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FEDERAL REGISTER

Vol. 85 Thursday,
No. 34 February 20, 2020

Pages 9661–10032

OFFICE OF THE FEDERAL REGISTER

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2018–0048]

RIN 3150–AK11

Adjustment of Civil Penalties for Inflation for Fiscal Year 2020; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a final rule that appeared in the **Federal Register** on January 15, 2020, that amended its regulations to adjust the maximum civil monetary penalties it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This document corrects the final rule to provide the correct maximum civil monetary penalty, per day, for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act.

DATES: Effective on February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Eric Michel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0932; email: *Eric.Michel2@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document corrects the final rule that was published in the **Federal Register** on Wednesday, January 15, 2020 (85 FR 2281), to provide the correct maximum civil monetary penalty, per day, for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act. As previously stated in the January 15 final rule, agency rules that implement the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 are expressly exempt from the notice and comment requirements of the Administrative Procedure Act (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this corrective rulemaking is being issued without prior public notice or opportunity for public comment, with an effective date of February 20, 2020.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 2:

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Environmental protection, Freedom of information, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Accordingly, 10 CFR part 2 is corrected by making the following correcting amendments:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

§ 2.205 [Amended]

■ 2. In § 2.205(j), remove the amount ''$303.471'' and add in its place ''$303,471''.

Dated at Rockville, Maryland, this 5th day of February, 2020.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Regulatory Analysis and Rulemaking Support, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–02548 Filed 2–19–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM19–7–000; Order No. 868]

Custody and Authentication of Commission Records

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends its regulations concerning custody and authentication of Commission records. Specifically, this final rule provides clarification that a Senior Agency Official for Records will maintain legal custody of all Commission records. This final rule also clarifies that authentication of records can be performed by staff officials through delegated authority.

DATES: This rule will become effective March 23, 2020.

FOR FURTHER INFORMATION CONTACT:

Christopher Cook, Office of the Secretary, 888 First Street NE, Washington, DC 20426, (202) 502–8102, *christopher.cook@ferc.gov*

Mark Hershfield, Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8597, *mark.hershfield@ferc.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

1. This instant final rule revises 18 CFR 375.102(a) to establish a Senior Agency Official for Records as the legal custodian of all Commission records. This final rule also clarifies that authentication of records can be performed by staff officials through delegated authority under 18 CFR part

375, subpart C. The rule imposes no new obligations on the public.

II. Background

2. The Commission's existing regulations place records in the custody of both the Secretary and the Executive Director.[1] The Secretary has custody over: The Commission's seal; the minutes of all actions taken by the Commission; the transcripts, electronic recordings, or minutes of meetings closed to public observation; the Commission's rules and regulations; and the Commission's administrative orders.[2] The Executive Director has custody of all other records not in the custody of the Secretary.[3] The Commission's regulations also provide that all orders and other actions of the Commission shall be authenticated by the Secretary or the Secretary's designee.[4]

III. Discussion

A. Custody of Records

3. By statute, the head of each federal agency must make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency.[5] Specifically, federal agencies are responsible for both the physical and legal custody of records.[6]

4. Physical custody involves the responsibility for the care of records and implementing policies governing access to records.[7] This final rule does not change physical custody of Commission records, which will continue to remain with the individual office within the Commission that maintains the record.[8]

5. This final rule clarifies the agency official responsible for legal custody of the Commission's records. Legal custody involves the ownership and the responsibility for creating policies governing access to records regardless of their physical location.[9]

6. NARA requires that each agency designate a Senior Agency Official for Records that is responsible for the legal custody of agency records.[10] While the Commission's current regulation, 18 CFR 375.102(a), provides divided legal custody between the Secretary and the Executive Director, we are amending the regulation to place legal custody in one individual, the Senior Agency Official for Records. The Secretary of the Commission is the current Senior Agency Official for Records, and thus legal custody will no longer be divided between the Secretary and the Executive Director, and will be designated with the Secretary or his/her designee.

B. Authentication of Records

7. Additionally, this final rule clarifies that authentication of records can be performed by staff officials exercising delegated authority under 18 CFR part 375, subpart C.[11] Specifically, 18 CFR part 375, subpart C delegates authority to certain staff officials to take certain actions, *e.g.,* issue letter orders addressing certain categories of filings.[12]

8. The Commission's existing regulations specify that all orders and other actions of the Commission must be authenticated or signed by the Secretary or the Secretary's designee.[13] This final rule revises 18 CFR 375.102(b) to provide that the Secretary is required to authenticate all Commission actions and orders except those actions taken pursuant to delegated authority, which will be authenticated by the issuing staff official in lieu of the Secretary. Moreover, issuances in the Commission's electronic document repository (eLibrary) on the Commission's website (*http://www.ferc.gov*) will be considered authenticated.

IV. Information Collection Statement

9. The Office of Management and Budget (OMB) approves certain information collection requirements imposed by agency rule.[14] This instant final rule does not contain any information collection requirements. Therefore, compliance with OMB regulations is not required.

V. Environmental Analysis

10. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[15]

11. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.[16] This rulemaking is, accordingly, exempt from the requirement to draft such documents under that provision.

VI. Regulatory Flexibility Act

12. The Regulatory Flexibility Act of 1980 (RFA)[17] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns an interpretation of current Commission regulations and practices. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is therefore not required.

VII. Document Availability

13. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

14. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

15. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

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[1] *See* 18 CFR 375.102.

[2] *See* 18 CFR 375.102(a)(1).

[3] *See* 18 CFR 375.102(a)(2).

[4] *See* 18 CFR 375.102(b).

[5] 44 U.S.C. 3101.

[6] National Archives and Records Administration (NARA) defines the term custody to include care and control of records, including both physical possession (physical custody) and legal responsibility (legal custody), unless one or the other is specified. *See* NARA, *Strategic Directions: Custody of Federal Records of Archival Value,* (Sept. 2003), *https://www.archives.gov/records-mgmt/initiatives/custody.html.*

[7] *Id.*

[8] *Id.* The current regulations provide that the Secretary has custody over, for example, the Commission's seal and the minutes of all actions taken by the Commission, among other things as described above. Although this language has been deleted from the amended regulation, the Secretary will continue to have physical custody over these items.

[9] *See Id.*

[10] 36 CFR 1220.34(a).

[11] *See, e.g.,* 18 CFR 375.307.

[12] 18 CFR part 375.

[13] *See* 18 CFR 375.102(b).

[14] 5 CFR 1320.12.

[15] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[16] 18 CFR 380.4(a)(1).

[17] 5 U.S.C. 601–12.

VIII. Effective Date

16. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for ''rules of agency organization, procedure, or practice.'' This rule is such a rule, and is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights or interests of affected parties. The rule will not significantly affect regulated entities or the general public.

17. These regulations are effective March 23, 2020.

List of Subjects in 18 CFR Part 375.102

Seals and Insignia.

By the Commission.

Issued: January 28, 2020.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends part 375, chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 375.102 is revised to read as follows:

§ 375.102 Custody and authentication of Commission records.

(a) *Custody of official records.* The Senior Agency Official for Records shall have legal custody of all records of the Commission. The individual Commission office that maintains a record shall have physical custody of that record.

(b) *Authentication of action.* All orders and other actions of the Commission shall be authenticated by the Secretary or the Secretary's designee, with the exception of actions taken pursuant to delegations of authority under 18 CFR part 375, subpart C, which will be authenticated by the issuing official. Issuances posted on the Commission's electronic filing system on the Commission's website are authenticated.

[FR Doc. 2020–02359 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0076]

Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones surrounding vessels involved in Coast Guard training exercises in Hood Canal, WA, from May 11, 2020, through May 15, 2020. This enforcement is necessary to ensure the safety of the maritime public and vessels near training exercises. During the enforcement period, entry into the safety zones is prohibited, unless authorized by the Captain of the Port or her Designated Representative.

DATES: The regulations in 33 CFR 165.1339 will be enforced from 8 a.m. on May 11, 2020, through 5 p.m. on May 15, 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Chief Warrant Officer William Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones around vessels involved in Coast Guard training exercises in Hood Canal, WA, set forth in 33 CFR 165.1339, from 8 a.m. on May 11, 2020 through 5 p.m. on May 15, 2020. This enforcement is necessary to ensure the safety of the maritime public and vessels near training exercises. Under the provisions of 33 CFR 165.1339, no person or vessel may enter or remain within 500 yards of any vessel involved in Coast Guard training exercises while such vessel is transiting Hood Canal, WA, between Foul Weather Bluff and the entrance to Dabob Bay, unless authorized by the Captain of the Port or her Designated Representative. In addition, the regulation requires all vessel operators seeking to enter any of the zones during the enforcement period to first obtain permission. You may seek permission by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at 206–217–6001.

You will be able to identify participating vessels as those flying the Coast Guard Ensign. The Captain of the Port may also be assisted in the enforcement of the zone by other federal, state, or local agencies. The Captain of the Port will issue a general permission to enter the safety zones if the training exercise is completed before 5 p.m. on May 15. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Local Notice to Mariners.

Dated: January 28, 2020.

Linda A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2020–02972 Filed 2–19–20; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 383

[Docket No. 19–CRB–0006–NSR (2021–2025) (NSS IV)]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish a final rule governing the rates and terms for the digital performances of sound recordings by new subscription services and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: *Effective date:* January 1, 2021.

ADDRESSES: *Docket:* For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0006–NSR (2021–2025).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, Program Specialist, by telephone at (202) 707–0078 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 8, 2019, the Copyright Royalty Judges published a proposed rule governing the rates and terms for the digital performances of sound recordings by new subscription services that provide transmissions to residential subscribers as part of a cable or satellite

television bundle and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2021, and ending on December 31, 2025. 84 FR 60356. The rates and terms in the proposed rule were the subject of a settlement between SoundExchange, Inc., and Sirius XM Inc. Joint Motion to Adopt Settlement, Docket No. 19–CRB–0006–NSR (2021–2025) (''NSS IV''). The Judges received no comments on the proposed rule.

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii). Because no NSS IV participant has objected to the settlement, and the Judges find no basis in the record to conclude that the settlement does not provide a reasonable basis for setting statutory terms and rates, the Judges adopt the terms and rates as proposed.

List of Subjects in 37 CFR Part 383

Copyright, Sound recordings, Webcasters.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 383 as follows:

PART 383—RATES AND TERMS FOR SUBSCRIPTION TRANSMISSIONS AND THE REPRODUCTION OF EMPHEMERAL RECORDINGS BY CERTAIN NEW SUBSCRIPTION SERVICES

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

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 383.1 [Amended]

■ 2. In § 383.1, amend paragraph (a), by removing ''2016'' and adding in its place, ''2021'', and by removing ''2020'' and adding in its place, ''2025''.

