions as other ''600 series'' ECCNs in this final rule. For the ECCNs on the CCL prior to the effective date of this final rule that are being renumbered and placed in closer proximity to the firearms-related items that are being removed from the USML and added to the CCL, these existing firearms-related items will continue to be eligible for the same EAR license exceptions as they were prior to the effective date of this final rule, unless otherwise restricted under § 740.2, if the requirements of the license exceptions are met.

Restrictions on All License Exceptions

This final rule also makes the following additional changes to part 740 to respond to the comments received on the Commerce May 24 rule by adding two new general restrictions.

In § 740.2 (Restriction on all license exceptions), this final rule adds two additional restrictions for when license exceptions may not be used. This final rule adds new paragraph (a)(21) to restrict the use of license exceptions, except for License Exception GOV under § 740.11(b)(2)(ii) for the reexport or transfer (in-country) of certain firearms classified under ECCNs 0A501 or 0A502. The restriction on the use of license exceptions applies if a part or component that is not ''subject to the ITAR,'' but would otherwise meet the criteria in USML Category I(h)(2) is incorporated into the firearm or is to be reexported or transferred (in-country) with the firearm with ''knowledge'' the part or component will be subsequently incorporated into the firearm. Because these parts or components that would otherwise meet the criteria in USML Category I(h)(2) could be used for conversion of a semi-automatic firearm to a fully automatic firearm, this final rule excludes those firearms from license exception eligibility.

In § 740.2 this final rule also adds a new paragraph (a)(22) to restrict the use of license exceptions for the export, reexport, or transfer (in-country) of any item classified under a 0x5zz ECCN when a party to the transaction is designated on the Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons (SDN) list under the designation [SDNT], or under the designation [SDNTK]. OFAC makes SDNT designations pursuant to the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, and SDNTK designations are made, pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598. This restriction on the use of license exceptions for these 0x5zz items will ensure that such parties designated on the SDN list will not be able to receive these 0x5zz items without a BIS license.

License Exception: Shipments of Limited Value (LVS)

Under this final rule, complete firearms controlled under ECCN 0A501 are not eligible for License Exception LVS, 15 CFR 740.3. Firearms ''parts,'' ''components,'' ''accessories,'' and ''attachments'' controlled under ECCN 0A501, other than receivers (frames), and ''complete breech mechanisms,'' including castings, forgings or stampings thereof, are eligible for License Exception LVS, with a limit of $500 on net value per shipment. In addition, receivers (frames), and ''complete breech mechanisms,'' including castings, forgings or stampings thereof, are eligible for License Exception LVS if the ultimate destination is Canada. This final rule states these limits in the License Exceptions paragraph of ECCN 0A501, and no revisions to the text of the license exception itself are needed to implement them. BIS believes that this provision is generally consistent with the license exemption for limited value shipments of firearms formerly found in ITAR (22 CFR 123.17(a)) (removed and reserved by the companion rule). This LVS eligibility included in this final rule is less restrictive than the former ITAR provision in two respects. First, the value limit per shipment will be $500 compared to $100 in the ITAR. Second, the LVS eligibility in the final rule allows exports of receivers and ''complete breech mechanisms'' to Canada whereas § 123.17(a) did not. However, the $500 LVS limit is based on the actual selling price or fair market value, whereas the ITAR $100 limit is based on ''wholesale'' value. In addition, with respect to Canada, an LVS limit of $500 per shipment is needed to comply with the Section 517 of the Commerce, Justice, Science, and Related Agencies Appropriations Act of 2015, which prohibits expending any appropriated funds to require licenses for the export of certain non-automatic firearms parts, components, accessories and attachments to Canada when valued at under $500.

Guns and armament and related items controlled under ECCN 0A602 are eligible for License Exception LVS, with a limit of $500 net value per shipment in this final rule.

Ammunition controlled under ECCN 0A505 are eligible for License Exception LVS; however, ammunition parts and components will be eligible with a limit of $500 (Commerce May 24 rule proposed $100, but as described below in the changes to ECCN 0A505, this final rule increases the limit of $500) net value per shipment in this final rule.

Test, inspection, and production equipment controlled under ECCNs 0B501, 0B505, and 0B602 for firearms, guns and armament, and ammunition/ordnance are eligible for License Exception LVS with a limit of $3,000 net value per shipment, which is consistent with LVS eligibility for most 600 series ECCNs in this final rule.

License Exception: Temporary Imports, Exports, Reexports, and Transfers (In-Country) (TMP)

This final rule amends § 740.9 to state that License Exception TMP is not available to export or reexport the items that are the subject of this rule to destinations in Country Group D:5 (*See* Supplement No. 1 to part 740), or to Russia (Russian Federation). License Exception TMP is also not available to export or reexport some firearms and ammunition shipped from or manufactured in Russia (Russian Federation), Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan. In addition, this final rule will prohibit the use of License Exception TMP to export or reexport any item controlled by ECCN 0A501 and any shotgun with a barrel length less than 18 inches controlled under ECCN 0A502 that was shipped from or manufactured in Country Group D:5. This final rule also prohibits use of License Exception TMP to export or reexport any item controlled by ECCN 0A501 that is shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is also excluded under Annex A in Supplement No. 4 to part 740 (the prohibition will not apply to such firearms;); and any shotgun with a barrel length less than 18 inches controlled under 0A502 that was shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan. These prohibitions will apply to temporary exports of firearms from the United States, and the export of firearms temporarily in the United States. This final rule for consistency with the ITAR requirements for exports of firearms to Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, and Uzbekistan, removes the restriction included in the Commerce May 24 rule in paragraph (b)(5)(iii) that the firearms may not ultimately be destined to one of these seven countries from the restriction in paragraph (b)(5)(iii), but retains the restriction for Russia. This final rule makes one correction in Annex A in Supplement No. 4 to part 740 for the rifle ''VEPR Pioner'' under paragraph (b)(90) to correctly spell it as ''VEPR Pioneer.''

This final rule limits temporary exports of firearms controlled under ECCN 0A501 and any shotgun with a barrel length less than 18 inches controlled under ECCN 0A502 pursuant to License Exception TMP to exhibition and demonstration (§ 740.9(a)(5) of the EAR) and inspection, test, calibration, and repair (§ 740.9(a)(6) of the EAR). Consistent with the ITAR requirements previously applicable to temporary exports of the firearms covered by this rule (see 22 CFR 123.17(c), 123.22), exporters will continue to be required to file EEI in AES for transactions involving such firearms that are authorized pursuant to License Exception TMP (*See* § 758.1(a)(10) of the EAR).

This final rule authorizes the use of License Exception TMP for the export of ECCN 0A501 firearms temporarily in the United States for a period of not more than one year subject to the requirement that the firearms not be imported from or ultimately destined for certain proscribed or restricted countries. Certain information as described in the regulatory text will also be collected by CBP on behalf of BIS under existing or new Commerce paperwork collections. This final rule also makes eligibility to export under License Exception TMP for ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 subject to the following conditions:

At the time of entry for a temporary import, the temporary importer is required to provide the required statement to CBP, as specified in paragraph (b)(5)(iv)(A).

The temporary importer is required to include on the invoice or other appropriate import-related documentation (or electronic equivalents) provided to CBP a complete list and description of the 0A501 firearms being imported, including their serial numbers, model, make, caliber, quantity, and U.S. dollar value, as specified in paragraph (b)(5)(iv)(B).

If the firearms are temporarily imported for a trade show, exhibition, demonstration, or testing, the temporary importer must provide to CBP the relevant invitation or registration documentation for the event and an accompanying letter that details the arrangements to maintain effective control of the firearms while they are in the United States, as specified in paragraph (b)(5)(iv)(C).

At the time of export, the temporary importer or its agent as specified in paragraph (b)(5)(v) are required to provide the temporary import documentation (*i.e.,* the invoice used at the time of entry for the temporary importation or other appropriate temporary import-related documentation (or electronic equivalents)) related to paragraph (b)(5)(iv)(B) to CBP. This information will be used by CBP to confirm that such firearms were in fact temporarily imported under the EAR for subsequent export under License Exception TMP.

This final rule adds a note to License Exception TMP to direct temporary importers and exporters to contact CBP at the port of import or export for the proper procedures to provide any data or documentation required by BIS.

License Exception: Governments, International Organizations, International Inspections Under the Chemical Weapons Convention, and the International Space Station (GOV)

This final rule revises § 740.11 to limit the applicability of License Exception GOV for firearms, ''parts'' and ''components'' controlled by ECCN 0A501 and ammunition controlled by 0A505 to exports, reexports, and transfers for official use by U.S government agencies and official and personal use by U.S. Government employees (and the immediate families and household employees of those government employees) (§ 740.11(b)(2)(i) and (ii) of the EAR). This authorization under License Exception GOV treats 0A501 firearms in the same manner that other items that are subject to the EAR may be exported to U.S. Government employees under License Exception GOV. It does not impose certain restrictions that are imposed by the former ITAR license exemption (22 CFR 123.18) (removed and reserved by companion rule) that authorized shipments consigned to and for the use of servicemen's clubs, and for service members or civilian employees if the firearms are for personal use and the shipment is accompanied by a written authorization from the commanding officer concerned. *See* the Commerce May 24 rule for additional background. License Exception GOV authorizes non-automatic and semi-automatic firearms and related ''parts'' and ''components.''

All other items that are the subject of this final rule will be subject to the limits on use of License Exception GOV that apply to 600 series items generally, *i.e.,* § 740.11(b)—to, for, or on behalf of the U.S. Government (including contractors, government employees, their families and household employees) or § 740.11(c) to a government in Country Group A:1 cooperating governments or an agency of NATO. However, this rule will add some additional restrictions for E:1 and E:2 countries. This final rule will exclude the use of License Exception GOV for any item listed in a 0x5zz ECCN for E:1 countries, unless authorized under paragraph (b)(2)(i) or

(ii) when the items are solely for U.S. Government official use. In addition, to better ensure compliance with section 1754(c) of the ECRA and address concerns with certain end users and uses in Country Group E:1 and E:2 countries, this final rule adds a new Note 2 to paragraph (b)(2), which restricts the use of License Exception GOV for E:1 and E:2 countries for multilaterally controlled items and anti-terrorism (AT) controlled items when destined to certain end users or end uses of concern.

This final rule also makes the following additional change to License Exception GOV to respond to the comments received on the Commerce May 24 rule:

In § 740.11 of License Exception GOV, this final rule revises Note 2 to paragraph (b)(2) to include illustrative examples of other sensitive end-users. This final rule adds the parenthetical phrase ''(*e.g.,* contractors or other governmental parties performing functions on behalf of military, police, or intelligence entities)'' after the phrase ''or other sensitive end-users'' to provide greater clarity on the other end-users that are excluded.

License Exception: Baggage (BAG)

This final rule revises License Exception BAG, § 740.14, to allow United States citizens and permanent resident aliens leaving the United States temporarily to take up to three firearms controlled by proposed ECCN 0A501 and up to 1,000 rounds of ammunition for such firearms controlled under ECCN 0A505.a for personal use while abroad. This change to License Exception BAG is made to be consistent with former 22 CFR 123.17(c) (removed and reserved by companion rule), which authorized U.S. persons to take up to three non-automatic firearms and up to 1,000 cartridges therefor abroad for personal use. This amendment to License Exception BAG applies to both non-automatic and semi-automatic firearms.

Travelers leaving the United States temporarily are required to declare the 0A501 and 0A505 items to a CBP officer prior to departure from the United States and present the firearms, ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ammunition they are exporting to the CBP officer for inspection, confirming that the authority for the export is License Exception BAG, that the exporter is compliant with its terms. Should exporters desire to contact CBP prior to departure, contact information and a list of U.S. air, land and sea ports of entry can be found at: *https://www.cbp.gov/contact/ports.*

This final rule also revises License Exception BAG to allow nonresident aliens leaving the United States to take firearms, ''accessories,'' ''attachments,'' ''components,'' ''parts,'' and ammunition controlled by ECCN 0A501 or 0A505 that they lawfully brought into the United States. This change is consistent with former 22 CFR 123.17(d) (removed and reserved by companion rule), which authorized foreign persons leaving the United States to take firearms and ammunition controlled under Category I(a) of the USML (both non-automatic and semi-automatic) that they lawfully brought into the United States. This final rule does not adopt any changes to the availability of License Exception BAG for shotguns and shotgun shells authorized under paragraph (e)(1) or (2).

As a clarification to License Exception BAG, this final rule adds one sentence to the introductory text of paragraph (b)(4) to highlight the special provisions that apply in paragraph (e) for firearms and ammunition and in paragraph (h) for personal protective equipment under ECCN 1A613.c or .d. This one sentence does not change the existing requirement and has been included to assist the public in better identifying these special provisions.

Consistent with the ITAR requirements previously applicable to temporary exports of the firearms and associated ammunition covered by the May 24 proposed rule, BIS proposed in the Commerce May 24 rule to modify § 758.1 of the EAR to make clear that exporters would continue to be required to file EEI in AES for transactions involving such firearms and associated ammunition that are otherwise authorized pursuant to License Exception BAG. However, for the reasons described above in the description of the comments and BIS responses, this final rule adopts an alternative approach with the addition of the new § 758.11 described immediately below.

This final rule makes the following additional changes in response to the public comments received on the Commerce May 24 rule:

As described above, this final rule removes the EEI filing requirement in AES as set forth in § 758.1(b)(9) for firearms authorized under License Exception BAG.

In response to public comments as described above, this final rule instead adds a new § 758.11 (Export clearance requirements for firearms and related items) and incorporates a requirement to use the Department of Homeland Security, CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad) (OMB Control Number 1651–0010) for all exports of commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada, that are authorized under License Exception BAG, as set forth in § 740.14. Section 758.11 includes four paragraphs: Paragraph (a) (Scope) specifies when these export clearance requirements apply; paragraph (b) (Required form) identifies the required form that needs to be used in connection with these exports authorized under License Exception BAG, including paragraph (b)(1) that includes a website for where to find the form, and paragraph (b)(2) that specifies the ''description of articles'' for firearms to be included on the CBP Form 4457; paragraph (c) provides a link for where to find additional information on the CBP Form 4457; and paragraph (d) (Return of items exported pursuant to this section) specifies the requirements for the return of items exported under License Exception BAG when the export clearance requirements in § 758.11 apply.

License Exception: Servicing and Replacement of Parts and Equipment (RPL)

This final rule also adopts the following changes to License Exception RPL to respond to the comments received on the Commerce May 24 rule, that requested License Exception RPL be included as a valid purpose for a temporary import under § 758.10. As described above, BIS agreed to include License Exception RPL in § 758.10, and these changes are described below.