§ 383.2 [Amended]

■ 3. In § 383.2, amend paragraph (c), by removing ''2016'' and adding in its place, ''2021'', and by removing ''2020'' and adding in its place, ''2025''.

■ 4. Amend § 383.3 by:

■ a. In paragraph (a), removing the words ''statutory licenses'' and adding, in their place, the word ''License'';

■ b. Revising paragraphs (a)(1)(i) through (v);

■ c. Revising paragraph (a)(2)(i) through (v); and

■ d. Revising paragraph (c).

The revisions read as follows:

§ 383.3 Royalty fees for public performances of sound recordings and the making of ephemeral recordings.

(a) * * *

(1) * * *

(i) 2021: $0.0208

(ii) 2022: $0.0214

(iii) 2023: $0.0221

(iv) 2024: $0.0227

(v) 2025: $0.0234

(2) * * *

(i) 2021: $0.0346

(ii) 2022: $0.0356

(iii) 2023: $0.0367

(iv) 2024: $0.0378

(v) 2025: $0.0390

* * * * *

(c) *Allocation between ephemeral recordings fees and performance royalty fees.* The Collective must credit 5% of all royalty payments as royalty payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making noninteractive digital transmissions through a Service are included in the 5%.

§ 383.4 [Amended]

■ 5. In § 383.4 amend paragraph (a) by:

■ a. Removing the words ''subscription transmissions'' and adding, in their place, the words ''Digital audio transmission'';

■ b. Removing the words ''preexisting satellite digital audio radio services'' and adding, in their place, the words ''Commercial Webcasters'';

■ c. Removing the words ''part 382, subpart B'' and adding, in their place, the words ''part 380, subpart A'';

■ d. Removing the years ''2013–2017'' and adding, in their place, the years ''2021–2025'';

■ e. Removing the words ''For purposes of this section'' and adding, in their place, the words ''For purposes of this part''.

Dated: January 21, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–02134 Filed 2–19–20; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0597; FRL–10005–17–Region 10]

Air Plan Approval; ID: Idaho Portion of the Logan UT-ID 2006 24-Hour $PM_{2.5}$ Nonattainment Area; Moderate Plan Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Idaho State Implementation Plan (SIP) submitted on July 31, 2018. The submission includes Reasonable Further Progress and Quantitative Milestone attainment plan elements, along with updated Motor Vehicle Emissions Budgets, for the Idaho portion of the Logan, Utah-Idaho fine particulate matter ($PM_{2.5}$) nonattainment area (Logan UT-ID area). The EPA's prior conditional approval for these elements will be removed and these elements are now fully approved.

DATES: The final rule is effective March 23, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0597, at *https://www.regulations.gov.* All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Matthew Jentgen, (206) 553–0340, *jentgen.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background

II. Final Action
III. Statutory and Executive Order Reviews

I. Background

On December 14, 2012 and December 24, 2014, the Idaho Department of Environmental Quality (IDEQ) submitted attainment plan elements designed to attain the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) in the Idaho portion of the Logan UT-ID area. On January 4, 2017, the EPA approved Idaho's control measures as meeting Reasonably Available Control Measures/Technology (RACM/RACT), disapproved the attainment plan submission for contingency measures, and deferred action on the attainment demonstration, Reasonable Further Progress (RFP), Quantitative Milestone (QM), and Motor Vehicle Emissions Budgets (MVEB) requirements (82 FR 729). Following our January 4, 2017, action, in an April 25, 2017 letter, Idaho committed to further address the RFP, QM, and MVEB requirements by August 1, 2018. Because Idaho committed to address these requirements within one year, in specific ways that the EPA considered appropriate, the EPA conditionally approved the RFP, QM, and MVEB elements of the Idaho attainment plan on August 8, 2017 (82 FR 37025). In that same action, we also finalized approval of the Idaho attainment demonstration and the 2014 MVEBs as early progress budgets. Based on quality-assured, quality-controlled data for the period 2015–2017 showing that the area attained the 2006 24-hour $PM_{2.5}$ NAAQS, on October 19, 2018, the EPA finalized a determination of attainment by the attainment date and clean data determination for the Logan UT-ID area (83 FR 52983).

On July 31, 2018, Idaho submitted a SIP revision to further address the RFP, QM, and MVEB elements that the EPA conditionally approved on August 8, 2017 (Cache SIP Amendment or submission). The submission can be found in the docket for this action. On October 15, 2019, the EPA proposed to approve the RFP and QM elements and revised MVEBs in this submission as meeting the requirements of the CAA and the EPA's implementing regulations (84 FR 55100). Please see our proposed rulemaking for further explanation and the basis for our finding. The public comment period for this proposal ended on November 14, 2019. No comments were submitted.

II. Final Action

The EPA is approving the RFP and QM elements and revised MVEBs in the Cache SIP Amendment. In taking this final action, the EPA's prior conditional approval is removed, and these elements are now fully approved.

III. 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 Clean Air 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 action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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 SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 28, 2020.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670, amend the table in paragraph (e), under the heading ''Chapter VIII—Nonattainment Area Plans,'' by removing the two entries entitled ''Fine Particulate Matter Attainment Plan'' and adding an entry at the end of the table entitled ''Cache Valley Fine Particulate Matter Attainment Plan'' to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Cache Valley Fine Particulate Matter Attainment Plan.	Franklin County, Logan UT-ID $PM_{2.5}$ Nonattainment Area.	12/19/2012, 12/24/2014, 7/31/2018.	1/4/2017, 82 FR 729; 8/8/2017, 82 FR 37025; 2/20/2020, [Insert **Federal Register** citation].	

[FR Doc. 2020–02744 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2018–0510; FRL–10005–23–Region 4]

Air Plan Approval and Designation of Areas; FL; Source-Specific SO_2 Permit Limits & Redesignation of the Hillsborough-Polk 2010 1-Hr SO_2 Nonattainment Area to Attainment & Mulberry Unclassifiable Area to Attainment/Unclassifiable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve state implementation plan (SIP) revisions and two redesignation requests provided by the State of Florida, through the Florida Department of Environmental Protection (FDEP), related to the 2010 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS or standard). Specifically, EPA is approving a December 1, 2017, SIP revision (as supplemented through an October 9, 2019, SIP revision discussed below) that includes SO_2 multi-unit permit limits and associated compliance and monitoring parameters for Mosaic Fertilizer LLC's New Wales facility (Mosaic New Wales) and Bartow facility (Mosaic Bartow), both located in Polk County, Florida. The December 1, 2017, SIP revision also includes a modeling analysis to demonstrate that the Hillsborough-Polk SO_2 nonattainment area (hereinafter referred to as the ''Hillsborough-Polk Area'') attains the SO_2 NAAQS with these permit limits. EPA is also approving an October 9, 2019, request to redesignate the Hillsborough-Polk Area to attainment for the 1-hour SO_2 NAAQS and associated SIP revision containing the State's plan for maintaining attainment of the standard in the Hillsborough-Polk Area. The October 9, 2019, SIP submittal also revises the modeling analysis and some permit conditions in the 2017 SIP revision, contains a base-year emissions inventory for the Hillsborough-Polk Area, and certifies that the Hillsborough-Polk Area meets nonattainment new source review (NNSR) requirements. In addition, EPA is approving an October 9, 2019, request to redesignate the Mulberry Unclassifiable Area (hereinafter referred to as the ''Mulberry Area'') to attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS. FDEP submitted a draft version of the October 9, 2019, redesignation requests and SIP revisions on February 15, 2019, and EPA proposed to approve those requests and revisions through parallel processing at the State's request.

DATES: This rule will be effective March 23, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0510. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. What is the background for the actions?

On June 2, 2010, EPA revised the primary SO_2 NAAQS, establishing a new 1-hour SO_2 standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010). Under EPA's regulations at 40 CFR part 50, the 2010 1-hour SO_2 NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T). *See* 40 CFR 50.17. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a

quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including state-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.[1]

Upon promulgation of a new or revised NAAQS, the Clean Air Act (CAA) requires EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. Effective on April 9, 2018, EPA designated the Hillsborough-Polk Area as nonattainment based on air dispersion modeling and designated the Mulberry Area as unclassifiable for the 2010 1-hour SO_2 NAAQS.[2] *See* 83 FR 1098 (January 9, 2018). Under the CAA, SO_2 nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the April 9, 2018, effective date of the designation. *See* CAA section 192(a). Therefore, the Hillsborough-Polk Area's applicable attainment date is no later than April 9, 2023.

EPA's nonattainment designation for the Hillsborough-Polk Area triggered an obligation for Florida to develop a nonattainment area SIP revision addressing certain requirements under CAA title I, part D, subpart 1 (hereinafter ''Subpart 1''), and to submit that SIP revision to EPA in accordance with the deadlines in title I, part D, subpart 5 (hereinafter ''Subpart 5'').[3] Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that: Provides for the implementation of reasonably available control measures (RACM); requires reasonable further progress (RFP); includes base-year and attainment-year emissions inventories, a SIP-approved NNSR permitting program that accounts for growth in the area, enforceable emission limitations and other such control measures; and provides for the implementation of contingency measures. This SIP revision was due within 18 months following the April 9, 2018, effective date of designation (*i.e.,* October 9, 2019). *See* CAA section 191(a).[4]

The State submitted its first SIP revision for the Hillsborough-Polk Area to EPA in December 2017. That SIP revision included SO_2 multi-unit permit limits and associated compliance and monitoring parameters for Mosaic New Wales and Bartow and a modeling analysis to demonstrate that the Hillsborough-Polk Area attains the SO_2 NAAQS with these permit limits. Then, on February 15, 2019, Florida submitted a draft request to EPA to redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO_2 NAAQS and a related draft SIP revision containing a maintenance plan for the Hillsborough-Polk Area.[5] The February 15, 2019, draft submittal also included a request to redesignate the Mulberry Area to attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS,[6] contained a base-year emissions inventory for the Hillsborough-Polk Area, certified that the Hillsborough-Polk Area meets NNSR requirements, revised the modeling analysis in the December 2017 SIP revision, and included administrative amendments to certain permit conditions in the December 2017 SIP revision. Florida requested that EPA parallel process the draft requests and SIP submittals while the State waited for the multi-unit permit limits for Mosaic New Wales and Bartow to become state-enforceable on August 31, 2019. In a March 22, 2019 letter, FDEP clarified that it is asking EPA to incorporate the following conditions from Permit Nos. 10500046–106–AC and 1050046–050–AC:[7] (1) Section III, Subsection A, Specific Condition 3 (as corrected by Permit Nos. 1050059–114–AC and Permit No. 1050046–063–AC)—establishing the five-unit permit limit of 1,090 lb/hr for Mosaic New Wales and the three-unit permit limit of 1,100 lb/hr for Mosaic Bartow, each based on 24-hour block average, and applicable during all periods of operation;[8] (2) Section III, Subsection A Specific Condition 4—requiring the facilities to use certified SO_2 continuous emissions monitoring system (CEMS) data to demonstrate initial compliance with the new SO_2 permit limit; and (3) Section III, Subsection A, Specific Condition 5—requiring the facilities to keep records of the initial compliance demonstration that include the SO_2 CEMS data and sulfuric acid production rate (in tons per hour) during the demonstration.