In § 740.10(b) (Servicing and replacement of parts and equipment), this final rule makes needed conforming changes for the addition of License Exception RPL to § 758.10 and to include similar changes as were made to License Exception TMP under § 740.9(b)(5) in the Commerce May 24 rule. This final rule adds one sentence to the end of the introductory text of § 740.10(b)(1) to specify that that additional requirements in new paragraph (b)(4) must be met in order to use License Exception RPL to authorize under paragraph (b)(2) or (3) the export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 temporarily in the United State for servicing and replacement. This final rule adds new paragraph (b)(4) (Exports

of firearms and certain shotguns temporarily in the United States for servicing and replacement). Under the introductory text of paragraph (b)(4), this final rule imposes a requirement that the firearms and certain shotguns must be temporarily in the United States for servicing or replacement for a period not exceeding one year or the time it takes to service or replace the commodity, whichever is shorter in order to use License Exception RPL to authorize the export. This final rule adds paragraphs (b)(4)(i) and (ii) to impose restrictions for firearms shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to part 740, to impose the same types of restrictions and impose the same type of information requirements for providing information to CBP as this final rule includes for License Exception TMP under paragraph (b)(5).

License Exception: Additional Permissive Reexports (APR)

This final rule also adopts the following change to License Exception APR to respond to the comments received on the Commerce May 24 rule:

In § 740.16 of License Exception APR, this final rule adds commodities classified under a 0x5zz ECCN to the list of commodities excluded under paragraph (a) of License Exception APR. This final rule also adds a new paragraph (b)(2)(vi) to exclude commodities classified under a 0x5zz ECCN under paragraph (b) of License Exception APR. The Commerce May 24 rule did not propose these exclusions from License Exception APR, but BIS identified these two paragraphs of License Exception APR as two authorizations that were not intended to be available under the Commerce May 24 rule, but based on the stated criteria prior to the effective date of this final rule would have been available. Therefore, this final rule makes these changes to ensure the authorizations available for reexports and transfers (in-country) will be equivalent to those available for exports.

License Exception STA

BIS did not receive any comments on the proposed changes to License Exception STA, § 740.20, in the Commerce May 24 rule, so this final rule adopts those changes as proposed. This final rule revises the regulations at § 740.20 to make firearms controlled under ECCN 0A501 and most ''parts,'' ''components,'' ''accessories,'' and ''attachments'' controlled under ECCN 0A501 ineligible for License Exception STA. Only those ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are controlled under paragraph .x are eligible for export under License Exception STA. Items controlled under ECCNs 0A502 and 0A503 are also excluded from STA eligibility.

Support Documentation for Firearms, Parts, Components, Accessories, and Attachments Controlled by ECCN 0A501

BIS did not receive any comments on this proposed change to § 748.12 in the Commerce May 24 rule, so the change is published in this final rule as proposed. This final rule requires that for commodities controlled by ECCN 0A501 that are the subject of export or reexport transactions for which a license is required, the exporter or reexporter must obtain, prior to submitting an application, an import permit (or copy thereof) if the importing country requires such permits for import of firearms. That import permit is a record that must be kept by the exporter or reexporter as required by part 762 of the EAR. The purpose of this requirement is to assure foreign governments that their regulations concerning the importation of firearms are not circumvented. To implement this change, this final rule revises § 748.12 to include the commodities controlled under ECCNs 0A501 (except 0A501.y), 0A502, 0A504 (except 0A504.f), and 0A505 (except 0A505.d) within the list of commodities that are subject to the requirement and adds a new paragraph (e) requiring that import certificates or permits be obtained from countries other than OAS member states if those states require such a certificate or permit.

Licenses for Firearms and Ammunition Will Be Limited to the Authorized End Use and End Users

BIS did not receive any comments on these statements of EAR licensing policy in the Commerce May 24 rule but restates them here to assist the public. Consistent with other BIS licenses, including ''600 series'' and 9x515 items, licenses for firearms and ammunition that move from the USML to the CCL are limited to the authorized end use and end users specified on the license and supporting documentation submitted as part of the license application. This means any change in the authorized end use or end user for a licensed transaction will require a BIS authorization. This existing requirement of BIS licenses is specified in § 750.7(a) and on the boiler plate text included on all BIS licenses. These requirements are also applied to firearms and ammunition licenses. A change in end use or end user, including a change of authorized end use or end user within a single foreign country for a firearm or ammunition authorized under a BIS license, requires a BIS authorization. BIS does not adopt any changes in this final rule to these well-established and understood requirements on using BIS licenses. Applicants for firearms and ammunition licenses are also advised that BIS continues to exercise its authority, as specified in § 748.11 in the Note 2 to paragraph (a), on a case-by-case basis to require a Statement by Ultimate Consignee and Purchaser as warranted.

The exporter, reexporter, or transferor using a BIS license, including for firearms and ammunition licenses, is also required, pursuant to § 750.7(a), to inform the other parties identified on the license, such as the ultimate consignees and end users of the license's scope and of the specific conditions applicable to them. As an additional safeguard for firearms and ammunition licenses, BIS will include, when warranted, a license condition requiring the exporter, reexporter, or transferor to obtain from the other parties identified on the license a written confirmation that those other parties have received and agree to the terms and conditions of the license. For example, the condition may state ''Prior to using this license, the exporter (reexporter or transferor) and other parties to the license must agree to the conditions in writing and the exporter (reexporter or transferor) must keep this on file with their other records.'' The documents described in this paragraph are required to be kept for EAR recordkeeping purposes under part 762 of the EAR.

Conventional Arms Reporting for Certain Exports of ECCN 0A501.a and .b Commodities

In § 743.4 (Conventional arms reporting), this final rule revises paragraphs (c)(1)(i) and (c)(2)(i) to add ECCN 0A501.a and .b as commodities that require Wassenaar Arrangement reporting and United Nations reporting under this conventional arms reporting section of the EAR. This requirement assists the U.S. Government to meet its multilateral commitments for the special reporting requirements for exports of certain items listed on the WAML and the United Nations Register of Conventional Arms when these items are authorized for export under License Exceptions LVS, TMP, RPL, STA, or GOV (see part 740 of the EAR) or the

Validated End-User authorization (see § 748.15 of the EAR) and for United Nations reporting. License Exceptions LVS and STA are identified in § 743.4(b)(1), but because ECCN 0A501.a and .b commodities are not eligible for those two license exceptions, the reporting requirements under § 743.4(c)(1)(i) and (c)(2)(i) are limited to exports authorized License Exceptions TMP, GOV, and RPL or the Validated End-User authorization. This final rule also adds contact information for these reports.

This final rule also makes the following additional change to § 743.4 to respond to the comments received on the Commerce May 24 rule:

Commenters requested that BIS use information required to be submitted in the EEI filing in AES to pull the conventional arms reporting data directly in order to eliminate the need for exporters to submit separate reports to BIS. BIS agreed and this final rule revises three paragraphs in § 743.4 to adopt an alternative method for BIS to receive the information that is required for conventional arms reporting. This rule revises paragraph (a) to add four sentences at the end of the paragraph. These four sentences specify that if the exporter follows the requirements specified in this section for the alternative submission method described in new paragraph (h) (Alternative submission method), that separate reporting does not need to be made to BIS for purposes of § 743.4. Because of the EEI filing requirements in AES in new § 758.1(g)(4)(ii) for the firearms that require conventional arms reporting, all conventional arms reporting requirements for firearms should be able to be met by using the alternative submission method. Under paragraph (b) (Requirements), this final rule adds a reference to meeting the reporting requirement by using the alternative submission method in new paragraph (h).

This final rule adds paragraph (h) that describes the requirements for the alternative submission method. To use the alternative reporting method, each time the exporter files an EEI record in AES, the exporter must include as the first text in the Commodity Description field in AES the first six characters of the ECCN number, *i.e.,* ''0A501.a'' or ''0A501.b.'' In addition, the exporter must document for recordkeeping requirements under the EAR that for purposes of the conventional arms reporting requirements under part 743, it has decided to use the alternate submission method by taking steps to identify the end item firearms in the EEI filing in AES that will enable the U.S. Government to pull the data and meet national reporting commitments to the Wassenaar Arrangement and the United Nations.

As a conforming change, in § 758.1 (The Electronic Export Enforcement (EEI) filing to the Automated Export System (AES)), this final rule adds a new paragraph (g)(4)(ii) (Identifying end item firearms by ''items'' level classification or other control descriptor in the EEI filing in AES). Exporters must include the six character ECCN classification (*i.e.,* 0A501.a or 0A501.b), as the first text to appear in the Commodity description block in the EEI filing in AES. Exporters for shotguns controlled under 0A502 must include the phrase ''0A502 barrel length less than 18 inches'' as the first text to appear in the Commodity description block in the EEI filing in AES. This information will be used by BIS as referenced in § 743.4(h) for conventional arms reporting.

Changes to Export Clearance Requirements for Firearms Being Moved to the CCL (Part 758)

In § 758.1, this final rule adopts changes to clarify that a filing of EEI in AES will be required for exports of the firearms transferred from the USML pursuant to this rule regardless of value or destination, including exports to Canada. As noted above, this requirement applies, as was the case under the ITAR prior to the effective date of this final rule, for temporary exports of such items pursuant to License Exception TMP, but not for License Exception BAG.

In addition, this final rule expands the data elements required as part of an EEI filing to AES filing for these firearms to include serial numbers, make, model and caliber. This requirement will ensure law enforcement officials are able to effectively verify that firearms exports are properly authorized and in conformance with all applicable regulations, including those associated with the temporary export and subsequent return of controlled firearms and unused ammunition.

This final rule also makes the following additional changes to § 758.1(b)(10) and (c)(1) to respond to the comments received on the Commerce May 24 rule regarding the concerns for individuals having to file EEI in AES:

In § 758.1, this final rule revises new paragraph (b)(10) that was included in the Commerce May 24 rule, but adds it as new paragraph (b)(9). This final rule excludes exports authorized under License Exception BAG from the EEI filing requirement in AES. As a conforming change, this final rule revises paragraph (c)(1) to eliminate the restriction from the exemption for License Exception BAG. This final rule makes this change because of excluding License Exception BAG from paragraph (b)(9) means the general exemption for not filing EEI in AES for these firearms authorized under License Exception BAG, should be available, so this final rule makes this conforming change. This final rule adds a new Note to paragraph (c)(1) to add a cross reference to the export clearance requirements that are specific to firearms exported under License Exception BAG.

This final rule also makes the following additional changes to § 758.1(g)(4) to respond to the comments received on the Commerce May 24 rule regarding concerns for having to include the manufacture, model, caliber, and serial number in the EEI filing in AES:

In § 758.1(g)(4) (Exports of Firearms and Related Items), this final rule adds a new paragraph (g)(4)(i) (Identifying end item firearms by manufacturer, model, caliber, and serial number in the EEI filing in AES) to narrow the requirement for when firearms must be identified by manufacture, model, caliber, and serial number in the EEI filing in AES to License Exception TMP or a BIS license that contains a condition requiring all or some of this information to be filed as EEI in AES.

Entry Clearance Requirements for Temporary Imports (§ 758.10)

Temporary imports are transactions that involve both the temporary entry of an item into the U.S. from a foreign country and the subsequent export of that item from the U.S. To preserve the treatment of temporary import transactions for items in this rule that will transfer from the USML in the ITAR to become subject to the EAR, BIS imposes a temporary imports entry clearance requirement in this final rule by adding new § 758.10. This new section is limited to items in this rule that are both ''subject to the EAR'' and on the USMIL in 27 CFR 447.21. To allow such items to temporarily enter the U.S., this final rule imposes a process to collect identifying information for the sole purpose of tracking items being temporarily imported for subsequent export. BIS does not impose a license requirement for such imports, but this information is necessary to facilitate the export after a temporary import. The entry clearance requirement is an EAR requirement and any false representation made under the new § 758.10 will be a violation of the EAR.

This final rule also makes the following additional change to § 758.10 to respond to the comments received on the Commerce May 24 rule:

In § 758.10, this final rule adds an exclusion to the entry clearance requirements proposed in the Commerce May 24 rule to clarify that firearms ''subject to the EAR'' brought into the United States by nonimmigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 are not subject to these same entry clearance requirements for temporary imports. This final rule makes this change for consistency with License Exception BAG under paragraph (e) and because ATF regulations address nonimmigrant aliens temporarily bringing these types of firearms into the United States, so the requirements in § 758.10 do not need to apply.

In § 758.10, this final rule clarifies the penultimate sentence and the last sentence of paragraph (a) by removing references to ''permanent return'' and ''permanent import'' after items are temporarily exported under an EAR authorization, *e.g.,* License Exception TMP or a Commerce license. This clarification is made because the inbound portion of a temporary export is covered by the temporary export authorization, so it not accurate to describe those as a ''permanent return'' or as a ''permanent import.''

Also in § 758.10, this final rule clarifies the introductory text of paragraph (b) by deleting the title ''the Port Directors'' before U.S. Customs and Border Protection. This change is made because U.S. Customs and Border Protection Center Directors may also have an enforcement role in addition to Port Directors, so referencing U.S. Customs and Border Protection is sufficient. In paragraph (b)(2), this final rule revises the phrase ''as requested by CBP'' with the phrase ''upon request by CBP.'' In the last sentence of paragraph (b)(2), this final rule removes the word ''inspection'' after the phrase ''additional requirements,'' because the word was not intended to be included in the cross reference to § 758.1(g)(4).

This final rule also revises § 758.10 to add references to License Exception RPL and BIS licenses as two additional EAR authorizations as valid purposes for a temporary import under this section. This final rule does this by revising paragraph (b)(1)(i) to broaden the number of permissible statements to allow for three statements (instead of the single statement that was included in the Commerce May 24 rule). This final rule adds new paragraphs (b)(1)(i)(A) (to account for License Exception TMP under 15 CFR 740.9(b)(5)), (b)(1)(i)(B) (to account for the addition of License Exception RPL under 15 CFR 740.10(b)), and (b)(1)(i)(C) (to account for BIS licenses) to add the three statements. The three statements are substantively the same, and the only difference is the EAR authorization being referenced in the statement. As a conforming change, this final rule adds a new paragraph (b)(1)(iv) that applies if the item being temporarily imported under § 758.10 is for servicing or replacement. Under this new paragraph (b)(1)(iv) at the time of temporary import, the name, address and contact information of the organization or individual in the U.S. that will be receiving the item for servicing or replacement must be provided to CBP. Lastly, as an additional conforming change, this final rule adds a new Note 2 to paragraph (b)(1) to impose exclusions, similar to those imposed on License Exception TMP that limit the availability of License Exception RPL for temporary imports of certain firearms shipped from or manufactured in listed countries.

Unique Application and Submission Requirements for Licenses

This final rule also adopts the following changes for BIS license applications in response to comments received. As described above, BIS agreed to include changes in § 758.10 to account for temporary imports that would require a BIS license for subsequent export.