In a notice of proposed rulemaking (NPRM) published on September 9, 2019 (84 FR 47216), EPA proposed to approve the draft February 15, 2019, SIP submittal and redesignation requests through parallel processing and to approve the December 2017 SIP revision (as supplemented through the February 15, 2019, draft revision). Specifically, EPA proposed to (1) approve and incorporate the SO_2 permit limits and associated compliance and monitoring parameters for Mosaic New Wales and Bartow into the SIP; (2) approve the base-year emissions inventory for the Hillsborough-Polk Area and incorporate it into the SIP; (3) concur with Florida's certification that its existing NNSR requirements apply to the Hillsborough-Polk Area;[9] (4) determine that the air quality modeling submitted by the State demonstrates that the Hillsborough-Polk

[1] *See* 40 CFR part 50, appendix T, section 3(b).

[2] EPA designated the Mulberry Area as unclassifiable due to the uncertainty regarding possible contribution from Mosaic Bartow to the modeled violations in the Hillsborough-Polk Area. *See* Chapter 9 of the Technical Support Document for the Round 3 Designations for the 2010 1-Hour SO_2 NAAQS located in the docket for the designation at Docket ID No. EPA–HQ–OAR–2017–0003–0635.

[3] No requirements were triggered as a result of the unclassifiable designation for the Mulberry Area.

[4] CAA section 172 requires states with nonattainment areas to submit plans providing for timely attainment and meeting other requirements. EPA's interpretation of the attainment-related nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not applicable for purposes of CAA section 107(d)(3)(E)(ii) and (v) and therefore need not be approved into the SIP before EPA can redesignate an area. Those requirements are not applicable for purposes of evaluating Florida's redesignation request for the Hillsborough-Polk Area because EPA is taking final action to incorporate the permitted SO_2 limits and associated compliance and monitoring parameters into the SIP since becoming effective August 31, 2019, and air quality modeling demonstrates that the Hillsborough-Polk Area attains the 1-hour SO_2 NAAQS as a result of compliance with these limits.

[5] CAA section 107(d)(3)(E) identifies the criteria for redesignating a nonattainment area to attainment. One of these criteria, 107(d)(3)(E)(iv), requires a fully approved maintenance plan for the area that meets the requirements of CAA section 175A.

[6] When approving or denying a request to redesignate an unclassifiable area to attainment/unclassifiable, EPA bases its decision on the air quality data for the area as well as the considerations provided under CAA section 107(d)(3)(A). For the 1-hour SO_2 NAAQS, EPA may also base its decision on relevant modeling analyses. The requirements of section 107(d)(3)(E) are not applicable to such a redesignation because that section of the CAA only applies to redesignation of nonattainment areas to attainment. Areas that are redesignated to attainment/unclassifiable must meet the requirements for attainment areas and thus must meet the relevant NAAQS and not contribute to ambient air quality in a nearby area that does not meet the NAAQS.

[7] The permit condition numbers are the same for each permit.

[8] Permit condition Section III, Subsection A, Specific Condition 3 requires compliance with the emissions caps within the same 24-hour block averaging period (6:00 a.m. to 6:00 a.m.) and in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. *See* Appendices B, C, G, and H of Florida's October 9, 2019, final SIP submission in the docket for this rulemaking.

[9] As discussed in the NPRM, EPA has a longstanding interpretation that because NNSR is replaced by Prevention of Significant Deterioration (PSD) permitting upon redesignation, nonattainment areas seeking redesignation to attainment need not have a fully approved part D NNSR program in order to be redesignated. Nonetheless, EPA proposed to concur with the State's certification and is approving the SIP revision containing that certification.

Area will have attained the 2010 SO_2 NAAQS as a result of compliance with the multi-unit permit limits at Mosaic New Wales and Bartow; (5) approve Florida's plan for maintaining the 2010 1-hour SO_2 NAAQS in the Hillsborough-Polk Area through 2032 and incorporate it into the SIP pursuant to section 175A of the CAA; (6) redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO_2 NAAQS; and (7) redesignate the Mulberry Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS based on air quality modeling.

Florida's October 9, 2019, final SIP submission demonstrates compliance with the SO_2 emissions limits for Mosaic New Wales and Bartow based on SO_2 hourly emissions data from August 1, 2019 through September 24, 2019.[10] EPA proposed to determine that the modeling analysis provided in the SIP revisions demonstrates that the Hillsborough-Polk and Mulberry Areas will attain the 2010 1-hour standard as a result of compliance with the 24-hour SO_2 emissions limits at Mosaic New Wales and Bartow.[11] The modeling resulted in a highest predicted 99th percentile daily maximum 1-hour concentration of 74.4 ppb with no modeled violations of the 1-hour SO_2 NAAQS in ambient air locations in the Hillsborough-Polk or Mulberry Areas. Because there are no air quality monitors in these areas, EPA's proposed approval of the redesignation request and maintenance plan SIP for the Hillsborough-Polk Area and the redesignation request for the Mulberry Area was based, in part, on these modeling results.[12] Because Mosaic New Wales and Bartow are required to comply with the permit limits that air quality modeling shows will maintain the standard, this modeling shows that the areas will continue to maintain the 2010 1-hour SO_2 standard through 2032, the final year of the submitted 10-year maintenance plan for the Hillsborough-Polk Area. The details of Florida's submittal and the rationale for EPA's actions are further explained in the NPRM, including the modeled attainment demonstration to determine attainment with the 2010 1-hour SO_2 NAAQS.

On October 9, 2019, Florida submitted final redesignation requests for the Hillsborough Polk and Mulberry Areas and a final SIP submission. EPA reviewed the final submission and it contains no substantive changes to Florida's February 15, 2019, draft SIP submission that EPA proposed for parallel processing in the NPRM. The only changes are minor clarifications, typographical corrections, a demonstration that Mosaic New Wales and Bartow are meeting their respective 24-hour block average permitted SO_2 emissions limits[13] that EPA is incorporating into Florida's SIP as part of this final rulemaking,[14] and a demonstration that Mosaic New Wales has completed the ambient air boundary improvements[15] discussed in the NPRM. Based on the information and analysis in the NPRM and on Florida's compliance demonstration, the final multi-unit SO_2 emissions limits at Mosaic New Wales and Bartow provide for modeled attainment of the 1-hour SO_2 NAAQS in ambient air locations in the Hillsborough-Polk and Mulberry Areas. Comments on EPA's September 9, 2019, proposed rulemaking were due on or before October 9, 2019.

II. Response to Comments

EPA received three sets of comments on the proposed rulemaking—one set that generally supports the proposed rulemaking and two sets that are adverse. These comments are available in the docket for this action. Summaries of the comments and EPA's responses are provided below.

Comment 1: The Commenter asserts that the adjustment factors used in the development of the 24-hour SO_2 emission limits for Mosaic New Wales and Bartow are on the order of 0.99 to 1.0, indicating in the Commenter's view that, historically, the emission units operate consistently without much if any variability and are much higher than default values discussed in EPA's guidance. The Commenter then questions the need for flexibility allowed by the 24-hour emissions limits, claiming that if the emissions are not fluctuating there is no need to establish a limit other than a 1-hour limit. The Commenter contends that the 24-hour limits allow for increases in hourly emissions well above historical hourly emissions and that these greater hourly emissions by way of 24-hour averaging does not demonstrate compliance with the 1-hour NAAQS.

Response 1: Prior to the issuance of the 1-hour SO_2 NAAQS in 2010, EPA's guidance recommended that the averaging time of emission limits should not exceed the averaging time of the applicable NAAQS. However, after the creation of 1-hour SO_2 standard, EPA received many comments expressing concern for extending this approach (*i.e.,* not allowing averaging of emission limits to show compliance with the 1-hour standard) as overly conservative and potentially burdensome for a facility with variable emissions and/or operations. After consideration of these comments, EPA issued guidance recommending a method to derive a comparably stringent emission limit with a longer averaging time (up to 30 days). As expressed on page 24 of the EPA's April 23, 2014 ''Guidance for 1-hour SO_2 Nonattainment Area SIP Submissions'' (SO_2 Guidance), ''[t]he EPA believes that making this option available to states could reflect an appropriate balance between providing a strong assurance that the NAAQS will be attained and maintained, while still acknowledging the necessary variability in source operations and the impairment to source operations that would occur under what could be in some cases an unnecessarily restrictive approach to constraining that variability.''

The process used by Florida to develop adjustment factors for the limits included at Mosaic New Wales and Bartow was described in Florida's SIP submission and evaluated in EPA's Hillsborough-Polk Longer Term Averaging TSD document, which was part of the NPRM docket (see page 6 of the TSD). This process generally followed the guidance laid out in the SO_2 Guidance, which can be used by permitting authorities to establish longer-term SO_2 emission limits in lieu of shorter-term (1-hour or 3-hour) limits at facilities they believe would benefit from the added flexibility. Although Mosaic's operations do not have a high level of variability, there are still some emission peaks that occasionally occur. Recent emissions data indicate that up to 1.5 percent of the time, emissions exceed the critical emissions value

[10] *See* Appendix N of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

[11] A detailed discussion of FDEP's modeling can be found in Section VII.C of the NPRM and the associated Air Modeling TSD.

[12] See Section VII.C of the NPRM for a discussion regarding the nature of an attainment determination for SO_2.