In Supplement No. 2 to part 748—Unique Application and Submission Requirements, this final rule adds a new paragraph (z) (Exports of firearms and certain shotguns temporarily in the United States) describing a certification requirement for applicants to include in Block 24 of the BIS license application. The certification requirement is an acknowledgement by the applicant that the firearms in the application will not be shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to part 740. The certification also requires that the applicant and other parties to the transaction will comply with the requirements in paragraphs (z)(2)(i) and (ii) of Supplement No. 2 to part 748. This final rule adds paragraph (z)(2) (*Requirements*) to describe the requirements that will be applicable for any license for the export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that will be temporarily imported to the United States. These requirements impose the same type of requirements as this final rule includes for License Exception TMP under paragraph (b)(5) and License Exception RPL under paragraph (b)(4), but does so by imposing the certification requirement in paragraph (z)(1). BIS will include a standard condition that will require compliance with the requirements in paragraphs (z)(2)(i) and (ii).

Changes to EAR Recordkeeping Requirements for Firearms Being Moved to the CCL (Part 762)

BIS does not make any additional changes in this final rule to what was proposed in the Commerce May 24 rule as a result of the comments received, so these changes are adopted as proposed. In part 762 (Recordkeeping), this final rule adopts two changes to the recordkeeping requirements under the EAR. These changes specify that certain records, that are already created and kept in the normal course of business, must be kept by the ''exporter'' or any other party to the transaction (*see* § 758.3 of the EAR), that creates or receives such records.

Specifically, in § 762.2 (Records to be retained), this final rule redesignates paragraph (a)(11) as (a)(12) and adds a new paragraph (a)(11) to specify the following information must be kept as an EAR record: Serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502. The ''exporter'' or any other ''party to the transaction'' that creates or receives such records is the person responsible for retaining this record.

In § 762.3 (Records exempt from recordkeeping requirements), this final rule narrows the scope of an exemption from the EAR recordkeeping requirements for warranty certificates. This final rule narrows this exclusion to specify the exclusion from the recordkeeping requirements does not apply (meaning the record will need to be kept under the recordkeeping requirements) for warranty certificates for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502, when the certificate issued is for an address located outside the United States. This is an expansion of the EAR recordkeeping requirements, but because warranty certificates are already created and kept as part of normal business recordkeeping purposes, this expansion is not anticipated to create any new or increased burden under the

EAR, because it is a document that is created in the normal course of business and should be easily accessible. These recordkeeping requirements will assist the United States Government because it is important for law enforcement to have access to this information.

Conforming Change To Add a New Definition for Use in ECCNs 0A501 and 0A502 (§ 772.1)

This final rule also adds a new definition to the definition part of the EAR to respond to the comments received on the Commerce May 24 rule:

In § 772.1 (Definitions of terms as used in the Export Administration Regulations), this final rule adds a definition of ''complete breech mechanisms.'' The new definition specifies that this is a mechanism for opening and closing the breech of a breech-loading firearm, especially of a heavy-caliber weapon. As a conforming change, this final rule also adds double quotation marks around the term where it is used in ECCNs 0A501 and 0A502.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Executive Order Requirements

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Although the items identified in this final rule have been determined to no longer warrant ITAR control by the President, the proliferation of such items has been identified as a threat to domestic and international security if not classified and controlled at the appropriate level under the EAR. Commerce estimates that the combined effect of all rules to be published adding items removed from the ITAR to the EAR will increase the number of license applications to be submitted to BIS by approximately 30,000 annually.

This final rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

To control these items under the EAR that no longer warrant ITAR control, appropriate controls on the CCL needed to be included in the Department of Commerce final rule. This includes creating new ECCNs and revising certain existing ECCNs, as well as making other changes to the EAR to control items that will be moved from these three USML categories to the CCL once the section 38(f) notification process is completed and a final rule is published and becomes effective. Adding new controls and other requirements to the EAR imposes regulatory burdens on exporters and some other parties involved with those items, but compared to the burdens these exporters and other parties faced under the ITAR, these regulatory burdens, including financial costs, will be reduced significantly. The EAR is a more flexible regulatory structure whereby the items can still be controlled appropriately, but in a much more efficient way that will significantly reduce the burdens on exporters and other parties compared to the regulatory burdens they faced when the items were ''subject to the ITAR.'' Deregulatory does not mean a decontrol of these items.

For those items in USML Categories I, II, and III that will move by this rule to the CCL, BIS will be collecting the necessary information using the form associated with OMB Control No. 0694–0088. BIS estimates that this form takes approximately 43.8 minutes for a manual or electronic submission. Using the State Department's estimate that 10,000 license applications annually will move from the USML to the CCL and BIS's estimate in this final rule that 6,000 of the 10,000 license applications will require licenses under the EAR, that constitutes a burden of 4,380 hours for this collection under the EAR. Those companies are currently using the State Department's forms associated with OMB Control No. 1405–0003 for which the burden estimate is 1 hour per submission, which for 10,000 applications results in a burden of 10,000 hours. Thus, subtracting the BIS burden hours of 4,380 from the State Department burden hours of 10,000, the burden is reduced by 5,620 hours. The other 4,000 applicants may use license exceptions under the EAR or the ''no license required'' designation, so these applicants will not be required to submit license applications under the EAR.

In addition to the reduced burden hours of 5,620 hours, there will also be direct cost savings to the State Department that will result from the 10,000 license applications no longer being required under the ITAR once these items are moved to the EAR. The Department of State charges a registration fee to apply for a license under the ITAR. Pursuant to the AECA, ITAR, and associated delegations of authority, every person who engages in the business of brokering activities, manufacturing, exporting, or temporarily importing any defense articles or defense services must register with the Department of State and pay a registration fee. The Department of State adopted the current fee schedule to align the registration fees with the cost of licensing, compliance, and other related activities. The Department of Commerce will incur additional costs to administer these controls and process license applications. However, the Department of Commerce does not charge a registration fee to apply for a license under the EAR, and we are unable to estimate the increase in costs to the Department of Commerce to process the new license applications. Therefore, we are unable to provide an estimate of the net change in resource costs to the government from moving these items from the ITAR to the EAR. It is the case, however, that the movement of these items from the ITAR will result in a permanent and recurring direct transfer of $2,500,000 per year from the government to the exporting public, less the increased cost to taxpayers, because they will no longer

pay fees to the State Department for licenses and there is no fee charged by the Department of Commerce to apply for a license.

Estimated Cost Savings

For purposes of E.O. 13771 of January 30, 2017 (82 FR 9339), the Department of State and Department of Commerce final rules are expected to be ''net deregulatory actions.'' The Department of Commerce has conducted this analysis in close consultation with the Department of State, because of how closely linked the two final rules are for the regulated public and the burdens imposed under the U.S. export control system.

E.O. 13771 and guidance provided to the agencies on interpreting the intended scope of the E.O. do not use the term ''net deregulatory action,'' but rather refer to deregulatory actions. As outlined above, the Departments of State and Commerce final rules are closely linked and are best viewed as a consolidated deregulatory action although being implemented by two different agencies. Also, as noted above, items may not be subject to both sets of regulations. Therefore, the movement of a substantial number of items from the USML determined to no longer warrant ITAR control to the CCL will result in a significant reduction of regulatory burden for exporters and other persons involved with such items that were previously ''subject to the ITAR.''

For purposes of E.O. 13771, the Departments of State and Commerce have agreed to equally share the cost burden reductions that will result from the publication of these two integral deregulatory actions. The Department of State will receive 50% and the Department of Commerce will receive 50% for purposes of calculating the deregulatory benefit of these two integral actions.

Under this agreed formulation, the burden reductions will be calculated as follows:

For purposes of the Department of Commerce, the ''net deregulatory actions'' will result in a permanent and recurring cost savings of $1,250,000 per year, and a reduction in burden hours by 2,810 hours. The reduction in burden hours by 2,810 will result in an additional cost savings of [1] $126,281 to the exporting public. The total cost savings will be $1,376,281 in present (2017) dollars. To allow for cost comparisons under E.O. 13771, the value of these costs savings in 2016 dollars is $1,353,574. Assuming a 7% discount rate, the present value of these cost savings in perpetuity is $19,336,771. Since the costs savings of this rule are expected to be permanent and recurring, the annualized value of these cost savings is also $1,353,574 in 2016 dollars.

For purposes of the Department of State, the ''net deregulatory actions'' will result in a permanent and recurring cost savings of $1,250,000 per year, and a reduction in burden hours by 2,810 hours. The reduction in burden hours by 2,810 will result in an additional cost savings of $126,281 to the exporting public. The total cost savings will be $1,376,281 in present (2017) dollars. To allow for cost comparisons under E.O. 13771, the value of these costs savings in 2016 dollars is $1,353,574. Assuming a 7% discount rate, the present value of these cost savings in perpetuity is $19,336,771. Since the costs savings of this rule are expected to be permanent and recurring, the annualized value of these cost savings is also $1,353,574 in 2016 dollars.

The Department of Commerce in the Commerce May 24 rule welcomed comments from the public on the analysis under E.O. 13771 described here. The Commerce May 24 rule noted that it would be helpful to receive comments from companies that will no longer need to register with the Department of State because the company only deals with items under USML Category I, II, and/or III that will move to the CCL. Comments were also encouraged on any of the other collections that may be relevant for the items that will move from the USML to the CCL. The Commerce May 24 rule also noted that it would be helpful to receive data on Department of State forms that will no longer need to be submitted.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number.

This final regulation involves four collections currently approved by OMB under these BIS collections and control numbers: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; License Exceptions and Exclusions (control number 0694–0137); Import Certificates and End-User Certificates (control number 0694–0093); Five Year Records Retention Period (control number 0694–0096); and the U.S. Census Bureau collection for the Automated Export System (AES) Program (control number 0607–0152).

This final rule will affect the information collection, under control number 0694–0088, associated with the multi-purpose application for export licenses. This collection carries a burden estimate of 43.8 minutes for a manual or electronic submission for a burden of 31,833 hours. BIS believes that the combined effect of all rules to be published adding items removed from the ITAR to the EAR will be an increase in the number of license applications to be submitted by approximately 30,000 annually, resulting in an increase in burden hours of 21,900 (30,000 transactions at 43.8 minutes each) under this control number. For those items in USML Categories I, II, and III that will move by this rule to the CCL, the State Department estimates that 10,000 applicants annually will move from the USML to the CCL. BIS estimates that 6,000 of the 10,000 applicants will require licenses under the EAR, resulting in a burden of 4,380 hours under this control number. Those companies are currently using the State Department's forms associated with OMB Control No. 1405–0003 for which the burden estimate is 1 hour per submission, which for 10,000 applications results in a burden of 10,000 hours. Thus, subtracting the BIS burden hours of 4,380 from the State Department burden hours of 10,000, the burden will be reduced by 5,620 hours. (*See* the description above for the E.O. 13771 analysis for additional information on the cost benefit savings and designation of the two rules as ''net deregulatory actions''.)

This final rule will also affect the information collection under control number 0694–0137, addressing the use of license exceptions and exclusions. Some parts and components formerly on the USML, and ''software'' and ''technology'' for firearms and their parts and components formerly on the USML, will become eligible for License Exception STA under this final rule. Additionally, test, inspection and production equipment, and ''software'' and ''technology'' related to those firearms and ''parts'' may become eligible for License Exception STA. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be

[1] The Department of Commerce used the Department of State's estimate that the burden hour cost for completing a license application is $44.94 per hour. Multiplied by the estimated burden hour savings of 2,810 equals a cost savings to the public of $126,281.

published adding items removed from the ITAR to the EAR will increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden as a result of the increased use of License Exception STA will be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. This final rule addresses controls on firearms and ''parts,'' production equipment and ''parts'' and related ''software'' and ''technology'' and specifically non-automatic and semi-automatic firearms and their ''parts'' and ''parts,'' ''components,'' ''attachments,'' and ''accessories'' that are used in both semi-automatic and fully automatic firearms. BIS has made this determination on the basis that with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, and requires a specific State Department authorization for most exports of firearms used for hunting and recreational purposes and exports of ''parts,'' ''components,'' ''attachments,'' and ''accessories'' that are common to military fully automatic firearms and their semi-automatic civilian counterparts, even when destined to NATO and other close allies and also requires State Department authorization for the exports necessary to produce ''parts'' and ''components'' for defense articles in the inventories of the United States and its NATO and other close allies. However, under the EAR, as specified in this final rule, a number of low-level parts will be eligible for export under License Exception STA and will therefore not require a license to such destinations.

This final rule will also affect the information collection under control number 0694–0096, for the five-year recordkeeping retention because of two changes this rule will make to part 762 of the EAR. This rule adds a new paragraph (a)(11) to § 762.2 to specify the following information must be kept as an EAR record: Serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502. This rule will also require warranty certificates for these items to be retained for EAR recordkeeping. However, because these records are already created and kept as part of normal business recordkeeping, this expansion is not anticipated to create any new or increased burden under the EAR.

Even in situations in which a license will be required under the EAR, the burden will likely be reduced compared to a license requirement under the ITAR. In particular, license applications for exports of ''technology'' controlled by ECCN 0E501 will likely be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements (as a result of the differences in the scope of the ITAR's and the EAR's technology controls).

This final rule will affect the information collection under control number 0694–0093, import certificates and end-user certificates because of the changes included in this final rule. First, this regulation will require that for shipments requiring a license of firearms, ''parts,'' ''components,'' ''accessories,'' and ''attachments'' controlled under ECCN 0A501, the exporter must obtain a copy of the import certificate or permit if the importing country requires one for importing firearms. License applications for which an import or end-user certificate is already required under § 748.12 of the EAR will not be subject to this new requirement. BIS expects that this requirement will result in no change in the burden under control number 0694–0093. Second, this final rule also will require that prior to departure, travelers leaving the United States and intending to temporarily export firearms, parts, and components controlled under ECCN 0A501 under License Exception BAG declare the firearms and parts to a CBP officer and present the firearms and parts to the CBP officer for inspection. As the State Department also requires that persons temporarily exporting firearms, parts, and components declare the items to CBP, BIS does not expect that the requirement in this final rule will result in a change in burden under control number 0694–0093.