[13] As discussed in the NPRM, the 24-hour SO_2 emissions limits of 1,090 lb/hr and 1,100 lb/hr for Mosaic New Wales and Bartow, respectively, provide an appropriate alternative to establishing a 1-hour average emission limit for each unit at these facilities. *See* Section VI of the NPRM and EPA's Longer Term Averaging SO_2 Technical Support Document entitled *U.S. Environmental Protection Agency Technical Support Document (TSD) for the Longer Term Average Sulfur Dioxide (SO_2) Permit Limits for the Mosaic New Wales and Bartow Fertilizer Facilities.*

[14] Florida's October 9, 2019, final SIP submission demonstrates compliance with the SO_2 emissions limits for Mosaic New Wales and Bartow based on SO_2 emissions data from August 1, 2019 through September 24, 2019. *See* Appendix N of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

[15] *See* Appendix M of Florida's final October 9, 2019, SIP submission in the docket for this rulemaking.

(CEV) while still maintaining permitted emissions limits (1.5 percent for New Wales and less than 1 percent for Bartow). If the Mosaic facilities were required to comply with a 1-hour emission limit all the time (*i.e.,* no averaging), the operation of the facility would have to be restricted to ensure those occasional periods of higher emissions never exceeded the 1-hour permit limit. At sulfuric acid plants (SAPs), SO_2 is a process material rather than a byproduct, where SO_2 is converted to sulfuric acid. Residual SO_2 emissions from SAPs are controlled by the process itself rather than with an add-on pollution control device. Considering the increased effectiveness of the new catalysts at Mosaic New Wales and Bartow, and the integration of the sulfur recovery catalyst beds into the process, EPA believes that attempting to change the operations of the Mosaic facilities to comply with a 1-hour permit limit would be unnecessarily restrictive in this case.

Additionally, the Commenter notes that there are default adjustment factors in our guidance that are lower than those used for Mosaic. This characterization of EPA's guidance is not correct. Appendix D of the guidance provides illustrations of historical typical adjustment factors observed for electric generating units under different emissions control scenarios. These are intended as a reference for states and sources when developing appropriate adjustment factors following the process in EPA's guidance, especially in circumstances where the source in question does not have historical or other adequate emissions data to fully evaluate potential emissions variability. For the Mosaic facilities, historical data for the specific operations being permitted were available and fully evaluated, resulting in the adjustment factors used to develop source-specific permit limits. Table 1 in Appendix D of EPA's guidance does include a 24-hour adjustment factor of 0.93 for ''[s]ources with no control equipment.'' This factor was developed based on historical data for electric generating units without wet or dry scrubbers, whose operations fluctuate based on electricity demand and SO_2 content of the fuel. Mosaic New Wales and Bartow are sulfuric acid plants, not electric generating units, where the catalyst bed used to capture SO_2 emissions is part of the process and not an add-on control device, as would potentially be used to control SO_2 emissions from other types of facilities. As EPA described in the TSD (*see* page 6), ''SO_2 emissions from SAPs are controlled by the process itself rather than with an add-on pollution control device, as the catalyst bed cannot be turned off, disabled, or bypassed. [. . .] The catalyst degrades over time and will need to be replaced every few years; however; there is little fluctuation in emissions over any given 24-hour period. A consequence of this stability over a 24-hour period is the relatively high (close to 1.0) adjustment factors for the individual units (*see* Table 3).'' The relative stability of the sulfuric acid plant operations explains why the adjustment factors are relatively close to one. The SO_2 Guidance describes a process for a permitting authority to develop a longer-term emission limit that is protective of the NAAQS. In the case of the sulfuric acid plants at Mosaic New Wales and Bartow facilities, EPA believes that Florida has followed the SO_2 Guidance to develop adjustment factors that are appropriate for the sulfuric acid plant operation based on an analysis of facility data and to establish 24-hour emission limits that are protective of the NAAQS.

EPA disagrees with the Commenter's contention that the 24-hour limits will result in hourly emissions increases that will not provide for compliance with the 1-hour NAAQS. EPA acknowledges the concern that occasional spikes of emissions above the CEV can occur when a longer-term limit is established. This concern has been addressed in the NPRM and TSD for this action (*see* pages 2–4 of the Longer Term Averaging TSD). Additionally, as discussed in the NPRM and the associated technical support documents, Florida provided a modeling analysis demonstrating that compliance with the 24-hour emissions limits provides for attainment of the 1-hour SO_2 NAAQS. EPA's April 23, 2014 ''Guidance for 1-hour SO_2 Nonattainment Area SIP Submissions'' allows States to establish permitted emissions limits with averaging times up to 30 days provided that the limits meet certain recommended criteria. After careful review of these limits, Florida's compliance demonstration, and the criteria recommended in the guidance document, EPA believes that the 24-hour emissions limits selected by the State require average emissions to be lower than the level that would otherwise have been required by 1-hour average limits and provide for attainment of the NAAQS. EPA also notes that the comment lacks information indicating that the 24-hour emissions limits would not result in compliance with the NAAQS.

Comment 2: The Commenter questions EPA's preliminary determination that the combination of fencing and natural barriers (*e.g.,* wetlands, canals, industrial ponds) are adequate to preclude public access to the area where receptors were excluded from the air quality modeling performed by Florida. The Commenter does not understand how EPA equates wetlands with a physical barrier and thus qualifies those areas to be exempted from the modeling. The Commenter mentions that Florida's tourism industry involves airboat tours, that the boats used in those tours travel over marshes and swamps, and that EPA did not identify wetlands as a physical barrier in its draft ''Revised Policy On Exclusions from 'Ambient Air.' '' The Commenter concludes by asserting that EPA should not approve this action until all ambient air areas are properly modeled.

Response 2: EPA disagrees with the Commenter's assertion that adequate barriers do not exist to preclude public access within the ambient air boundary used in the modeling. Florida's February 15, 2019, draft SIP submittal contains information supporting its finding that the combination of fencing and natural barriers are adequate to preclude public access to areas within the Mosaic New Wales property that were excluded from the modeling (*i.e.,* the property area within the ambient air boundary), and EPA summarized this information in Section 1.4 of EPA's Technical Support Document for the Air Quality Modeling Analysis (Modeling TSD) associated with the proposed rulemaking. When Florida submitted the draft SIP revision, Mosaic was in the process of installing additional fencing along the perimeter of the newly acquired land. In its October 9, 2019, final SIP submittal, Florida documents the completion of Mosaic's fencing construction and provides 22 pages of additional information supporting the State's conclusion that the combination of fencing and natural barriers in this specific instance is adequate to preclude public access to these areas of the source's property. The submittal describes the natural barriers as densely vegetated ditches and canals with steep banks, forested and herbaceous wetlands with dense vegetation and standing water, deep water industrial ponds, and densely vegetated uplands. Numerous photographs of the fencing and natural barriers were provided by Florida in the submittal. It should also be noted that the entire ambient air boundary lies wholly within a larger Mosaic Holdings Boundary which is private property owned by Mosaic and is not open to activities that would invite tourism or other public access via

airboats or other similar means of transport.

Regarding the Commenter's reference to EPA's November 2018 draft ''Revised Policy On Exclusions from 'Ambient Air' '' [16] and the claim that the document does not expressly mention wetlands, it first should be noted that natural barriers are physical barriers. The focus of the guidance was to communicate that, in addition to physical barriers addressed by the existing policy, non-physical barriers may be sufficient (by themselves or in combination with physical barriers) to preclude public access in some circumstances. EPA did not attempt to list in the guidance every type of acceptable barrier (whether a physical barrier or otherwise). Instead, the guidance provided examples of ''non-physical'' measures that may be effective in some circumstances to preclude public access to source property, other than by ''fences and other physical barriers.'' Moreover, the effectiveness of any natural physical obstruction in precluding public access, so that it may serve as an ambient air boundary, should be evaluated on a case-by-case basis due to the variability in circumstances among stationary sources.

EPA believes that Florida has provided sufficient information, including descriptions, maps, and photographs of the measures being relied upon, to support its conclusion that the combination of fencing and natural barriers effectively precludes public access from the areas within the source property that were excluded from the modeling demonstration. The Commenter did not provide any information supporting its position that the natural barriers in combination with fencing at the Mosaic New Wales facility are insufficient or that the affected wetlands are accessible to airboat tours or that other types of public access are allowed by the source or could in fact occur there.

Comment 3: The Commenter generally agrees with EPA's proposed action, stating that it is encouraging to see Florida's plan to limit SO_2 emissions at Mosaic New Wales and Bartow. The Commenter then argues that these businesses should face a hefty fine if they exceed the proposed SO_2 emissions limits, and if such exceedances become frequent the sources should have their business licenses suspended until they can show emissions that are consistent with the proposed limits.

[16] The final revised ambient air guidance was signed by the Administrator on December 2, 2019.

Response 3: Actual SO_2 emissions at Mosaic New Wales and Bartow must remain below the permitted emissions limits identified by the Commenter. These limits are state-enforceable and are federally-enforceable through the SIP via this final action and through the title V permits for these facilities. As discussed in the NPRM, FDEP has an active compliance and enforcement program to address any violations of these emissions limits and has committed to verify compliance with these limits and with continued attainment of the SO_2 NAAQS in the Hillsborough-Polk Area using, among other things, emissions data from the mandatory annual operating reports submitted by these facilities.[17] FDEP has also committed to undertake an aggressive follow-up for compliance and enforcement and to implement contingency measures within 18–24 months of non-compliance with the SO_2 emissions limits.[18] EPA believes that these commitments and the enforcement authorities available to the Agency and to Florida are sufficient to address any violation of the SO_2 emissions limits at Mosaic New Wales and Bartow.

III. What are the effects of these actions?

Approval of the redesignation request changes the legal designation of the Hillsborough-Polk Area, found at 40 CFR 81.310, from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS. Approval of Florida's associated SIP revision also incorporates a plan into the SIP for maintaining the 2010 1-hour SO_2 NAAQS in the Hillsborough-Polk Area as described in the NPRM. The CAA section 175A maintenance plan also establishes contingency measures to remedy any future violations of the 2010 1-hour SO_2 NAAQS and procedures for evaluation of potential violations. The Hillsborough-Polk Area is required to implement this maintenance plan and the prevention of significant deterioration program for the 2010 1-hour SO_2 NAAQS. The approved maintenance plan can only be revised if the revision meets the requirements of CAA section 110(l) and, if applicable, CAA section 193. Approval of the redesignation request for the Mulberry Area changes the legal designation of this area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS. Finally, approval of the SIP revision incorporates into the SIP certain permitting conditions applicable to Mosaic New Wales and Bartow, making them permanent and federally enforceable.[19]

[17] See the ''Verification of Continued Attainment'' section of the NRPM at 84 FR 47227–28.

[18] See the ''Contingency Measures in the Maintenance Plan'' section of the NRPM at 84 FR 47228–29.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference into Florida's SIP the following conditions from Air Permit No. 1050046–050–AC issued by FDEP to Mosaic Bartow with an effective date of July 3, 2017, related to an SO_2 permitted limit at the facility and associated compliance monitoring, recordkeeping, and reporting requirements: (1) Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050046–063–AC with an effective date of January 11, 2019); [20] (2) Section III, Subsection A, Specific Condition 4; [21] and (3) Section III, Subsection A, Specific Condition 5.[22] In accordance with requirements of 1 CFR 51.5, EPA is also finalizing the incorporation by reference into Florida's SIP the following conditions from Air Permit No. 1050059–106–AC issued by FDEP to Mosaic New Wales with an effective date of October 30, 2017, related to an SO_2 permitted limit at the facility and associated compliance monitoring, recordkeeping, and reporting requirements: (1) Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050059–114–AC with an effective

[19] *See* Section VI of the NPRM for information regarding these permit conditions.

[20] This provision states: ''*SO_2 Emissions Limit:* The following emission limit applies to the Sulfuric Acid Plant (SAP) Nos. 4, 5 & 6: a. When all five SAPs are in operation within the same 24-hour block averaging period, a cap of 1,100 lb SO_2/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) is applicable; and, b. The cap of 1,100 lb SO_2/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) applies in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. [Rules 62–4.030, General *Prohibition,* F.A.C. & Rule 62–4.210, *Construction Permits,* F.A.C.; Application No. 1050046–050–AC; and, Administrative Permit Correction Application No. 1050046–063–AC.]''

[21] This provision states: ''*Initial Compliance:* These emission units shall use certified SO_2 CEMS data to demonstrate initial compliance with the new SO_2 emission limit. [Rules 62–4.070(1)&(3), *Reasonable Assurance,* F.A.C.; and, Application No. 1050046–050–AC.]''.

[22] This provision states: ''*Recordkeeping:* The permittee shall keep records of the initial compliance demonstration. The records shall include the SO_2 CEMS data along with the sulfuric acid production rate (TPH, tons per hour) during the demonstration. Any reports shall be prepared in accordance with the applicable requirements specified in Appendix D (Common Testing Requirements) of this permit. [Rule 62–297.310(10), F.A.C.; and, Application No. 1050046–050–AC.]''.

date of January 11, 2019);[23] (2) Section III, Subsection A, Specific Condition 4;[24] and (3) Section III, Subsection A, Specific Condition 5.[25] Therefore, these materials have been approved by EPA for inclusion in the state implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[26]

EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Final Actions

EPA is taking final actions regarding Florida's request to redesignate the Hillsborough-Polk Area to attainment for the 2010 1-hour SO_2 NAAQS and associated SIP revisions. EPA is determining that the Hillsborough-Polk Area has attained the 2010 1-hour SO_2 NAAQS. EPA is also approving the SIP revision containing the State's plan for maintaining attainment of the 2010 1-hour SO_2 standard, the base-year emissions inventory for the Hillsborough-Polk Area, and a certification regarding NNSR. EPA is approving Florida's redesignation request regarding the Hillsborough-Polk Area and redesignating the area to attainment for the 2010 1-hour SO_2 NAAQS. EPA is also approving Florida's redesignation request regarding the Mulberry Area and redesignating this area to attainment/unclassifiable for the 2010 1-hour SO_2 NAAQS. Finally, EPA is incorporating the aforementioned permit conditions for Mosaic New Wales and Bartow into the SIP. As mentioned above, approval of the redesignation request changes the official designation of the Hillsborough-Polk Area from nonattainment to attainment and the Mulberry Area from unclassifiable to attainment/unclassifiable, as found in 40 CFR part 81.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E), as well as the redesignation of an area to attainment/unclassifiable, are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment or to attainment/unclassifiable does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because they are not significant regulatory actions under Executive Order 12866;
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

These actions are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

[23] This provision states: ''*SO_2 Emissions Limit:* The following emission limit applies to the Sulfuric Acid Plant (SAP) Nos. 1, 2, 3, 4 & 5: a. When all five SAPs are in operation within the same 24-hour block averaging period, a cap of 1,090 lb SO_2/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) is applicable; and, b. The cap of 1,090 lb SO_2/hour, 24-hour block average (6:00 a.m. to 6:00 a.m.) applies in scenarios when any combination of any number of the SAPs are not in operation and when any number of the SAPs are in operation. [Rules 62–4.030, General *Prohibition,* F.A.C. & Rule 62–4.210, *Construction Permits,* F.A.C.; Application No. 1050059–106–AC; and, Administrative Permit Correction Application No. 1050059–114–AC.]''.

[24] This provision states: ''*Initial Compliance:* These emission units shall use certified SO_2 CEMS data to demonstrate initial compliance with the new SO_2 emission limit. [Rules 62–4.070(1)&(3), *Reasonable Assurance,* F.A.C.; and, Application Nos. 1050059–103–AC & 1050059–106–AC.]''.

[25] This provision states: ''*Recordkeeping:* The permittee shall keep records of the initial compliance demonstration. The records shall include the SO_2 CEMS data along with the sulfuric acid production rate (TPH, tons per hour) during the demonstration. Any reports shall be prepared in accordance with the applicable requirements specified in Appendix D (Common Testing Requirements) of this permit. [Rule 62–297.310(10), F.A.C.; and, Application Nos. 1050059–103–AC & 1050059–106–AC.]''.

[26] *See* 62 FR 27968 (May 22, 1997).

for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: January 30, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520 is amended:

■ a. In paragraph (d) by adding entries for ''Mosaic Fertilizer, LLC—Bartow Facility'' and ''Mosaic Fertilizer, LLC—New Wales Facility'' at the end of the table; and

■ b. In paragraph (e) by adding an entry for ''2010 1-hour SO_2 Maintenance Plan for the Hillsborough-Polk Area'' at the end of the table.

The additions read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Mosaic Fertilizer, LLC—Bartow Facility.	Air Permit No. 1050046–050–AC.	7/3/2017	2/20/2020 [Insert citation of publication].	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050046–063–AC with an effective date of January 11, 2019); Condition 4; and Condition 5.
Mosaic Fertilizer, LLC—New Wales Facility.	Air Permit No. 1050059–106–AC.	10/30/2017	2/20/2020 [Insert citation of publication].	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050059–114–AC with an effective date of January 11, 2019); Condition 4; and Condition 5.

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register**, notice	Explanation
*	*	*	*	*
2010 1-hour SO_2 Maintenance Plan for the Hillsborough-Polk Area.	10/9/2019	2/20/2020	[Insert citation of publication].	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. In § 81.310, the table entitled ''Florida-2010 Sulfur Dioxide NAAQS [Primary]'' is amended by revising the entries for ''Hillsborough-Polk County, FL'' and ''Mulberry, FL Area'' to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area	Designation	
	Date [1]	Type
*	*	*
Hillsborough-Polk County, FL [3] ..... Hillsborough County (part) Polk County (part)	3/23/2020	Attainment.

FLORIDA—2010 SULFUR DIOXIDE NAAQS—Continued

[Primary]

Designated area	Designation	
	Date [1]	Type
That portion of Hillsborough and Polk Counties encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 as follows: 390,500 E, 3,073,500 N; 390,500 E, 3,083,500 N; 400,500 E, 3,083,500 N; 400,500 E, 3,073,500 N		
* * * * *	*	*
Mulberry, FL Area [3]	3/23/2020	Attainment/Unclassifiable.
Hillsborough County (part)		
Polk County (part)		
That portion of Hillsborough and Polk Counties encompassed by the polygon with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 17 with datum NAD83 starting with the Northwest Corner and proceeding to the Northeast as follows: 390,500 E, 3,083,500 N; 410,700 E, 3,091,600 N; 412,900 E, 3,089,800 N; 412,900 E, 3,084,600 N; 400,500 E, 3,073,500 N; 400,500 E, 3,083,500 N		
* * * * *	*	*

[1] This date is 4/9/2018, unless otherwise noted.

* * * * * * *

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

* * * * *

[FR Doc. 2020–02606 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2019–0160; FRL–9999–79–Region 3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Clean Air Act (CAA) section 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). This plan was submitted to fulfill the requirements of the CAA and in response to EPA's promulgation of Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The Delaware plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective on March 23, 2020. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of March 23, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0160. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mike Gordon, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2039. Mr. Gordon can also be reached via electronic mail at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2019 (84 FR 31279), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of a Clean Air Act (CAA) section 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The formal State Plan was submitted by Delaware on October 10, 2017.

II. Summary of State Plan and EPA Analysis

EPA has reviewed the Delaware section 111(d) plan submittal in the context of the requirements of 40 CFR part 60, subparts B and Cf, and part 62, subpart A. In this action, EPA is determining that the submitted section 111(d) plan meets the above-cited requirements. Included within the section 111(d) plan are regulations under the Delaware Administrative Code, specifically DE Admin. Code 1120 (Section 30), entitled ''Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017.'' Section 30 of DE Admin. Code 1120, which is included in the Plan, applies to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification after July 17, 2014 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste. While Delaware has chosen to regulate new and existing landfills under the same State regulation, for purposes of this action, the Plan applies to any Delaware ''designated facility,'' which in the context of the Emissions Guideline means each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014,

which is consistent with the requirements of 40 CFR part 60, subpart Cf. A detailed explanation of the rationale behind this approval is available in the Technical Support Document (TSD).

Other specific requirements of Delaware's State Plan for MSW landfills and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA is approving the Delaware section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, EPA is amending 40 CFR part 62, subpart I, to reflect this action. The scope of the approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf. The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c), as well as 7 DE Admin. Code 1120 Section 30.1.