Third, this final rule will affect the information collection under control number 0694–0093 by creating a new temporary import entry clearance requirement by adding § 758.10. This new section will be limited to items in this rule that are both ''subject to the EAR'' and on the United States Munitions Import List (USMIL) in 27 CFR 447.21. To allow such items to temporarily enter the U.S., this rule implements a process to collect identifying information for the sole purpose of tracking items being temporarily imported for subsequent export under License Exceptions TMP, RPL, and BIS licenses. BIS will not impose a license requirement for such imports, but collecting this information will be necessary to facilitate the export after a temporary import. The temporary import entry clearance requirement in § 758.10 will also conform to the requirements in License Exception TMP under § 740.9(b)(5), License Exception RPL under § 740.9(b)(4), and for BIS licenses under paragraph (z) in Supplement No. 2 to part 748, so providing this information to CBP at entry after a temporary import will facilitate the export phase of a temporary import under License Exceptions TMP, RPL and BIS licenses. At the time of entry for a temporary import, the importer will need to provide a statement to CBP indicating that this shipment was being temporarily imported in accordance with the EAR for subsequent export in accordance with and under the authority of License Exceptions TMP, RPL, or a BIS license. The entry clearance requirement will be an EAR requirement and any false representation made under the new § 758.10 will be a violation of the EAR. The importer will also need to provide CBP an invoice or other appropriate import-related documentation (or electronic equivalents) that includes a complete list and description of the items being imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value. If imported for a trade show, exhibition, demonstration, or testing, the temporary importer will need to provide CBP with the relevant invitation or registration documentation for the event and an accompanying letter that details the arrangements to maintain effective control of the firearms while they are temporarily in the United States. If imported for servicing or replacement, the temporary importer will need to provide CBP with the name, address and contact information (telephone number and/or email) of the organization or individual in the U.S. that will be receiving the item for servicing or replacement. Lastly, at the time of exportation, upon request by CBP, the exporter, or an agent acting on his or her behalf, will have to provide the entry document number or a copy of the CBP document under which the ''item'' ''subject to the EAR'' on the USMIL was temporarily imported under this entry clearance requirement. As the State Department also requires that persons temporarily importing items in this rule provide the same type of information to CBP, BIS expects that the requirement in this final rule will result in a change in burden under control number 0694–0093, but because of the decrease under the burden imposed

under the State collection, the burden on the public will not change.

This final rule will also affect the information collection under control number 0607–0152, for filing EEI in AES because of one change this final rule makes to part 758 of the EAR. Under new § 758.1(b)(9), EEI will be required for all exports of items controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada. Exports of these USML firearms and ammunition prior to moving to the CCL required filing EEI in AES for all items ''subject to the ITAR,'' so the burden in this collection will not change for the exporter.

This final rule includes a requirement that, for all exports of temporary exports from the United States or when the license or other approval contains a condition requiring all or some of this information to be filed as EEI in AES of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing requirements, the exporter must provide to CBP the serial number, make, model, and caliber for each firearm being exported. The Department of Commerce is carrying over the existing CBP filing requirements for items transferred from the USML to the CCL. The Department of Homeland Security currently is collecting these data elements for firearms ''subject to the ITAR'' under OMB Control Number 1651–0010 (CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad). There is no change to the information being collected or to the burden hours as a result of this rule. Separate from this rule, CBP will update the information collection to reflect the use of AES or some other simplified electronic alternative to CBP Form 4457.

Any comments regarding the collection of information associated with this final rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

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

List of Subjects

15 CFR Parts 732, 740, and 748

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

15 CFR Part 734

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

15 CFR Parts 736 and 772

Exports.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

15 CFR Part 758

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

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 732, 734, 736, 740, 742, 743, 744, 746, 748, 758, 762, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 732—STEPS FOR USING THE EAR

■ 1. The authority citation for 15 CFR part 732 is revised to read as follows:

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

■ 2. Section 732.2 is amended by adding one sentence to the end of paragraph (b) introductory text to read as follows:

§ 732.2 Steps regarding scope of the EAR.

* * * * *

(b) * * * The following also remains subject to the EAR: ''Software'' or ''technology'' for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501, as referenced in § 734.7(c) of the EAR).

* * * * *

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

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

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 4. Section 734.7 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 734.7 Published.

(a) Except as set forth in paragraphs (b) and (c) of this section, unclassified ''technology'' or ''software'' is ''published,'' and is thus not ''technology'' or ''software'' subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following:

* * * * *

(c) The following remains subject to the EAR: ''software'' or ''technology'' for the production of a firearm, or firearm frame or receiver, controlled under ECCN 0A501, that is made available by posting on the internet in an electronic format, such as AMF or G-code, and is ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment that makes use of the ''software'' or ''technology'' to

produce the firearm frame or receiver or complete firearm.

PART 736—GENERAL PROHIBITIONS

■ 5. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 8, 2019, 84 FR 20537 (May 10, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 6. Supplement No. 1 to part 736 is amended by revising paragraph (e)(3) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(e) * * *

(3) *Prior commodity jurisdiction determinations.* If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was not listed in a then existing ''018'' series ECCN (for purposes of the ''600 series'' ECCNs, or the 0x5zz ECCNs) or in a then existing ECCN 9A004.b or related software or technology ECCN (for purposes of the 9x515 ECCNs), then the item is per se not within the scope of a ''600 series'' ECCN, a 0x5zz ECCN, or a 9x515 ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (*i.e.,* the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

* * * * *

PART 740—LICENSE EXCEPTIONS

■ 7. The authority citation for 15 CFR part 740 continues to read as follows:

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

■ 8. Section 740.2 is amended by adding paragraphs (a)(21) and (22) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(21) The reexport or transfer (in-country) of firearms classified under ECCNs 0A501 or 0A502 if a part or component that is not ''subject to the ITAR,'' but would otherwise meet the criteria in USML Category I(h)(2) (*i.e.,* parts and components specially designed for conversion of a semiautomatic firearm to a fully automatic firearm) is incorporated into the firearm or is to be reexported or transferred (in-country) with the firearm with ''knowledge'' the part or component will be subsequently incorporated into the firearm. (*See* USML Category I(h)(2)). In such instances, no license exceptions are available except for License Exception GOV (§ 740.11(b)(2)(ii)).

(22) The export, reexport, or transfer (in-country) of any item classified under a 0x5zz ECCN when a party to the transaction is designated on the Department of the Treasury, Office of Foreign Assets Control (OFAC), Specially Designated Nationals and Blocked Persons (SDN) list under the designation [SDNT], pursuant to the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536, or under the designation [SDNTK], pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598.

* * * * *

■ 9. Section 740.9 is amended by:

■ a. Adding five sentences at the end of paragraph (a) introductory text;

■ b. Adding one sentence at the end of paragraph (b)(1) introductory text;

■ c. Adding paragraph (b)(5); and

■ d. Redesignating notes 1 through 3 to paragraph (b) as notes 2 through 4 to paragraph (b).

The additions read as follows:

§ 740.9 Temporary imports, exports, reexports, and transfers (in-country) (TMP).

* * * * *

(a) * * * This paragraph (a) does not authorize any export of a commodity controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502 to, or any export of such an item that was imported into the United States from, a country in Country Group D:5 (Supplement No. 1 to this part), or from Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan. The only provisions of this paragraph (a) that are eligible for use to export such items are paragraph (a)(5) of this section (''Exhibition and demonstration'') and paragraph (a)(6) of this section (''Inspection, test, calibration, and repair''). In addition, this paragraph (a) may not be used to export more than 75 firearms per shipment. In accordance with the requirements in § 758.1(b)(9) and (g)(4) of the EAR, the exporter or its agent must provide documentation that includes the serial number, make, model, and caliber of each firearm being exported by filing these data elements in an EEI filing in AES. In accordance with the exclusions in License Exception TMP under paragraph (b)(5) of this section, the entry clearance requirements in § 758.1(b)(9) do not permit the temporary import of: Firearms controlled in ECCN 0A501.a or .b that are shipped from or manufactured in a Country Group D:5 country, or that are shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan (except for any firearm model designation (if assigned) controlled by 0A501 that is specified under Annex A in Supplement No. 4 to this part); or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that are shipped from or manufactured in a Country Group D:5 country, or from Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, because of the exclusions in License Exception TMP under paragraph (b)(5) of this section.

* * * * *

(b) * * *

(1) * * * No provision of paragraph (b) of this section, other than paragraph (b)(3), (4), or (5), may be used to export firearms controlled by ECCN 0A501.a, .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502.

* * * * *

(5) *Exports of firearms and certain shotguns temporarily in the United States.* This paragraph (b)(5) authorizes the export of no more than 75 end item firearms per shipment controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that are temporarily in the United States for a period not exceeding one year, provided that:

(i) The firearms were not shipped from or manufactured in a U.S. arms embargoed country, *i.e.,* destination listed in Country Group D:5 in Supplement No. 1 to this part;

(ii) The firearms were not shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to this part; and

(iii) The firearms are not ultimately destined to a U.S. arms embargoed country, *i.e.,* destination listed in Country Group D:5 in Supplement No. 1 to this part, or to Russia;

(iv) When the firearms entered the U.S. as a temporary import, the temporary importer or its agent:

(A) Provided the following statement to U.S. Customs and Border Protection: ''This shipment will be exported in

accordance with and under the authority of License Exception TMP (15 CFR 740.9(b)(5))'';

(B) Provided to U.S. Customs and Border Protection an invoice or other appropriate import-related documentation (or electronic equivalents) that includes a complete list and description of the firearms being temporarily imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value; and

(C) Provided (if temporarily imported for a trade show, exhibition, demonstration, or testing) to U.S. Customs and Border Protection the relevant invitation or registration documentation for the event and an accompanying letter that details the arrangements to maintain effective control of the firearms while they are in the United States; and

(v) In addition to the export clearance requirements of part 758 of the EAR, the exporter or its agent must provide the import documentation related to paragraph (b)(5)(iv)(B) of this section to U.S. Customs and Border Protection at the time of export.

Note 1 to paragraph (b)(5): In addition to complying with all applicable EAR requirements for the export of commodities described in paragraph (b)(5) of this section, exporters and temporary importers should contact U.S. Customs and Border Protection (CBP) at the port of temporary import or export, or at the CBP website, for the proper procedures for temporarily importing or exporting firearms controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502, including regarding how to provide any data or documentation required by BIS.

* * * * *

■ 10. Section 740.10 is amended by:

■ a. Adding one sentence at the end of paragraph (b)(1); and

■ b. Adding paragraph (b)(4).

The additions read as follows:

§ 740.10 License Exception Servicing and replacement of parts and equipment (RPL).

* * * * *

(b) * * *

(1) * * * The export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 temporarily in the United States for servicing and replacement may be exported under paragraph (b)(2) or (3) of this section only if the additional requirements in paragraph (b)(4) of this section are also met.

* * * * *

(4) This paragraph (b)(4) authorizes the export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that are temporarily in the United States for servicing or replacement for a period not exceeding one year or the time it takes to service or replace the commodity, whichever is shorter, provided that the requirements of paragraph (b)(2) or (3) of this section are met and:

(i) The firearms were not shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to this part;

(ii) When the firearms entered the U.S. as a temporary import, the temporary importer or its agent:

(A) Provided the following statement to U.S. Customs and Border Protection: ''This shipment will be exported in accordance with and under the authority of License Exception RPL (15 CFR 740.10(b))'';

(B) Provided to U.S. Customs and Border Protection an invoice or other appropriate import-related documentation (or electronic equivalents) that includes a complete list and description of the firearms being temporarily imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value; and

(C) Provided (if temporarily imported for servicing or replacement) to U.S. Customs and Border Protection the name, address and contact information (telephone number and/or email) of the organization or individual in the U.S. that will be receiving the item for servicing or replacement; and

(iii) In addition to the export clearance requirements of part 758 of the EAR, the exporter or its agent must provide the import documentation related to paragraph (b)(4)(iii)(B) of this section to U.S. Customs and Border Protection at the time of export.

Note 1 to paragraph (b)(4): In addition to complying with all applicable EAR requirements for the export of commodities described in paragraph (b)(4) of this section, exporters and temporary importers should contact U.S. Customs and Border Protection (CBP) at the port of temporary import or export, or at the CBP website, for the proper procedures for temporarily importing or exporting firearms controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502, including regarding how to provide any data or documentation required by BIS.

* * * * *

■ 11. Section 740.11 is amended by:

■ a. Adding two sentences at the end of the introductory text;

■ b. Adding note 2 to paragraph (b)(2); and

■ c. Redesignating note 1 to paragraph (c)(1) as note 3 to paragraph (c)(1) and notes 1 and 2 to paragraph (e) as notes 4 and 5 to paragraph (e).

The additions read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * Commodities listed in ECCN 0A501 are eligible only for transactions described in paragraphs (b)(2)(i) and (ii) of this section. Any item listed in a 0x5zz ECCN for export, reexport, or transfer (in-country) to an E:1 country is eligible only for transactions described in paragraphs (b)(2)(i) and (ii) solely for U.S. Government official use of this section.

* * * * *

Note 2 to paragraph (b)(2): Items controlled for NS, MT, CB, NP, FC, or AT reasons may not be exported, reexported, or transferred (in-country) to, or for the use of military, police, intelligence entities, or other sensitive end users (*e.g.,* contractors or other governmental parties performing functions on behalf of military, police, or intelligence entities) of a government in a Country Group E:1 or E:2 country.

* * * * *

■ 12. Section 740.14 is amended by revising paragraph (b)(4) introductory text and paragraph (e) heading and adding paragraphs (e)(3) and (4) to read as follows:

§ 740.14 Baggage (BAG).

* * * * *

(b) * * *

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers and also technology for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household who are traveling or moving. For special provisions regarding firearms and ammunition, see paragraph (e) of this section. For special provisions regarding encryption commodities and software subject to EI controls, see paragraph (f) of this section. For a special provision that specifies restrictions regarding the export or reexport of technology under this paragraph (b)(4), see paragraph (g) of this section. For special provisions regarding personal protective equipment under ECCN 1A613.c or .d, see paragraph (h) of this section.

* * * * *

(e) *Special provisions for firearms and ammunition.* * * *

(3) A United States citizen or a permanent resident alien leaving the

United States may export under this License Exception firearms, ''parts,'' ''components,'' ''accessories,'' or ''attachments'' controlled under ECCN 0A501 and ammunition controlled under ECCN 0A505.a, subject to the following limitations:

(i) Not more than three firearms and 1,000 rounds of ammunition may be taken on any one trip.

(ii) ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' exported pursuant to this paragraph (e)(3) must be of a kind and limited to quantities that are reasonable for the activities described in paragraph (e)(3)(iv) of this section or that are necessary for routine maintenance of the firearms being exported.

(iii) The commodities must be with the person's baggage.

(iv) The commodities must be for the person's exclusive use and not for resale or other transfer of ownership or control. Accordingly, except as provided in paragraph (e)(4) of this section, firearms, ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ammunition, may not be exported permanently under this License Exception. All firearms, ''parts,'' ''components,'' ''accessories,'' or ''attachments'' controlled under ECCN 0A501 and all unused ammunition controlled under ECCN 0A505.a exported under this License Exception must be returned to the United States.