IV. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, EPA is finalizing regulatory text that includes the incorporation by reference of Delaware Administrative Code 1120 (Section 30), effective July 11, 2017, entitled ''Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017,'' which is part of the CAA section 111(d) plan applicable to existing MSW landfills in Delaware as discussed in section II of this preamble. The regulatory provisions of DE Admin. Code 1120 (Section 30). The regulatory provisions of DE Admin. Code 1120 (Section 30) incorporate by reference the Standards of Performance for Municipal Solid Waste landfills promulgated by EPA at 40 CFR part 60, subpart XXX, and establish emission standards and compliance times for the control of methane and other organic compounds from MSW landfills, open or closed, located in Delaware, that commenced construction, modification, or reconstruction after July 17, 2014 or that have accepted waste after November 8, 1987 or that have additional capacity available to accept waste. EPA has made, and will continue to make, the Delaware plan, including DE Admin. Code 1120 (Section 30), generally available through *www.regulations.gov,* Docket No. EPA–R03–OAR–2019–0160, and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). This incorporation by reference has been approved by the Office of the Federal Register and the Plans are federally enforceable under the CAA as of the effective date of this final rulemaking.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve section 111(d) state plan submissions that comply with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State Plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Delaware's State Plan for existing MSW landfills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Methane, Ozone, Reporting

and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

Editorial note: This document was received for publication by the Office of the Federal Register on February 4, 2020.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart I—Delaware

■ 2. Section 62.1950 is revised to read as follows:

§ 62.1950 Identification of plan.

(a) Section 111(d) plan for municipal solid waste landfills and the associated Delaware Department of Natural Resources, Division of Air and Waste Management, Regulation No. 20, Section 28, as submitted on April 23, 1998, to implement 40 CFR part 60, subpart Cc.

(b) Control of Emissions from Existing Municipal Solid Waste Landfills, including Delaware Administrative Code 1120 (Section 30), submitted by the Delaware Department of Natural Resources and Environmental Control on October 10, 2017, to implement 40 CFR part 60, subpart Cf. The Plan includes the regulatory provisions cited in paragraph (d) of this section, which the EPA incorporates by reference.

(c) After March 23, 2020, the substantive requirements of the municipal solid waste landfills state plan are contained in paragraph (b) of this section and owners and operators of municipal solid waste landfills in Delaware must comply with the requirements in paragraph (b) of this section.

(d)(1) The material incorporated by reference in this section was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the material is available at the EPA Region III office, 1650 Arch Street, Philadelphia, PA 19103, 215–814–5000. You may inspect a copy at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(2) State of Delaware, Delaware Department of Natural Resources and Environmental Control, State of Delaware Administrative Code.

(i) Title 7 Natural Resources and Environmental Control, 1120 New Source Performance Standards, 30.0 Standards of Performance for Municipal Solid Waste Landfills After July 11, 2017, dated July 11, 2017.

(ii) [Reserved]

■ 3. Section 62.1951 is revised to read as follows:

§ 62.1951 Identification of sources.

(a) The plan in § 62.1950(a) applies to all Delaware existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

(b) The plan in § 62.1950(b) applies to all existing municipal solid waste landfills under the jurisdiction of the Delaware Department of Natural Resources and Environmental Control for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

■ 4. Section 62.1952 is revised to read as follows:

§ 62.1952 Effective date.

(a) The effective date of the plan submitted on April 23, 1998 by the Delaware Department of Natural Resources and Environmental Control for municipal solid waste landfills is November 16, 1999.

(b) The effective date of the plan submitted on October 10, 2017 by the Delaware Department of Natural Resources and Environmental Control for municipal solid waste landfills is March 23, 2020.

[FR Doc. 2020–02507 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2020–0005; Internal Agency Docket No. FEMA–8617]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and

submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Florida: Saint Lucie County, Unincorporated Areas.	120285	May 31, 1974, Emerg; August 17, 1981, Reg; February 19, 2020, Susp.	Feb. 19, 2020	Feb. 19, 2020.

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: February 4, 2020.

Eric Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2020–02508 Filed 2–19–20; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 503, 515, and 535

[Docket No. 19–06]

RIN 3072–AC77

Regulatory Amendments Implementing the Frank LoBiondo Coast Guard Authorization Act of 2018

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) is revising its regulations to implement the provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018. The proposed revisions include amendments to the regulations governing: Commission meetings; ocean transportation intermediary licensing, financial responsibility, and general duties, and the submission of public comments on ocean common carrier and marine terminal operator agreements. The revisions also include miscellaneous updates to the references to statutory provisions reorganized by the LoBiondo Act.

DATES: This rule is effective February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

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II. Summary of NPRM
III. Comment Summary
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A. References to Statutory Provisions (Parts 515, 530, 532, 545)
B. Commission Meetings (Part 503)
C. OTI Licensing, Financial Responsibility, and General Duties (Part 515)
1. Licensing and Financial Responsibility
2. Common Carrier Prohibitions
D. Comments on Filed Agreements (Part 535)
V. Rulemaking Analyses and Notices

I. Introduction

On December 4, 2018, the ''Frank LoBiondo Coast Guard Authorization Act of 2018'' was enacted as Public Law 115–282 (LoBiondo Act or Act). The LoBiondo Act made a number of changes affecting the Federal Maritime Commission (Commission) and the Shipping Act of 1984 (Shipping Act). These included the changes made in Title VII of the Act, referred to as the ''Federal Maritime Commission Authorization Act of 2017,'' as well as a miscellaneous provision in § 834 of the LoBiondo Act. By Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 9, 2019, the Commission proposed to revise its regulations to reflect the statutory changes. The Commission also invited comment on whether the statutory changes to the ocean transportation intermediary (OTI) [1] licensing requirements conflicted with the Commission's regulatory requirement that only licensed OTIs may perform OTI services in the United States for registered non-vessel-operating common carriers (NVOCCs) and whether this requirement should therefore be removed.

The NPRM included a 30-day comment period, and the Commission received one comment. After consideration of the comment and for the reasons stated below, the Commission is adopting all of the proposed amendments without substantive change. In addition, the Commission has determined that the licensed U.S. agent requirement for registered NVOCCs conflicts with the statutory licensing and financial responsibility provisions as amended by the LoBiondo Act, and is removing that requirement.

[1] OTIs include non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs). 46 U.S.C. 40102(20).

II. Summary of NPRM

In the NPRM, the Commission focused on the statutory changes that warranted corresponding revisions to the Commission's regulations. The proposed changes included:

- Revising several Commission regulations to update references to statutory provisions;
- Revising the regulations governing Commission meetings to include provisions on ''nonpublic collaborative discussions,'' a new type of meeting established by the LoBiondo Act that is not open to public observation;
- Revising the regulations governing OTI licensing and financial responsibility to reflect statutory changes to the types of persons that are required to be licensed and maintain a bond, insurance, or other surety;
- Revising the regulations governing the general duties of NVOCCs to reflect amendments to several prohibited acts; and
- Revising the regulations related to comments on filed ocean common carrier and marine terminal operator (MTO) agreements to reflect that such comments are now confidential and may not be disclosed by the Commission;

The Commission sought comment on these proposed revisions and on whether the Commission should remove the licensed U.S. agent requirement for registered NVOCCs.

Although beyond the scope of this current rulemaking, the Commission also invited comments on any regulatory changes necessary to implement other LoBiondo Act provisions not discussed in the NPRM.

III. Comment Summary

The Commission received a single comment from Hecny Brokerage Services, Inc., on its behalf and that of its affiliates (Hecny). Hecny is a licensed NVOCC. The comment is a letter addressed to the National Customs Brokers and Forwarders Association of America (NCBFAA), a trade association representing OTIs, air cargo agents, and customs brokers. About NCBFAA, *https://www.ncbfaa.org/scripts/4disapi.dll/4DCGI/cms/review.html?Action=CMS_Document&DocID=503&MenuKey=about* (last visited Dec. 23, 2019). The letter requests that the NCBFAA file comments on the October 9, 2019 NPRM opposing the elimination of the licensed U.S. agent requirement for registered NVOCCs. Hecny's reasons for opposing this change are discussed in more detail in Section IV.C below. The Commission received no comments from NCBFAA.

IV. Revisions to Commission Regulations

A. References to Statutory Provisions (Parts 515, 530, 532, 545)

The LoBiondo Act amended 46 U.S.C. 41104 to revise several prohibited acts and added a new prohibited act. Public Law 115–282, 708. As part of those amendments, the Act changed the subsection designations in § 41104. The Commission is therefore revising its regulations to reflect the new subsection designations.

B. Commission Meetings (Part 503)

The LoBiondo Act amended 46 U.S.C. 303 to exclude certain Commission meetings from the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). Public Law 115–282, 711(a). Under the revised statute, a majority of Commissioners may hold a meeting closed to the public to discuss Commission business if: (1) No vote or official Commission action is taken at the meeting; (2) only Commissioners and employees are present; (3) at least one Commissioner from each political party is present (assuming there are sitting Commissioners from more than one party); and (4) the Commission's General Counsel is present. 46 U.S.C. 303(c).[2] The statute refers to these closed meetings as ''nonpublic collaborative discussions.''

Although the Commission need not publicize such meetings beforehand or record a complete transcript or minutes, the Commission must, following the meeting, make publicly available a list of individuals present at the meeting and a summary of matters discussed, except for those matters the Commission determines may be withheld from the public under one of the applicable exemptions listed in the Sunshine Act. § 303(c)(2)–(3). For those matters withheld from the public, the Commission must provide a summary with as much general information as possible. § 303(c)(3). The required disclosures must be made within two business days after the meeting, unless the meeting relates to an ongoing proceeding before the Commission, in which case the disclosures must be made on the date of the final Commission decision. § 303(c)(2), (4); *see* S. Rep. No. 115–89 at 19.

Finally, the Act includes provisions clarifying that: (1) The Sunshine Act

[2] This exclusion was modeled on a similar provision in the Surface Transportation Board Reauthorization Act of 2015. *See* S. Rep. No. 115–89 at 19 (2017) (accompanying S. 1129, an earlier authorization bill that contained many of the provisions later incorporated into the LoBiondo Act); 49 U.S.C. 1303(a)(2).

continues to apply to all meetings other than nonpublic collaborative discussions as described in § 303(c), as well as to any information related to those discussions that the Commission proposes to withhold from the public; and (2) the provisions governing nonpublic collaborative discussions do not authorize the Commission to withhold records accessible to an individual under the Privacy Act of 1974 (5 U.S.C. 552a). § 303(b)(5)–(6).

The final rule includes a new section, § 503.84, in part 503 of the Commission's regulations mirroring the new provisions in 46 U.S.C. 303(c)(1)–(4) and makes necessary conforming revisions to other sections in that part.

C. OTI Licensing, Financial Responsibility, and General Duties (Part 515)

1. Licensing and Financial Responsibility

The LoBiondo Act amendments expanded the class of persons that must be licensed as OTIs and meet the OTI financial responsibility requirements to include persons that advertise or hold themselves out as OTIs. 46 U.S.C. 40901(a); 40902(a); Public Law 115–282, 707(a), (c). Previously, only persons that *acted* as OTIs were subject to the licensing and financial responsibility requirements.