(v) Travelers leaving the United States temporarily are required to declare the firearms, ''parts,'' ''components,'' ''accessories,'' ''attachments,'' and ammunition being exported under this License Exception to a Customs and Border Protection (CBP) officer prior to departure from the United States and present such items to the CBP officer for inspection, confirming that the authority for the export is License Exception BAG and that the exporter is compliant with its terms.

(4) A nonimmigrant alien leaving the United States may export or reexport under this License Exception only such firearms controlled under ECCN 0A501 and ammunition controlled under ECCN 0A505 as he or she brought into the United States under the relevant provisions of Department of Justice regulations at 27 CFR part 478.

* * * * *

■ 13. Section 740.16 is amended by revising paragraphs (a)(2) and (b)(2)(iv) and (v) and adding paragraph (b)(2)(vi) to read as follows:

§ 740.16 Additional permissive reexports (APR).

* * * * *

(a) * * *

(2) The commodities being reexported are not controlled for NP, CB, MT, SI, or CC reasons or described in ECCNs 0A919, 3A001.b.2 or b.3 (except those that are being reexported for use in civil telecommunications applications), 6A002, 6A003; or commodities classified under a 0x5zz ECCN; and

* * * * *

(b) * * *

(2) * * *

(iv) Commodities described in ECCN 0A504 that incorporate an image intensifier tube;

(v) Commodities described in ECCN 6A002; or

(vi) Commodities classified under a 0x5zz ECCN.

* * * * *

■ 14. Section 740.20 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(ii) License Exception STA may not be used for:

(A) Any item controlled in ECCNs 0A501.a, .b, .c, .d, or .e; 0A981; 0A982; 0A983; 0A503; 0E504; 0E982; or

(B) Shotguns with barrel length less than 18 inches controlled in 0A502.

* * * * *

■ 15. Add Supplement No. 4 to part 740 to read as follows:

Supplement No. 4 to Part 740—Annex A Firearm Models

(a) *Pistols/revolvers.*
(1) German Model P08 Pistol = SMCR.
(2) IZH 34M, .22 Target pistol.
(3) IZH 35M, .22 caliber Target pistol.
(4) Mauser Model 1896 pistol = SMCR.
(5) MC–57–1 pistol.
(6) MC–1–5 pistol.
(7) Polish Vis Model 35 pistol = SMCR.
(8) Soviet Nagant revolver = SMCR.
(9) TOZ 35, .22 caliber Target pistol.
(10) MTs 440.
(11) MTs 57–1.
(12) MTs 59–1.
(13) MTs 1–5.
(14) TOZ–35M (starter pistol).
(15) Biathlon–7K.
(b) *Rifles.*
(1) BARS–4 Bolt Action carbine.
(2) Biathlon target rifle, .22.
(3) British Enfield rifle = SMCR.
(4) CM2, .22 target rifle (also known as SM2, .22).
(5) German model 98K = SMCR.
(6) German model G41 = SMCR.
(7) German model G43 = SMCR.
(8) IZH–94.
(9) LOS–7, bolt action.
(10) MC–7–07.
(11) MC–18–3.
(12) MC–19–07.
(13) MC–105–01.
(14) MC–112–02.
(15) MC–113–02.
(16) MC–115–1.
(17) MC–125/127.
(18) MC–126.
(19) MC–128.
(20) Saiga.
(21) Soviet Model 38 carbine = SMCR.
(22) Soviet Model 44 carbine = SMCR.
(23) Soviet Model 91/30 rifle = SMCR.
(24) TOZ 18, .22 bolt action.
(25) TOZ 55.
(26) TOZ 78.
(27) Ural Target, .22lr.
(28) VEPR rifle.
(29) Winchester Model 1895, Russian Model rifle = SMCR.
(30) Sever—double barrel.
(31) IZH18MH single barrel break action.
(32) MP–251 over/under rifle.
(33) MP–221 double barrel rifle.
(34) MP–141K.
(35) MP–161K.
(36) MTs 116–1.
(37) MTs 116M.
(38) MTs 112–02.
(39) MTs 115–1.
(40) MTs 113–02.
(41) MTs 105–01.
(42) MTs 105–05.
(43) MTs 7–17 combination gun.
(44) MTs 7–12–07 rifle/shotgun.
(45) MTs 7–07.
(46) MTs 109–12–07 rifle.
(47) MTs 109–07 rifle.
(48) MTs 106–07 combination.
(49) MTs 19–97.
(50) MTs 19–09.
(51) MTs 18–3M.
(52) MTs 125.
(53) MTs 126.
(54) MTs 127.
(55) Berkut–2.
(56) Berkut–2M1.
(57) Berkut–3.
(58) Berkut–2–1.
(59) Berkut–2M2.
(60) Berkut–3–1.
(61) Ots–25.
(62) MTs 20–07.
(63) LOS–7–1.
(64) LOS–7–2.
(65) LOS–9–1.
(66) Sobol (Sable).
(67) Rekord.
(68) Bars–4–1.
(69) Saiga.
(70) Saiga–M.
(71) Saiga 308.
(72) Saiga–308–1.
(73) Saiga 308–2.
(74) Saiga–9.
(75) Korshun.
(76) Ural–5–1.
(77) Ural 6–1.
(78) Ural–6–2.
(79) SM–2.
(80) Biatlon–7–3.
(81) Biatlon–7–4.
(82) Rekord–1.
(83) Rekord–2.
(84) Rekord–CISM.
(85) Rekord–1–308.
(86) Rekord–2–308.
(87) Rekord–1–308–CISM.

(88) VEPR.
(89) VEPR Super.
(90) VEPR Pioneer.
(91) VEPR Safari.
(92) TOZ 109.
(93) KO 44–1.
(94) TOZ 78–01.
(95) KO 44.
(96) TOZ 99.
(97) TOZ 99–01.
(98) TOZ 55–01 Zubr.
(99) TOZ 55–2 Zubr.
(100) TOZ 120 Zubr.
(101) MTs 111.
(102) MTs 109.
(103) TOZ 122.
(104) TOZ 125.
(105) TOZ 28.
(106) TOZ 300.

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 16. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 17. Section 742.6 is amended by revising the first and sixth sentences of paragraph (b)(1)(i) and adding a seventh sentence at the end of paragraph (b)(1)(i) to read as follows:

§ 742.6 Regional stability.

* * * * *

(b) * * *

(1) * * *

(i) Applications for exports and reexports of ECCN 0A501, 0A504, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 items; 9x515 items and ''600 series'' items and will be reviewed on a case-by-case basis to determine whether the transaction is contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of promoting the observance of human rights throughout the world. * * * When destined to the People's Republic of China or a country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR, items classified under ECCN 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 or any 9x515 ECCN will be subject to a policy of denial. In addition, applications for exports and reexports of ECCN 0A501, 0A505, 0B501, 0B505, 0D501, 0D505, 0E501, 0E504, and 0E505 items when there is reason to believe the transaction involves criminal organizations, rebel groups, street gangs, or other similar groups or individuals, that may be disruptive to regional stability, including within individual countries, will be subject to a policy of denial.

* * * * *

■ 18. Section 742.7 is amended by revising paragraphs (a)(1) through (4) and (c) to read as follows:

§ 742.7 Crime control and detection.

(a) * * *

(1) Crime control and detection instruments and equipment and related ''technology'' and ''software'' identified in the appropriate ECCNs on the CCL under CC Column 1 in the Country Chart column of the ''License Requirements'' section. A license is required to countries listed in CC Column 1 (Supplement No. 1 to part 738 of the EAR). Items affected by this requirement are identified on the CCL under the following ECCNs: 0A502, 0A504, 0A505.b, 0A978, 0A979 0E502, 0E505 (''technology'' for ''development'' or for ''production'' of buckshot shotgun shells controlled under ECCN 0A505.b), 1A984, 1A985, 3A980, 3A981, 3D980, 3E980, 4A003 (for fingerprint computers only), 4A980, 4D001 (for fingerprint computers only), 4D980, 4E001 (for fingerprint computers only), 4E980, 6A002 (for police-model infrared viewers only), 6E001 (for police-model infrared viewers only), 6E002 (for police-model infrared viewers only), and 9A980.

(2) Shotguns with a barrel length greater than or equal to 24 inches, identified in ECCN 0A502 on the CCL under CC Column 2 in the Country Chart column of the ''License Requirements'' section regardless of end user to countries listed in CC Column 2 (Supplement No. 1 to part 738 of the EAR).

(3) Shotguns with barrel length greater than or equal to 24 inches, identified in ECCN 0A502 on the CCL under CC Column 3 in the Country Chart column of the ''License Requirements'' section only if for sale or resale to police or law enforcement entities in countries listed in CC Column 3 (Supplement No. 1 to part 738 of the EAR).

(4) Certain crime control items require a license to all destinations, except Canada. These items are identified under ECCNs 0A982, 0A503, and 0E982. Controls for these items appear in each ECCN; a column specific to these controls does not appear in the Country Chart (Supplement No. 1 to part 738 of the EAR).

* * * * *

(c) *Contract sanctity.* Contract sanctity date: August 22, 2000. Contract sanctity applies only to items controlled under ECCNs 0A982, 0A503, and 0E982 destined for countries not listed in CC Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR).

* * * * *

■ 19. Section 742.17 is amended by revising the first sentence of paragraph (a) and paragraph (f) to read as follows:

§ 742.17 Exports of firearms to OAS member countries.

(a) *License requirements.* BIS maintains a licensing system for the export of firearms and related items to all OAS member countries. * * *

* * * * *

(f) *Items/Commodities.* Items requiring a license under this section are ECCNs 0A501 (except 0A501.y), 0A502, 0A504 (except 0A504.f), and 0A505 (except 0A505.d). (See Supplement No. 1 to part 774 of the EAR).

* * * * *

§ 742.19 [Amended]

■ 20. Section 742.19(a)(1) is amended by:

■ a. Removing ''0A986'' and adding in its place ''0A505.c''; and

■ b. Removing ''0B986'' and adding in its place ''0B505.c''.

PART 743—SPECIAL REPORTING AND NOTIFICATION

■ 21. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223.

■ 22. Section 743.4 is amended by:

■ a. In paragraph (a):

■ i. Removing ''(c)(1)'' and ''(c)(2)'' and adding in their places ''(c)(1) of this section'' and ''(c)(2) of this section,'' respectively; and

■ ii. Adding four sentences to the end of the paragraph;

■ b. Redesignating the note to paragraph (a) as note 1 to paragraph (a) and removing ''§ 743.4'' in newly redesignated note 1 and adding ''this section'' in its place;

■ c. Revising paragraph (b) introductory text;

■ d. Adding paragraphs (c)(1)(i) and (c)(2)(i);

■ e. Redesignating the note to paragraph (e)(1)(ii) as note 2 to paragraph (e)(1)(ii);

■ e. Revising paragraph (h); and
■ f. Adding paragraph (i).

The additions and revisions read as follows:

§ 743.4 Conventional arms reporting.

(a) * * * This section does not require reports when the exporter uses the alternative submission method described under paragraph (h) of this section. The alternative submission method under paragraph (h) requires the exporter to submit the information required for conventional arms reporting in this section as part of the required EEI submission in AES, pursuant to § 758.1(b)(9) of the EAR. Because of the requirements in § 758.1(g)(4)(ii) of the EAR for the firearms that require conventional arms reporting of all conventional arms, the Department of Commerce believes all conventional arms reporting requirements for firearms will be met by using the alternative submission method. The Department of Commerce leaves standard method for submitting reports in place in case any additional items are moved from the USML to the CCL, that may require conventional arms reporting.

* * * * *

(b) *Requirements.* You must submit one electronic copy of each report required under the provisions of this section, or submit this information using the alternative submission method specified in paragraph (h) of this section, and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section for the following:

* * * * *

(c) * * *

(1) * * *

(i) ECCN 0A501.a and .b.

* * * * *

(2) * * *

(i) ECCN 0A501.a and .b.

* * * * *

(h) *Alternative submission method.* This paragraph (h) describes an alternative submission method for meeting the conventional arms reporting requirements of this section. The alternative submission method requires the exporter, when filing the required EEI submission in AES, pursuant to § 758.1(b)(9) of the EAR, to include the six character ECCN classification (*i.e.,* 0A501.a or 0A501.b) as the first text to appear in the Commodity description block. If the exporter properly includes this information in the EEI filing in AES, the Department of Commerce will be able to obtain that export information directly from AES to meet the U.S. Government's commitments to the Wassenaar Arrangement and United Nations for conventional arms reporting. An exporter that complies with the requirements in § 758.1(g)(4)(ii) of the EAR does not have to submit separate annual and semi-annual reports to the Department of Commerce pursuant to this section.

(i) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of National Security and Technology Transfer Controls, Tel.: (202) 482–0092, Fax: (202) 482–4094. Information concerning the reporting requirements for items identified in paragraphs (c)(1) and (2) of this section is available from the Office of Nonproliferation and Treaty Compliance (NPTC), Tel.: (202) 482–4188, Fax: (202) 482–4145.

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 23. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2019, 83 FR 49633 (September 20, 2019); Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

§ 744.9 [Amended]

■ 24. Section 744.9 is amended by removing ''0A987'' from paragraphs (a)(1) introductory text and (b) and adding in its place ''0A504''.

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 25. The authority citation for 15 CFR part 746 continues to read as follows:

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

§ 746.3 [Amended]

■ 26. Section 746.3 is amended by removing ''0A986'' from paragraph (b)(2) and adding in its place ''0A505.c''.

§ 746.7 [Amended]

■ 27. Section 746.7(a)(1) is amended by:
■ a. Adding ''0A503,'' immediately before ''0A980''; and
■ b. Removing ''0A985,''.

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 28. The authority citation for 15 CFR part 748 is revised to read as follows:

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

■ 29. Section 748.12 is amended by:
■ a. Revising the section heading;
■ b. Adding introductory text;
■ c. Revising paragraphs (a) introductory text and (a)(1);
■ d. Redesignating the note to paragraph (c)(8) as note 1 to paragraph (c)(8); and
■ e. Adding paragraph (e).

The revisions and additions read as follows.

§ 748.12 Firearms import certificate or import permit.

License applications for certain firearms and related commodities require support documents in accordance with this section. For destinations that are members of the Organization of American States (OAS), an FC Import Certificate or equivalent official document is required in accordance with paragraphs (a) through (d) of this section. For other destinations that require a firearms import or permit, the firearms import certificate or permit is required in accordance with paragraph (e) of this section.

(a) *Requirement to obtain document for OAS member states.* Unless an exception in § 748.9(c) applies, an FC Import Certificate is required for license applications for firearms and related commodities, regardless of value, that are destined for member countries of the OAS. This requirement is consistent with the OAS Model Regulations described in § 742.17 of the EAR.

(1) *Items subject to requirement.* Firearms and related commodities are those commodities controlled for ''FC Column 1'' reasons under ECCNs 0A501 (except 0A501.y), 0A502, 0A504 (except 0A504.f), or 0A505 (except 0A505.d).

* * * * *

(e) *Requirement to obtain an import certificate or permit for other than OAS member states.* If the country to which

firearms, parts, components, accessories, and attachments controlled under ECCN 0A501, or ammunition controlled under ECCN 0A505, are being exported or reexported requires that a government-issued certificate or permit be obtained prior to importing the commodity, the exporter or reexporter must obtain and retain on file the original or a copy of that certificate or permit before applying for an export or reexport license unless:

(1) A license is not required for the export or reexport; or

(2) The exporter is required to obtain an import or end-user certificate or other equivalent official document pursuant to paragraphs (a) thorough (d) of this section and has, in fact, complied with that requirement.

(3)(i) The number or other identifying information of the import certificate or permit must be stated on the license application.

(ii) If the country to which the commodities are being exported does not require an import certificate or permit for firearms imports, that fact must be noted on any license application for ECCN 0A501 or 0A505 commodities.

Note 2 to paragraph (e). Obtaining a BIS Statement by Ultimate Consignee and Purchaser pursuant to § 748.11 does not exempt the exporter or reexporter from the requirement to obtain a certification pursuant to paragraph (a) of this section because that statement is not issued by a government.

■ 30. Supplement No. 2 to part 748 is amended by adding paragraph (z) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(z) *Exports of firearms and certain shotguns temporarily in the United States*—(1) *Certification.* If you are submitting a license application for the export of firearms controlled by ECCN 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that will be temporarily in the United States, *e.g.,* for servicing and repair or for intransit shipments, you must include the following certification in Block 24:

The firearms in this license application will not be shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to part 740. I and the parties to this transaction will comply with the requirements specified in paragraphs (z)(2)(i) and (ii) of Supplement No. 2 to part 748.

(2) *Requirements.* Each approved license for commodities described under this paragraph (z) must comply with the requirements specified in paragraphs (z)(2)(i) and (ii) of this supplement.

(i) When the firearms enter the U.S. as a temporary import, the temporary importer or its agent must:

(A) Provide the following statement to U.S. Customs and Border Protection: ''This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of BIS license number (provide the license number) (15 CFR 750.7(a) and 758.4);''

(B) Provide to U.S. Customs and Border Protection an invoice or other appropriate import-related documentation (or electronic equivalents) that includes a complete list and description of the firearms being temporarily imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value; and

(C) Provide (if temporarily imported for servicing or replacement) to U.S. Customs and Border Protection the name, address, and contact information (telephone number and/or email) of the organization or individual in the U.S. that will be receiving the item for servicing or replacement); and

(ii) In addition to the export clearance requirements of part 758 of the EAR, the exporter or its agent must provide the import documentation related to paragraph (z)(2)(i)(B) of this supplement to U.S. Customs and Border Protection at the time of export.

Note 1 to paragraph (z): In addition to complying with all applicable EAR requirements for the export of commodities described in paragraph (z) of this supplement, exporters and temporary importers should contact U.S. Customs and Border Protection (CBP) at the port of temporary import or export, or at the CBP website, for the proper procedures for temporarily importing or exporting firearms controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502, including regarding how to provide any data or documentation required by BIS.

PART 758—EXPORT CLEARANCE REQUIREMENTS

■ 31. The authority citation for part 758 is revised to read as follows:

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

■ 32. Section 758.1 is amended by:
■ a. Revising paragraphs (b)(7) and (8);
■ b. Adding paragraph (b)(9);
■ c. Revising paragraph (c)(1);
■ d. Adding paragraph (g)(4); and
■ e. Redesignating note to paragraph (h)(1) as note 3 to paragraph (h)(1).

The revisions and additions read as follows:

§ 758.1 The Electronic Export Enforcement (EEI) filing to the Automated Export System (AES).

* * * * *

(b) * * *

(7) For all items exported under authorization Validated End-User (VEU);

(8) For all exports of tangible items subject to the EAR where parties to the transaction, as described in § 748.5(d) through (f) of the EAR, are listed on the Unverified List (Supplement No. 6 to part 744 of the EAR), regardless of value or destination; or

(9) For all exports, except for exports authorized under License Exception BAG, as set forth in § 740.14 of the EAR, of items controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada.

(c) * * *

(1) License Exception Baggage (BAG), as set forth in § 740.14 of the EAR. See 15 CFR 30.37(x) of the FTR;

Note 1 to paragraph (c)(1): See the export clearance requirements for exports of firearms controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or ammunition controlled under ECCN 0A505, authorized under License Exception BAG, as set forth in § 740.14 of the EAR.

* * * * *

(g) * * *

(4) *Exports of firearms and related items.* This paragraph (g)(4) includes two separate requirements under paragraphs (g)(4)(i) and (ii) of this section that are used to better identify exports of certain end item firearms under the EAR. Paragraph (g)(4)(i) of this section is limited to certain EAR authorizations. Paragraph (g)(4)(ii) of this section applies to all EAR authorizations that require EEI filing in AES.

(i) *Identifying end item firearms by manufacturer, model, caliber, and serial number in the EEI filing in AES.* For any export authorized under License Exception TMP or a BIS license authorizing a temporary export of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing, you must report the manufacturer, model, caliber, and serial number of the exported items. The requirements of this paragraph (g)(4)(i) also apply to any other export authorized under a BIS license that includes a condition or proviso on the license requiring the submission of this information specified in paragraph (g) of this section when the EEI is filed in AES.

(ii) *Identifying end item firearms by ''items'' level classification or other control descriptor in the EEI filing in AES.* For any export of items controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, in addition to any other required data for the associated EEI filing, you must include the six character ECCN classification (*i.e.,* 0A501.a, or 0A501.b), or for shotguns controlled under 0A502 the phrase ''0A501 barrel length less than 18 inches'' as the first text to appear in the Commodity description block in the EEI filing in AES. (*See* § 743.4(h) of the EAR for the use of this information for conventional arms reporting).

Note 2 to paragraph (g)(4): If a commodity described in paragraph (g)(4) of this section is exported under License Exception TMP under § 740.9(a)(6) of the EAR for inspection, test, calibration, or repair is not consumed or destroyed in the normal course of authorized temporary use abroad, the commodity must be disposed of or retained in one of the ways specified in § 740.9(a)(14)(i), (ii), or (iii) of the EAR. For example, if a commodity described in paragraph (g)(4) was destroyed while being repaired after being exported under § 740.9(a)(6), the commodity described in paragraph (g)(4) would not be required to be returned. If the entity doing the repair returned a replacement of the commodity to the exporter from the United States, the import would not require an EAR authorization. The entity that exported the commodity described in paragraph (g)(4) and the entity that received the commodity would need to document this as part of their recordkeeping related to this export and subsequent import to the United States.

* * * * *

■ 33. Add § 758.10 to read as follows:

§ 758.10 Entry clearance requirements for temporary imports.

(a) *Scope.* This section specifies the temporary import entry clearance requirements for firearms ''subject to the EAR'' that are on the United States Munitions Import List (USMIL, 27 CFR 447.21), except for firearms ''subject to the EAR'' that are temporarily brought into the United States by nonimmigrant aliens under the provisions of Department of Justice regulations at 27 CFR part 478 (*See* § 740.14(e) of the EAR for information on the export of these firearms ''subject to the EAR''). These firearms are controlled in ECCN 0A501.a or .b or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502. Items that are temporarily exported under the EAR must have met the export clearance requirements specified in § 758.1.

(1) An authorization under the EAR is *not* required for the temporary import of ''items'' that are ''subject to the EAR,'' including for ''items'' ''subject to the EAR'' that are on the USMIL. Temporary imports of firearms described in this section must meet the entry clearance requirements specified in paragraph (b) of this section.

(2) Permanent imports are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR parts 447, 478, 479, and 555).

(b) *EAR procedures for temporary imports and subsequent exports.* To the satisfaction of U.S. Customs and Border Protection, the temporary importer must comply with the following procedures:

(1) At the time of entry into the U.S. of the temporary import:

(i) Provide one of the following statements specified in paragraph (b)(1)(i)(A), (B), or (C) of this section to U.S. Customs and Border Protection:

(A) ''This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception TMP (15 CFR 740.9(b)(5));''

(B) ''This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of License Exception RPL (15 CFR 740.10(b));'' or

(C) ''This shipment is being temporarily imported in accordance with the EAR. This shipment will be exported in accordance with and under the authority of BIS license number (provide the license number) (15 CFR 750.7(a) and 758.4);''

(ii) Provide to U.S. Customs and Border Protection an invoice or other appropriate import-related documentation (or electronic equivalents) that includes a complete list and description of the firearms being temporarily imported, including their model, make, caliber, serial numbers, quantity, and U.S. dollar value;

(iii) Provide (if temporarily imported for a trade show, exhibition, demonstration, or testing) to U.S. Customs and Border Protection the relevant invitation or registration documentation for the event and an accompanying letter that details the arrangements to maintain effective control of the firearms while they are in the United States; or

(iv) Provide (if temporarily imported for servicing or replacement) to U.S. Customs and Border Protection the name, address and contact information (telephone number and/or email) of the organization or individual in the U.S. that will be receiving the item for servicing or replacement).

Note 1 to paragraph (b)(1): In accordance with the exclusions in License Exception TMP under § 740.9(b)(5) of the EAR, the entry clearance requirements in § 758.1(b)(9) do not permit the temporary import of: Firearms controlled in ECCN 0A501.a or .b that are shipped from or manufactured in a Country Group D:5 country; or that are shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan (except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to part 740 of the EAR); or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that are shipped from or manufactured in a Country Group D:5 country, or from Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, because of the exclusions in License Exception TMP under § 740.9(b)(5).

Note 2 to paragraph (b)(1): In accordance with the exclusions in License Exception RPL under § 740.10(b)(4) and Supplement No. 2 to part 748, paragraph (z), of the EAR, the entry clearance requirements in § 758.1(b)(9) do not permit the temporary import of: Firearms controlled in ECCN 0A501.a or .b that are shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan (except for any firearm model controlled by 0A501 that is specified under Annex A in Supplement No. 4 to part 740 of the EAR); or shotguns with a barrel length less than 18 inches controlled in ECCN 0A502 that are shipped from or manufactured in Russia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Turkmenistan, Ukraine, or Uzbekistan, because of the exclusions in License Exception RPL under § 740.10(b)(4) and Supplement No. 2 to part 748, paragraph (z), of the EAR.

(2) At the time of export, in accordance with the U.S. Customs and Border Protection procedures, the eligible exporter, or an agent acting on the filer's behalf, must as required under § 758.1(b)(9) file the export information with CBP by filing EEI in AES, noting the applicable EAR authorization as the authority for the export, and provide, upon request by CBP, the entry document number or a copy of the CBP document under which the ''item'' subject to the EAR'' on the USMIL was temporarily imported. *See* also the additional requirements in § 758.1(g)(4).

■ 34. Add § 758.11 to read as follows:

§ 758.11 Export clearance requirements for firearms and related items.

(a) *Scope.* The export clearance requirements of this section apply to all exports of commodities controlled under ECCNs 0A501.a or .b, shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, or

ammunition controlled under ECCN 0A505 except for .c, regardless of value or destination, including exports to Canada, that are authorized under License Exception BAG, as set forth in § 740.14 of the EAR.

(b) *Required form.* Prior to making any export described in paragraph (a) of this section, the exporter is required to submit a properly completed Department of Homeland Security, CBP Form 4457, (Certificate of Registration for Personal Effects Taken Abroad) (OMB Control Number 1651–0010), to the U.S. Customs and Border Protection (CBP), pursuant to 19 CFR 148.1, and as required by this section.

(1) *Where to obtain the form*? The CBP Certification of Registration Form 4457 can be found on the following CBP website: *https://www.cbp.gov/document/forms/form-4457-certificate-registration-personal-effects-taken-abroad.*

(2) *Required ''description of articles'' for firearms to be included on the CBP Form 4457.* For all exports of firearms controlled under ECCNs 0A501.a or .b, or shotguns with a barrel length less than 18 inches controlled under ECCN 0A502, the exporter must provide to CBP the serial number, make, model, and caliber for each firearm being exported by entering this information under the ''Description of Articles'' field of the CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad.

(c) *Where to find additional information on the CBP Form 4457*? See the following CBP website page for additional information: *https://help.cbp.gov/app/answers/detail/a_id/323/~/traveling-outside-of-the-u.s.-temporarily-taking-a-firearm%2C-rifle%2C-gun%2C.*

(d) *Return of items exported pursuant to this section.* The exporter when returning with a commodity authorized under License Exception BAG and exported pursuant this section, is required to present a copy of the CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad) (OMB Control Number 1651–0010), to CBP, pursuant to 19 CFR 148.1, and as required by this section.

PART 762—RECORDKEEPING

■ 35. The authority citation for part 762 is revised to read as follows:

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

■ 36. Section 762.2 is amended by removing ''and,'' at the end of paragraph (a)(10), redesignating paragraph (a)(11) as paragraph (a)(12), and adding a new paragraph (a)(11) to read as follows:

§ 762.2 Records to be retained.

(a) * * *

(11) The serial number, make, model, and caliber for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502 that have been exported. The ''exporter'' or any other party to the transaction (*see* § 758.3 of the EAR), that creates or receives such records is a person responsible for retaining this record; and

* * * * *

■ 37. Section 762.3 is amended by revising paragraph (a)(5) to read as follows:

§ 762.3 Records exempt from recordkeeping requirements.

(a) * * *

(5) Warranty certificate, except for a warranty certificate issued for an address located outside the United States for any firearm controlled in ECCN 0A501.a and for shotguns with barrel length less than 18 inches controlled in 0A502;

* * * * *

PART 772—DEFINITIONS OF TERMS

■ 38. The authority citation for part 772 is revised to read as follows:

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

■ 39. In § 772.1:

■ a. The definition of ''Complete breech mechanisms'' is added in alphabetical order; and

■ b. In the definition of ''Specially designed,'' note 1 is amended by removing ''0B986'' and adding in its place ''0B505.c''.

The addition reads as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Complete breech mechanisms. The mechanism for opening and closing the breech of a breech-loading firearm, especially of a heavy-caliber weapon.

* * * * *

PART 774—THE COMMERCE CONTROL LIST

■ 40. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 41. In Supplement No. 1 to part 774, Category 0, revise Export Control Classification Number (ECCN) 0A018 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A018 Items on the Wassenaar Munitions List (see List of Items Controlled)

No items currently are in this ECCN. See ECCN 0A505 for ''parts'' and ''components'' for ammunition that, immediately prior to March 9, 2020, were classified under 0A018.b.