The Commission is amending the general licensing and financial responsibility requirements in §§ 515.3 and 515.21 to reflect this change.[3] The Commission expects this change to have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Instead of having to show that a noncompliant entity actually *acted* as an OTI, the mere fact that an unlicensed entity advertised or held itself out as an OTI is now sufficient to show a violation of the statute.

As described in the NPRM, the LoBiondo Act also includes a new provision clarifying that the OTI licensing and financial responsibility requirements do not apply to a person ''that performs [OTI] services on behalf of an [OTI] for which it is a disclosed agent.'' 46 U.S.C. 40901(c); Public Law 115–282, 707(b). The Commission tentatively determined in the NPRM that this statutory change might conflict with the Commission's regulations at 46 CFR 515.3 requiring that only licensed OTIs may act as U.S. agents to provide OTI services for registered NVOCCs (which are not licensed). As noted above, the Commission received only one comment on this rulemaking from Hecny, which opposed removing this requirement. For the reasons discussed below, the Commission has determined that this requirement, along with the complementary requirement in § 515.3 that registered NVOCCs must use licensed OTIs to provide NVOCC services in the United States, conflict with the new statutory provision at § 40901(c). The Commission is therefore revising § 515.3 to remove these requirements and making corresponding changes to § 515.4, which describes the circumstances when a license is not required.

The requirement that only licensed OTIs can provide OTI services on behalf of foreign-based, unlicensed NVOCC principals was originally promulgated after the enactment of the Ocean Shipping Reform Act of 1998 (OSRA), which for the first time required NVOCCs ''in the United States'' to be licensed. *See* Final Rule: Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 64 FR 11156, 11156 (Mar. 8, 1999) (1999 Final Rule); Public Law 105–258, 116; S. Rep. 105–61, at 30–31 (1997). The legislative history of OSRA made clear that it was Congress's intent for the Commission ''to determine when foreign-based entities conducting business in the United States are to be considered persons in the United States for the purposes of'' the licensing requirements. *See* S. Rep. No. 105–61, at 31 (1997); 1999 Final Rule, 64 FR at 11156. In the rulemaking implementing this part of OSRA, the Commission considered several options for defining the class of persons required to have a license.

At one end of the spectrum, the Commission considered expansive requirements that would have required licenses for NVOCCs incorporated in the United States or with a physical presence in the United States through another person, *e.g.,* an agent, affiliate, or subsidiary (this option was rejected prior to the publication of the proposed rule). NPRM: Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 63 FR 70710, 70710 (Dec. 22, 1998) (1998 NPRM). At the other end, the Commission considered a narrow definition that would have only required licenses for NVOCCs incorporated in, resident in, maintaining a physical presence in, or established under the laws of the United States. *Id.* at 70710–70711. In the final rule, the Commission determined to adopt the current requirements, which fell between the two other approaches in terms of scope, concluding that this middle-of-the-road approach was ''the most fair and equitable,'' ''would increase competition consistent with the intent of OSRA,'' and represented ''a good step towards leveling the playing field between OTIs in the United States who are within the Commission's jurisdictional reach and those who are outside of that reach.'' 1999 Final Rule, 64 FR at 11157. The final rule provided that a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States, but required that only licensed OTIs act as agents providing OTI services in the United States for foreign-based, unlicensed NVOCCs. *See id.;* 46 CFR 515.3 (2000).

In 2006, an OTI petitioned the Commission for a declaratory order regarding the lawfulness of a *licensed* OTI using unlicensed agents to provide OTI services to the public. After receiving comments, the Commission rejected the petition, determining that the use of unlicensed agents was unlawful because an agent that provides OTI services ''act[s] as an ocean transportation intermediary'' and is thereby subject to the licensing requirement in section 19 of the Shipping Act (currently codified at 46 U.S.C. 40901(a)). *In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries—Pet'n for Declaratory Order,* 31 S.R.R. 185, 2008 FMC LEXIS 9 (FMC 2008). Landstar, a licensed NVOCC, petitioned the U.S. Court of Appeals for the D.C. Circuit to review the Commission's order. The court vacated the Commission's order, holding that ''[a]gents providing NVOCC services for licensed NVOCC principals are not NVOCCs (or OFFs) solely by virtue of being agents of NVOCCs,'' ''[t]hey therefore fall outside the coverage of the statute's licensing requirement,'' and ''[t]he Commission lacks authority to compel those agents to obtain licenses.'' 569 F.3d at 500.

On remand, the Commission granted the original petition, ''but only to the extent consistent with the [c]ourt's decision in *Landstar* that it is lawful for a licensed OTI to engage an unlicensed

[3] The proposed regulatory text in the NPRM inadvertently retained a reference to ''acting as an ocean transportation intermediary'' in § 515.21(a). The final rule does not include this phrase in light of the changes made by the LoBiondo Act.

person to act as its agent to perform OTI services on behalf of the disclosed licensed OTI.'' *In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries—Pet'n for Declaratory Order,* 31 S.R.R. 1058, 2009 FMC LEXIS 25 (FMC 2009).

In 2014, the Commission proposed to amend § 515.3 to delete a requirement that separately incorporated branch offices be licensed when they serve as an agent for a licensed OTI. NPRM: Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties, 79 FR 61544, 61545 (Oct. 10, 2014). The Commission proposed to retain the requirement that only licensed OTIs may perform OTI services in the United States for foreign-based, unlicensed NVOCCS, but to replace the term ''unlicensed ocean transportation intermediary'' with the term ''registered NVOCC'' to reflect the Commission requirement that foreign-based, unlicensed NVOCCs register with the Commission. *See id.;* Final Rule: Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption, 78 FR 42866 (July 18, 2013). Some commenters argued that the requirement regulated agents in contravention of *Landstar. See* Final Rule: Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties, 80 FR 68722, 68723 (Nov. 5, 2015). In response, the Commission recited the rationale for the requirement in the 1999 final rule and explained that the requirement was necessary in order to ensure that the distinction created by Congress between NVOCCs ''in the United States'' that require a license and foreign-based NVOCCs that do not require a license would not be thwarted. *Id.* The Commission further noted that the requirement had long been in effect and stated that it was consistent with *Landstar* in that it regulated the conduct of OTI principals, not agents. *Id.*

In its comment, Hecny argues that the focus of the LoBiondo Act was on carrier alliances and the need to provide additional powers to the Commission to protect terminal service and equipment providers. The company asserts that the changes to the OTI statutory provisions were intended to be ''cosmetic'' changes to reflect the *Landstar* decision, and there is no history indicating an intent to change the requirement relating to U.S. agents for registered NVOCCs. Hecny further states that it is unaware of any problems with the licensed U.S. agent requirement and that there are ample reasons supporting it. According to Hecny, the requirement: (1) Enhances the Commission's ability to timely receive responses to its requests because licensed entities are aware of the types of records responsive to such requests and know that they could lose their own license if they fail to act responsibly; and (2) gives customers confidence that they are being treated properly because a licensed entity is responsible for handling their goods and is held to the standards set forth in the Commission's regulations. Hecny concludes by asserting that there is no reason for changing the current requirement and believes that serious problems could arise if U.S. agents are not licensed OTIs.

After considering the history of the licensed U.S. agent requirement, the language of the relevant LoBiondo Act provision, and the comment submitted, the Commission has determined that the requirement is inconsistent with the new provision at § 40901(c) and must be removed. Section 40901(c) plainly states that disclosed agents performing OTI services on behalf of OTIs are not required to be licensed. The provision does not distinguish between agents performing OTI services on behalf of licensed OTIs versus unlicensed or registered OTIs; all disclosed agents are exempt from the licensing requirement regardless of whether the OTI principal is licensed.

The relevant provisions of § 515.3 of the Commission's regulations include dual complementary requirements: (1) Registered NVOCCs must use licensed OTIs to provide NVOCC services in the United Stated; and (2) only licensed OTIs may act as agents to provide OTI services in the United States for registered NVOCCs. These requirements are applicable to the registered NVOCC principal and not the U.S. agent, *i.e.,* if a U.S. agent performing OTI services for a registered NVOCC is unlicensed, the registered NVOCC, not the agent, is considered to have violated the regulation. *See* 80 FR at 68723. Regardless of whether the requirement applies to the registered NVOCC principal or the U.S. agent, however, the result is the same: U.S. agents performing OTI services on behalf of registered NVOCCs must have a license. This result clearly conflicts with § 40901(c) and the decision by Congress to exempt such agents from the licensing requirement. Under § 40901, as amended, the Commission lacks the authority to compel these U.S. agents to obtain licenses.[4] *See Landstar,* 569 F.3d at 500 (holding that because agents providing NVOCC services for licensed NVOCCs principals ''fall outside the coverage of the statute's licensing requirement, . . . [t]he Commission lacks authority to compel those agents to obtain licenses''). In the absence of such authority, the relevant requirements in § 515.3 must be removed. *See id.*

The Commission respectfully disagrees with Hecny's characterization of the LoBiondo Act's changes to the OTI provisions as ''cosmetic'' changes to reflect the *Landstar* decision. In the NPRM, the Commission speculated that codifying the *Landstar* decision may have been Congress's intent, but there is no legislative history to support this theory. In any event, it is presumed ''that Congress 'says in a statute what it means and means in a statute what it says there,''' *Rotkiske* v. *Klemm,* 205 L. Ed. 2d 291, 297 (2019) (quoting *Connecticut Nat'l Bank* v. *Germain,* 503 U.S. 249, 254 (1992)), and ''neither courts nor federal agencies can rewrite a statute's plain text to correspond to its supposed purposes.'' *Landstar,* 569 F.3d at 498 (citing *Norfolk S. Ry Co.* v. *Sorrell,* 549 U.S. 158, 171 (2007); *Barnhart* v. *Sigmon Coal Co., Inc.,* 534 U.S. 438, 462 (2002)).

As the Commission indicated in the NPRM, § 40901(c) is broader than the holding in *Landstar.* The court in *Landstar* held that the Commission lacked authority to require that agents of licensed NVOCCs obtain licenses. The new § 40901(c) exempts agents performing OTI services on behalf of an OTI from the licensing and financial responsibility requirements. By its plain language, the exemption in § 40901(c) applies to both agents of NVOCCs and agents of OFFs, as NVOCCs and OFFs both fall within the statutory definition of ''ocean transportation intermediary.'' *See* 46 U.S.C. 40102(20).[5] And the statutory language does not limit the applicability of the exemption based on whether the OTI principal is licensed, referring to persons that perform ''ocean

[4] Although disclosed agents of registered NVOCCs may not face the risk of noncompliance with the Commission's regulations and potential civil penalties if they do not obtain the license, § 515.3 compels agents to obtain licenses because it prohibits registered NVOCCs from using unlicensed agents.