■ 42. In Supplement No. 1 to part 774, Category 0, add, between entries for ECCNs 0A018 and 0A521, entries for ECCNs 0A501, 0A502, 0A503, 0A504, and 0A505 to read as follows:

0A501 Firearms (except 0A502 shotguns) and related commodities as follows (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, FC, UN, AT

Control(s)	*Country chart (see supp. No. 1 to part 738)*
NS applies to entire entry except 0A501.y.	NS Column 1
RS applies to entire entry except 0A501.y.	RS Column 1
FC applies to entire entry except 0A501.y.	FC Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls.
AT applies to entire entry.	AT Column 1

License Requirement Note: In addition to using the Commerce Country Chart to determine license requirements, a license is required for exports and reexports of ECCN 0A501.y.7 firearms to the People's Republic of China.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for 0A501.c, .d, and .x.
$500 for 0A501.c, .d, .e, and .x if the ultimate destination is Canada.
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in this entry.

List of Items Controlled

Related Controls: (1) Firearms that are fully automatic, and magazines with a capacity of greater than 50 rounds, are ''subject to the ITAR.'' (2) See ECCN 0A502 for

shotguns and their ''parts'' and ''components'' that are subject to the EAR. Also see ECCN 0A502 for shot-pistols. (3) See ECCN 0A504 and USML Category XII for controls on optical sighting devices.

Related Definitions: N/A.

Items:

a. Non-automatic and semi-automatic firearms equal to .50 caliber (12.7 mm) or less.

Note 1 to paragraph 0A501.a: '*Combination pistols*' are controlled under ECCN 0A501.a. A *'combination pistol' (a.k.a., a combination gun)* has at least one rifled barrel and at least one smoothbore barrel (generally a shotgun style barrel).

b. Non-automatic and non-semi-automatic rifles, carbines, revolvers or pistols with a caliber greater than .50 inches (12.7 mm) but less than or equal to .72 inches (18.0 mm).

c. The following types of ''parts'' and ''components'' if ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry, or USML Category I (unless listed in USML Category I(g) or (h)): Barrels, cylinders, barrel extensions, mounting blocks (trunnions), bolts, bolt carriers, operating rods, gas pistons, trigger housings, triggers, hammers, sears, disconnectors, pistol grips that contain fire control ''parts'' or ''components'' (*e.g.,* triggers, hammers, sears, disconnectors) and buttstocks that contain fire control ''parts'' or ''components.''

d. Detachable magazines with a capacity of greater than 16 rounds ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry.

Note 2 to paragraph 0A501.d: Magazines with a capacity of 16 rounds or less are controlled under 0A501.x.

e. Receivers (frames) and ''complete breech mechanisms,'' including castings, forgings stampings, or machined items thereof, ''specially designed'' for a commodity controlled by paragraph .a or .b of this entry.

f. through w. [Reserved]

x. ''Parts'' and ''components'' that are ''specially designed'' for a commodity classified under paragraphs .a through .c of this entry or the USML and not elsewhere specified on the USML or CCL.

y. Specific ''parts,'' ''components,'' ''accessories'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or common to a defense article in USML Category I and not elsewhere specified in the USML or CCL as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor.

y.1. Stocks or grips, that do not contain any fire control ''parts'' or ''components'' (*e.g.,* triggers, hammers, sears, disconnectors);''

y.2. Scope mounts or accessory rails;

y.3. Iron sights;

y.4. Sling swivels;

y.5. Butt plates or recoil pads;

y.6. Bayonets; and

y.7. Firearms manufactured from 1890 to 1898 and reproductions thereof.

Technical Note 1 to 0A501: The controls on ''parts'' and ''components'' in ECCN 0A501 include those ''parts'' and ''components'' that are common to firearms described in ECCN 0A501 and to those firearms ''subject to the ITAR.''

Note 3 to 0A501: Antique firearms (*i.e.,* those manufactured before 1890) and reproductions thereof, muzzle loading black powder firearms except those designs based on centerfire weapons of a post 1937 design, BB guns, pellet rifles, paint ball, and all other air rifles are EAR99 commodities.

Note 4 to 0A501: Muzzle loading (black powder) firearms with a caliber less than 20 mm that were manufactured later than 1937 that are used for hunting or sporting purposes that were not ''specially designed'' for military use and are not ''subject to the ITAR'' nor controlled as shotguns under ECCN 0A502 are EAR99 commodities.

0A502 Shotguns; shotguns ''parts'' and ''components,'' consisting of complete trigger mechanisms; magazines and magazine extension tubes; ''complete breech mechanisms;'' except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use.

License Requirements

Reason for Control: RS, CC, FC, UN, AT, NS

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to shotguns with a barrel length less than 18 inches (45.72 cm).	NS Column 1
RS applies to shotguns with a barrel length less than 18 inches (45.72 cm).	RS Column 1
FC applies to entire entry.	FC Column 1
CC applies to shotguns with a barrel length less than 24 in. (60.96 cm) and shotgun ''components'' controlled by this entry regardless of end user.	CC Column 1
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end user.	CC Column 2
CC applies to shotguns with a barrel length greater than or equal to 24 in.. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3
UN applies to entire entry.	See § 746.1(b) of the EAR for UN controls
AT applies to shotguns with a barrel length less than 18 inches (45.72 cm).	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for 0A502 shotgun ''parts'' and ''components,'' consisting of complete trigger mechanisms; magazines and magazine extension tubes.

$500 for 0A502 shotgun ''parts'' and ''components,'' consisting of complete trigger mechanisms; magazines and magazine extension tubes, ''complete breech mechanisms'' if the ultimate destination is Canada.

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: Shotguns that are fully automatic are ''subject to the ITAR.''

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Note 1 to 0A502: Shotguns made in or before 1898 are considered antique shotguns and designated as EAR99.

Technical Note: Shot pistols or shotguns that have had the shoulder stock removed and a pistol grip attached are controlled by ECCN 0A502. Slug guns are also controlled under ECCN 0A502.

0A503 Discharge type arms; non-lethal or less-lethal grenades and projectiles, and ''specially designed'' ''parts'' and ''components'' of those projectiles; and devices to administer electric shock, for example, stun guns, shock batons, shock shields, electric cattle prods, immobilization guns and projectiles; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and ''specially designed'' ''parts'' and ''components,'' n.e.s.

License Requirements

Reason for Control: CC, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
CC applies to entire entry.	A license is required for ALL destinations, except Canada, regardless of end use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information)
UN applies to entire entry.	See § 746.1(b) of the EAR for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: Law enforcement restraint devices that administer an electric shock are controlled under ECCN 0A982. Electronic devices that monitor and report a person's location to enforce restrictions on movement for law enforcement or penal reasons are controlled under ECCN 3A981.

Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0A504 Optical sighting devices for firearms (including shotguns controlled by 0A502); and ''components'' as follows (see List of Items Controlled).

License Requirements

Reason for Control: FC, RS, CC, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to paragraph .i.	RS Column 1
FC applies to paragraphs .a, .b, .c, .d, .e, .g, and .i of this entry.	FC Column 1
CC applies to entire entry.	CC Column 1
UN applies to entire entry.	See § 746.1(b) of the EAR for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for 0A504.g.
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See USML Category XII(c) for sighting devices using second generation image intensifier tubes having luminous sensitivity greater than 350 μA/lm, or third generation or higher image intensifier tubes, that are ''subject to the ITAR.'' (2) See USML Category XII(b) for laser aiming or laser illumination systems ''subject to the ITAR.'' (3) Section 744.9 of the EAR imposes a license requirement on certain commodities described in 0A504 if being exported, reexported, or transferred (in-country) for use by a military end-user or for incorporation into an item controlled by ECCN 0A919.
Related Definitions: N/A
Items:
a. Telescopic sights.
b. Holographic sights.
c. Reflex or ''red dot'' sights.
d. Reticle sights.
e. Other sighting devices that contain optical elements.
f. Laser aiming devices or laser illuminators ''specially designed'' for use on firearms, and having an operational wavelength exceeding 400 nm but not exceeding 710 nm.

Note 1 to 0A504.f: 0A504.f does not control laser boresighting devices that must be placed in the bore or chamber to provide a reference for aligning the firearms sights.

g. Lenses, other optical elements and adjustment mechanisms for articles in paragraphs .a, .b, .c, .d, .e, or .i.
h. [Reserved]
i. Riflescopes that were not ''subject to the EAR'' as of March 8, 2020 and are ''specially designed'' for use in firearms that are ''subject to the ITAR.''

Note 2 to paragraph i: For purpose of the application of ''specially designed'' for the riflescopes controlled under 0A504.i, paragraph (a)(1) of the definition of ''specially designed'' in § 772.1 of the EAR is what is used to determine whether the riflescope is ''specially designed.''

0A505 Ammunition as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, CC, FC, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to 0A505.a and .x.	NS Column 1
RS applies to 0A505.a and .x.	RS Column 1
CC applies to 0A505.b.	CC Column 1
FC applies to entire entry except 0A505.d.	FC Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to 0A505.a, .d, and .x.	AT Column 1
AT applies to 0A505.c	A license is required for items controlled by paragraph .c of this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500 for items in 0A505.x, except $3,000 for items in 0A505.x that, immediately prior to March 9, 2020, were classified under 0A018.b. (*i.e.,* ''Specially designed'' components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are ''subject to the ITAR''). (See 22 CFR parts 120 through 130))
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A505.

List of Items Controlled

Related Controls: (1) Ammunition for modern heavy weapons such as howitzers, artillery, cannon, mortars and recoilless rifles as well as inherently military ammunition types such as ammunition preassembled into links or belts, caseless ammunition, tracer ammunition, ammunition with a depleted uranium projectile or a projectile with a hardened tip or core and ammunition with an explosive projectile are ''subject to the ITAR.'' (2) Percussion caps, and lead balls and bullets, for use with muzzle-loading firearms are EAR99 items.
Related Definitions: N/A
Items:
a. Ammunition for firearms controlled by ECCN 0A501 or USML Category I and not enumerated in paragraph .b, .c, or .d of this entry or in USML Category III.
b. Buckshot (No. 4 .24'' diameter and larger) shotgun shells.
c. Shotgun shells (including less than lethal rounds) that do not contain buckshot; and ''specially designed'' ''parts'' and ''components'' of shotgun shells.

Note 1 to 0A505.c: Shotgun shells that contain only chemical irritants are controlled under ECCN 1A984.

d. Blank ammunition for firearms controlled by ECCN 0A501 and not enumerated in USML Category III.
e. through w. [Reserved]
x. ''Parts'' and ''components'' that are ''specially designed'' for a commodity subject to control in this ECCN or a defense article in USML Category III and not elsewhere specified on the USML, the CCL or paragraph .d of this entry.

Note 2 to 0A505.x: The controls on ''parts'' and ''components'' in this entry include Berdan and boxer primers, metallic cartridge cases, and standard metallic projectiles such as full metal jacket, lead core, and copper projectiles.

Note 3 to 0A505.x: The controls on ''parts'' and ''components'' in this entry include those ''parts'' and ''components'' that are common to ammunition and ordnance described in this entry and to those enumerated in USML Category III.

Note 4 to 0A505: Lead shot smaller than No. 4 Buckshot, empty and unprimed shotgun shells, shotgun wads, smokeless gunpowder, 'Dummy rounds' and blank rounds (unless linked or belted), not incorporating a lethal or non-lethal projectile(s) are designated EAR99. A 'dummy round or drill round' is a round that is completely inert, *i.e.,* contains no primer, propellant, or explosive charge. It is typically used to check weapon function and for crew training.

■ 43. In Supplement No. 1 to part 774, Category 0, add, between entries for ECCNs 0A521 and 0A604, an entry for ECCN 0A602 to read as follows:

0A602 Guns and Armament as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1

Control(s)	Country chart (see Supp. No. 1 to part 738)
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A602.

List of Items Controlled

Related Controls: (1) Modern heavy weapons such as howitzers, artillery, cannon, mortars, and recoilless rifles are ''subject to the ITAR.'' (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' items. (3) See ECCN 0A606 for engines that are ''specially designed'' for a self-propelled gun or howitzer subject to control under paragraph .a of this ECCN or USML Category VII.
Related Definitions: N/A
Items:
a. Guns and armament manufactured between 1890 and 1919.
b. Military flame throwers with an effective range less than 20 meters.
c. through w. [Reserved]
x. ''Parts'' and ''components'' that are ''specially designed'' for a commodity subject to control in paragraphs .a or .b of this ECCN or a defense article in USML Category II and not elsewhere specified on the USML or the CCL.

Note 1 to 0A602.x: Engines that are ''specially designed'' for a self-propelled gun or howitzer subject to control under paragraph .a of this ECCN or a defense article in USML Category VII are controlled under ECCN 0A606.x.

Note 2 to 0A602: ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in USML subcategory II(j) are subject to the controls of that paragraph.

Note 3 to 0A602: Black powder guns and armament manufactured in or prior to 1890 and replicas thereof designed for use with black powder propellants are designated EAR99.

Supplement No. 1 to Part 774—[Amended]

■ 44. In Supplement No. 1 to part 774, Category 0, remove ECCNs 0A918, 0A984, 0A985, 0A986, and 0A987.

■ 45. In Supplement No. 1 to part 774, Category 0, revise ECCN 0A988 to read as follows:

0A988 Conventional military steel helmets.

No items currently are in this ECCN. See ECCN 1A613.y.1 for conventional steel helmets that, immediately prior to July 1, 2014, were classified under 0A988.

■ 46. In Supplement No. 1 to part 774, Category 0, add, before the entry for ECCN 0B521, entries for ECCNs 0B501 and 0B505 to read as follows:

0B501 Test, inspection, and production ''equipment'' and related commodities for the ''development'' or ''production'' of commodities enumerated or otherwise described in ECCN 0A501 or USML Category I as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except equipment for ECCN 0A501.y.	NS Column 1
RS applies to entire entry except equipment for ECCN 0A501.y.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3000
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used to ship any item in this entry.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:
a. Small arms chambering machines.
b. Small arms deep hole drilling machines and drills therefor.
c. Small arms rifling machines.
d. Small arms spill boring machines.
e. Production equipment (including dies, fixtures, and other tooling) ''specially designed'' for the ''production'' of the items controlled in 0A501.a through .x. or USML Category I.

0B505 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated or otherwise described in ECCN 0A505 or USML Category III, except equipment for the hand loading of cartridges and shotgun shells, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to paragraphs .a and .x.	NS Column 1
RS applies to paragraphs .a and .x.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to paragraphs .a, .d, and .x.	AT Column 1
AT applies to paragraph .c.	A license is required for export or reexport of these items to North Korea for anti-terrorism reasons

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3000
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0B505.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:
a. Production equipment (including tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test equipment), not enumerated in USML Category III that are ''specially designed'' for the ''production'' of commodities controlled by ECCN 0A505.a or .x or USML Category III.
b. Equipment ''specially designed'' for the ''production'' of commodities in ECCN 0A505.b.
c. Equipment ''specially designed'' for the ''production'' of commodities in ECCN 0A505.c.
d. Equipment ''specially designed'' for the ''production'' of commodities in ECCN 0A505.d.
e. through .w [Reserved]
x. ''Parts'' and ''components'' ''specially designed'' for a commodity subject to control in paragraph .a of this entry.

■ 47. In Supplement No. 1 to part 774, Category 0, add, between entries for ECCNs 0B521 and 0B604, an entry for ECCN 0B602 to read as follows:

0B602 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development'' or ''production'' of commodities enumerated or otherwise described in ECCN 0A602 or USML Category II as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $3000
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0B602.

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

a. The following commodities if ''specially designed'' for the ''development'' or ''production'' of commodities enumerated in ECCN 0A602.a or USML Category II:

a.1. Gun barrel rifling and broaching machines and tools therefor;

a.2. Gun barrel rifling machines;

a.3. Gun barrel trepanning machines;

a.4. Gun boring and turning machines;

a.5. Gun honing machines of 6 feet (183 cm) stroke or more;

a.6. Gun jump screw lathes;

a.7. Gun rifling machines; and

a.8. Barrel straightening presses.

b. Jigs and fixtures and other metal-working implements or accessories of the kinds exclusively designed for use in the manufacture of items in ECCN 0A602 or USML Category II.

c. Other tooling and equipment, ''specially designed'' for the ''production'' of items in ECCN 0A602 or USML Category II.

d. Test and evaluation equipment and test models, including diagnostic instrumentation and physical test models, ''specially designed'' for items in ECCN 0A602 or USML Category II.

Supplement No. 1 to Part 774—[Amended]

■ 48. In Supplement No. 1 to part 774, Category 0, remove ECCN 0B986.

■ 49. In Supplement No. 1 to part 774, Category 0, add, between the entries for ECCNs 0D001 and 0D521, entries for ECCNs 0D501 and 0D505 to read as follows:

0D501 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 0A501 or 0B501.

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry except ''software'' for commodities in ECCN 0A501.y or equipment in ECCN 0B501 for commodities in ECCN 0A501.y.	NS Column 1
RS applies to entire entry except ''software'' for commodities in ECCN 0A501.y or equipment in ECCN 0B501 for commodities in ECCN 0A501.y.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''software'' in 0D501.

List of Items Controlled

Related Controls: ''Software'' required for and directly related to articles enumerated in USML Category I is ''subject to the ITAR''.
Related Definitions: N/A
Items: The list of items controlled is contained in this ECCN heading.

0D505 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by 0A505 or 0B505.

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to ''software'' for commodities in ECCN 0A505.a and .x and equipment in ECCN 0B505.a .and .x.	NS Column 1
RS applies to ''software'' for commodities in ECCN 0A505.a and .x and equipment in ECCN 0B505.a and .x.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to ''software'' for commodities in ECCN 0A505.a, .d, or .x and equipment in ECCN 0B505.a, .d, or .x.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''software'' in 0D505.

List of Items Controlled

Related Controls: ''Software'' required for and directly related to articles enumerated in USML Category III is ''subject to the ITAR''.
Related Definitions: N/A
Items: The list of items controlled is contained in this ECCN heading.

■ 50. In Supplement No. 1 to part 774, Category 0, add, between the entries for ECCNs 0D521 and 0D604, an entry for ECCN 0D602 to read as follows:

0D602 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by 0A602 or 0B602 as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	Country chart (see Supp. No. 1 to part 738)
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0D602.

List of Items Controlled

Related Controls: (1) ''Software'' required for and directly related to articles enumerated in USML Category II is ''subject to the ITAR''. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S.-origin ''600 series'' items.

Related Definitions: N/A
Items: ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 0A602 and ECCN 0B602.

Supplement No. 1 to Part 774—[Amended]

■ 51. In Supplement No. 1 to part 774, Category 0, remove ECCN 0E018.

■ 52. In Supplement No. 1 to part 774, Category 0, add, between the entries for ECCNs 0E001 and 0E521, entries for ECCNs 0E501, 0E502, 0E504, and 0E505 to read as follows:

0E501 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by 0A501 or 0B501 as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''technology'' in ECCN 0E501.

List of Items Controlled

Related Controls: Technical data required for and directly related to articles enumerated in USML Category I are ''subject to the ITAR.''
Related Definitions: N/A
Items:
a. ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by ECCN 0A501 (other than 0A501.y) or 0B501.
b. ''Technology'' ''required'' for the operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 0A501 (other than 0A501.y) or 0B501.

0E502 ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by 0A502.

License Requirements

Reason for Control: CC, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
CC applies to entire entry.	CC Column 1
UN applies to entire entry.	See § 746.1(b) of the EAR for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

List of Items Controlled

Related Controls: Technical data required for and directly related to articles enumerated in USML Category I are ''subject to the ITAR''.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0E504 ''Technology'' ''required'' for the ''development'' or ''production'' of commodities controlled by 0A504 that incorporate a focal plane array or image intensifier tube.

License Requirements

Reason for Control: RS, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
RS applies to entire entry.	RS Column 1
UN applies to entire entry.	See § 746.1(b) of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

0E505 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A505.

License Requirements

Reason for Control: NS, RS, UN, CC, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505; and for ''software'' for that equipment and those commodities in 0D505.	NS Column 1
RS applies to entire entry except ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a and .x; for equipment for those commodities in 0B505 and for ''software'' for those commodities and that equipment in 0D505.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
CC applies to ''technology'' for the ''development'' or ''production'' of commodities in 0A505.b.	CC Column 1
AT applies to ''technology'' for ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing commodities in 0A505.a, .d, and .x.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''technology'' in 0E505.

List of Items Controlled

Related Controls: Technical data required for and directly related to articles enumerated in USML Category III are ''subject to the ITAR''.
Related Definitions: N/A
Items: The list of items controlled is contained in this ECCN heading.

■ 53. In Supplement No. 1 to part 774, Category 0, add, between the entries for

ECCNs 0E521 and 0E604, an entry for ECCN 0E602:

0E602 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities controlled by 0A602 or 0B602, or ''software'' controlled by 0D602 as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, UN, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
UN applies to entire entry.	See § 746.1 of the EAR for UN controls
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0E602.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated in USML Category II are ''subject to the ITAR.''
Related Definitions: N/A
Items: ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 0A602 or 0B602, or ''software'' controlled by ECCN 0D602.

Supplement No. 1 to Part 774—[Amended]

■ 54. In Supplement No. 1 to part 774, Category 0, remove ECCN 0E918.

■ 55. In Supplement No. 1 to part 774, Category 0, revise ECCN 0E982 to read as follows.

0E982 ''Technology'' exclusively for the ''development'' or ''production'' of equipment controlled by 0A982 or 0A503.

License Requirements

Reason for Control: CC

Control(s)
CC applies to ''technology'' for items controlled by 0A982 or 0A503. A license is required for ALL destinations, except Canada, regardless of end use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:
The list of items controlled is contained in the ECCN heading.

Supplement No. 1 to Part 774—[Amended]

■ 56. In Supplement No. 1 to part 774, Category 0, remove ECCNs 0E984 and 0E987.

■ 57. In Supplement No. 1 to part 774, Category 1, revise ECCN 1A984 to read as follows:

1A984 Chemical agents, including tear gas formulation containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloroacetophenone (CN), except in individual containers with a net weight of 20 grams or less; liquid pepper except when packaged in individual containers with a net weight of 3 ounces (85.05 grams) or less; smoke bombs; non-irritant smoke flares, canisters, grenades and charges; and other pyrotechnic articles (excluding shotgun shells, unless the shotgun shells contain only chemical irritants) having dual military and commercial use, and ''parts'' and ''components'' ''specially designed'' therefor, n.e.s.

License Requirements

Reason for Control: CC

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
CC applies to entire entry.	CC Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:
The list of items controlled is contained in the ECCN heading.

■ 58. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B004 to read as follows:

2B004 Hot ''isostatic presses'' having all of the characteristics described in the list of items controlled, and ''specially designed'' ''components'' and ''accessories'' therefor.

License Requirements

Reason for Control: NS, MT NP, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 2
MT applies to entire entry.	MT Column 1
NP applies to entire entry, except 2B004.b.3 and presses with maximum working pressures below 69 MPa.	NP Column 1
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: (1) See ECCN 2D001 for software for items controlled under this entry. (2) See ECCNs 2E001 (''development''), 2E002 (''production''), and 2E101 (''use'') for technology for items controlled under this entry. (3) For ''specially designed'' dies, molds and tooling, see ECCNs 0B501, 0B602, 0B606, 1B003, 9B004, and 9B009. (4) For additional controls on dies, molds and tooling, see ECCNs 1B101.d, 2B104, and 2B204. (5) Also see ECCNs 2B117 and 2B999.a.
Related Definitions: N/A
Items:

a. A controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; *and*

b. Having any of the following:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500 °C); *or*

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

Technical Note: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

■ 59. In Supplement No. 1 to part 774, Category 2, revise ECCN 2B018 to read as follows:

2B018 Equipment on the Wassenaar Arrangement Munitions List.

No commodities currently are controlled by this entry. Commodities formerly controlled by paragraphs .a through .d, .m, and .s of this entry are controlled in ECCN 0B606. Commodities formerly controlled by paragraphs .e through .l of this entry are controlled by ECCN 0B602. Commodities formerly controlled by paragraphs .o through

.r of this entry are controlled by ECCN 0B501. Commodities formerly controlled by paragraph .n of this entry are controlled in ECCN 0B501 if they are ''specially designed'' for the ''production'' of the items controlled in ECCN 0A501.a through .x or USML Category I and controlled in ECCN 0B602 if they are of the kind exclusively designed for use in the manufacture of items in ECCN 0A602 or USML Category II.

■ 60. In Supplement No. 1 to part 774, Category 2, revise ECCN 2D018 to read as follows:

2D018 ''Software'' for the ''development,'' ''production,'' or ''use'' of equipment controlled by 2B018.

No software is currently controlled under this entry. See ECCNs 0D501, 0D602, and 0D606 for software formerly controlled under this entry.

■ 61. In Supplement No. 1 to part 774, Category 2, revise ECCN 2E001 to read as follows:

2E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'' controlled by 2A (except 2A983, 2A984, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, 2B998, or 2B999), or 2D (except 2D983, 2D984, 2D991, 2D992, or 2D994).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''technology'' for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002.	NS Column 1
MT applies to ''technology'' for items controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B233, 2D001, 2D002, 2D101, 2D201, or 2D202 for NP reasons.	NP Column 1
NP applies to ''technology'' for items controlled by 2A290, 2A291, or 2D290 for NP reasons.	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352, valves controlled by 2A226 having the characteristics of those controlled by 2B350.g, and software controlled by 2D351.	CB Column 2
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: Yes, except N/A for MT

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''development'' of ''software'' specified in the License Exception STA paragraph in the License Exception section of ECCN 2D001 or for the ''development'' of equipment as follows: ECCN 2B001 entire entry; or ''Numerically controlled'' or manual machine tools as specified in 2B003 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: See also 2E101, 2E201, and 2E301
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Note 1 to 2E001: ECCN 2E001 includes ''technology'' for the integration of probe systems into coordinate measurement machines specified by 2B006.a.

■ 62. In Supplement No. 1 to part 774, Category 2, revise ECCN 2E002 to read as follows:

2E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 2A (except 2A983, 2A984, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, 2B998, or 2B999).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to ''technology'' for equipment controlled by 2A001, 2B001 to 2B009.	NS Column 1
MT applies to ''technology'' for equipment controlled by 2B004, 2B009, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122 for MT reasons.	MT Column 1
NP applies to ''technology'' for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B233 for NP reasons.	NP Column 1
NP applies to ''technology'' for equipment controlled by 2A290 or 2A291 for NP reasons.	NP Column 2
CB applies to ''technology'' for equipment Controlled by 2B350 to 2B352 and for valves controlled by 2A226 having the characteristics of those controlled by 2B350.g.	CB Column 2
AT applies to entire entry.	AT Column 1

Reporting Requirements

See § 743.1 of the EAR for reporting requirements for exports under License Exceptions, and Validated End-User authorizations.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: Yes, except N/A for MT

Special Conditions for STA

STA: License Exception STA may not be used to ship or transmit ''technology'' according to the General Technology Note for the ''production'' of equipment as follows: ECCN 2B001 entire entry; or ''Numerically controlled'' or manual machine tools as specified in 2B003 to any of the destinations listed in Country Group A:6 (See Supplement No. 1 to part 740 of the EAR).

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 63. In Supplement No. 1 to part 774, Category 7, revise ECCN 7A611 to read as follows:

7A611 Military fire control, laser, imaging, and guidance equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to part 738)*
NS applies to entire entry except 7A611.y.	NS Column 1
MT applies to commodities in 7A611.a that meet or exceed the parameters in 7A103.b or .c.	MT Column 1
RS applies to entire entry except 7A611.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 7A611.y.	See § 746.1(b) of the EAR for UN controls

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 7A611.

List of Items Controlled

Related Controls: (1) Military fire control, laser, imaging, and guidance equipment that are enumerated in USML Category XII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See Related Controls in ECCNs 0A504, 2A984, 6A002, 6A003, 6A004, 6A005, 6A007, 6A008, 6A107, 7A001, 7A002, 7A003, 7A005, 7A101, 7A102, and 7A103. (3) See ECCN 3A611 and USML Category XI for controls on countermeasure equipment. (4) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of U.S. origin ''600 series'' controlled content.

Related Definitions: N/A

Items:

a. Guidance or navigation systems, not elsewhere specified on the USML, that are ''specially designed'' for a defense article on the USML or for a 600 series item.

b. to w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' including accelerometers, gyros, angular rate sensors, gravity meters (gravimeters), and inertial measurement units (IMUs), that are ''specially designed'' for defense articles controlled by USML Category XII or items controlled by 7A611, and that are NOT:

1. Enumerated or controlled in the USML or elsewhere within ECCN 7A611;

2. Described in ECCNs 6A007, 6A107, 7A001, 7A002, 7A003, 7A101, 7A102, or 7A103; or

3. Elsewhere specified in ECCN 7A611.y or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or a defense article in Category XII and not elsewhere specified on the USML or in the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1 [RESERVED]

Dated: January 10, 2020.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–00573 Filed 1–17–20; 11:15 am]

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