[5] Although the *Landstar* decision focused on NVOCCs, the court remarked in dicta and the Commission has historically agreed that the same reasoning applies to agents of licensed OFFs. *See Landstar,* 569 F.3d at 499 (''But the Commission has no authority to require agents of OFFs who are not themselves OFFs to obtain OFF licenses, just as it has no authority to require agents of NVOCCs who are not themselves NVOCCs to obtain NVOCC licenses.''); *In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries—Pet'n for Declaratory Order,* 31 S.R.R. 1058, 2009 FMC LEXIS 25.

transportation intermediary services on behalf of *an ocean transportation intermediary.*'' *See* 46 U.S.C. 40901(c) (emphasis added). The Commission has consistently interpreted this type of broad language as including both licensed OTIs and foreign-based, unlicensed NVOCCs that are registered with the Commission. *See, e.g., Petra-Pet, Inc.* v. *Panda Logistics Ltd.,* 33 S.R.R. 4, 2013 FMC LEXIS 37 (FMC 2013) (finding that a registered NVOCC violated 46 U.S.C. 41102(c), which provides, ''*A*[*n*] . . . *ocean transportation intermediary* may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property'' (emphasis added)).[6] Therefore, contrary to Hecny's contentions, § 40901(c) goes beyond the holding in the *Landstar* decision and applies to U.S. agents performing OTI services for registered NVOCCs as well as those performing services for licensed OTIs.

This Commission's determination that the licensed U.S. agent requirement in 46 CFR 515.3 conflicts with 46 U.S.C. 40901(c) reflects the changed statutory landscape since the 2015 final rule. At that time, the Commission was considering whether the licensed U.S. agent requirement for registered NVOCCs conflicted with the *Landstar* decision. Notwithstanding some of the arguably broader dicta in the decision, the court in *Landstar* was focused on whether the agents performing OTI services for licensed NVOCCs were ''act[ing] as'' OTIs and thus subject to the licensing requirement in § 40901(a). In the 2015 final rule, the Commission considered not only the ''act as'' language in § 40901(a) and the *Landstar* decision, but also the other changes made to the licensing requirement by OSRA, specifically the language limiting the requirement to persons ''in the United States.'' As the Commission noted, the provision as amended imposed the licensing requirement on NVOCCs in the United States but not foreign-based NVOCCs, and the legislative history indicated clear Congressional intent that the Commission determine when foreign-based NVOCCs were to be considered to be ''in the United States'' and subject to the licensing requirement. 80 FR at 68723. Retaining the licensed U.S. agent requirement reflected an appropriate balance that effectuated Congress's desire for the Commission to distinguish between NVOCCs that must obtain a license and those that need not, while respecting the ''act as'' language and the *Landstar* decision by: (1) Limiting the requirement to U.S. agents of registered NVOCCs; and (2) applying the requirement only to registered NVOCC principals and not to agents.

The addition of § 40901(c), however, materially changes this analysis and warrants reconsideration of the licensed U.S. agent requirement. Rather than excluding agents from the licensing requirements based on the interpretation that they do not ''act as an'' OTI under § 40901(a), § 40901(c) creates an explicit exemption for such agents. Moreover, in the 2015 final rule, the Commission was dealing with multiple facets of a statutory provision enacted in a single piece of legislation. In contrast, the Commission is now faced with reconciling two provisions enacted by different Congresses over 20 years apart. Although the intent of Congress in 1998 was for the Commission to determine whether an NVOCC was ''in the United States'' and required to be licensed, the recently enacted § 40901(c) has the effect of limiting the Commission's discretion by foreclosing the agency from requiring agents to obtain a license.

Based on the foregoing, the Commission is amending § 515.3 to remove the licensed U.S. agent requirement and to improve readability. The Commission is also making conforming amendments to § 515.4(b), which provides that agents of licensed OTIs are not required to have a license, by revising that provision to cover disclosed agents of any OTI.

The Commission shares some of Hecny's concerns about the potential effects of removing the licensed U.S. agent requirement because U.S. shippers may no longer have the protection of dealing with a licensed agent when working with a foreign-based NVOCC. The Commission believes, however, that any potential negative effects will be mitigated given the Commission's increased oversight over foreign-based, unlicensed NVOCCs, which have been required to register with the Commission since 2013. *See* 46 CFR 515.19. The Commission also notes that no other NVOCCs commented on the NPRM and, despite Hecny's request, NCBFAA elected not to file a comment on this issue. This suggests that Hecny's concerns may not be widely shared by the licensed NVOCC community.

Nevertheless, going forward, the Commission will closely monitor the effect of removing the licensed U.S. agent requirement, and, if necessary, take appropriate action in the future to protect U.S. shippers. Such action may include reconsidering the financial responsibility requirements for foreign-based, registered NVOCCs or reconsidering the interpretation of when an NVOCC is ''in the United States'' under 46 U.S.C. 40901 and must obtain a license.

2. Common Carrier Prohibitions

The LoBiondo Act expanded the common carrier prohibition against knowingly and willfully accepting or transporting cargo for OTIs that do not meet certain Shipping Act requirements. *See* 46 U.S.C. 41104(a)(11); Public Law 115–282, 708(a)(2)(A). Previously, common carriers were prohibited from knowingly and willfully accepting or transporting cargo for an OTI that did not have a tariff *and* did not meet the OTI financial responsibility requirements. *See* 46 U.S.C. 41104(11) (2017). This wording, in effect, limited the prohibition to dealing with noncompliant NVOCCs, as OFFs are not required to have a tariff. *See* 46 CFR 515.19(g)(1)(vii); 515.27(a). The LoBiondo Act split the provision into two separate prohibitions in 46 U.S.C. 41104(a)(11). The first prohibits common carriers from knowingly and willfully accepting or transporting cargo from an NVOCC that does not have a tariff. The second prohibits common carriers from knowingly and willfully accepting or transporting cargo from an OTI (*i.e.,* NVOCC or OFF) that does not meet the financial responsibility requirements.

The Commission's regulations at 46 CFR 515.19 and 515.27 reflect the earlier version of the prohibition (accepting or transporting cargo for noncompliant NVOCCs). The Commission is therefore amending these sections to reflect the new, broader statutory prohibition.

D. Comments on Filed Agreements (Part 535)

The LoBiondo Act made several changes to the provisions governing Commission action on agreements. In particular, the LoBiondo Act expanded on the existing requirement that the Commission transmit a notice of an agreement filing to the **Federal Register** within seven days, adding a requirement that the Commission request interested persons to submit relevant information and documents. 46 U.S.C. 40304(a)(2); Public Law 115–282, 706(a). Although the Commission already includes such requests in its **Federal Register** notices, *see* 46 CFR

[6] The Commission notes that *Petra Pet* was decided under an earlier interpretation of 46 U.S.C. 41102. *See* Final Rule: Interpretive Rule, Shipping Act of 1984, 83 FR 64478 (Dec. 17, 2018); 46 CFR 545.4. The Commission's revised interpretation of the section, however, affects only the types of actions covered by the prohibition, not the types of entities to which it applies.

535.603, adding this statutory provision renders such comments confidential under 46 U.S.C. 40306, which exempts ''[i]nformation and documents . . . filed with the . . . Commission under [chapter 403]'' from disclosure under the Freedom of Information Act. Previously, only information provided by the filing parties was protected from disclosure under § 40306. *See* Final Rule: Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, 49 FR 45320, 45336 (Nov. 15, 1984) (interpreting the provision (as originally enacted in the Shipping Act of 1984) as only protecting information provided by the filing parties).

In addition, the Act included a saving clause stating that nothing in § 706 of the Act or the amendments made to 46 U.S.C. 40304 may be construed to prescribe a specific deadline for the submission of relevant information and documents from interested persons in response to a request for comment on an agreement filing. Public Law 115–282, 706(c).

The Commission is revising its regulations in part 535 to address these changes. In particular, the final rule revises the procedures for submitting comments on filed agreements in § 535.603 to reflect that such comments are exempt from disclosure under FOIA and to make conforming changes to the list of confidentially submitted material in § 535.608. The final rule also revises the **Federal Register** notice requirements in § 535.602 to reflect the saving clause, namely that the Shipping Act may not be construed as prescribing a deadline for the submission of comments on filed agreements. Under revised § 535.602, **Federal Register** notices will no longer include a ''final date'' or rigid deadline for filing comments; rather, notices will include a date by which comments are most useful for the Commission's analysis of an agreement, *e.g.,* when the agreement is subject to the statutory 45-day review period before going into effect.[7] Comments received before that date will be considered by the Commission and staff in making determinations within the 45-day review period, while comments received after that date may be considered, to the extent practicable, within the 45-day review period or as part of the Commission's continuing review of the agreement after it goes into effect.

V. Rulemaking Analyses and Notices

Effective Date

The Administrative Procedure Act generally requires a minimum of 30 days before a final rule can go into effect, but excepts from this requirement: (1) Substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretive rules and statements of policy; and (3) when an agency finds good cause for a shorter period of time and includes those findings with the rule. 5 U.S.C. 553(d).

The majority of the changes made by this rule implement statutory changes made by the LoBiondo Act and involve limited, if any, exercise of discretion by the Commission. Notwithstanding the effective date for the regulatory changes in this final rule, regulated entities are currently subject to the amended statutory provisions, including the expanded scope of persons required to obtain an OTI license from the Commission under 46 U.S.C. 40901 and the expanded prohibition against knowingly and willfully accepting or transporting cargo for OTIs that do not meet certain Shipping Act requirements in 46 U.S.C. 41104(a)(11). Likewise, this final rule does not affect the Commission's existing statutory authority to hold certain types of non-public meetings under 46 U.S.C. 303 or the confidentiality protections for third-party comments on filed agreements under 46 U.S.C. 40306. A delayed effective date is therefore unnecessary. In addition, a delayed effective date would lengthen the period during which the Commission's regulations would be inconsistent with the revised statutory provisions, potentially causing confusion among regulated entities and other affected parties. A delayed effective date would therefore also be contrary to the public interest. For the foregoing reasons, the Commission finds good cause for these changes to be effective immediately.

Although the elimination of the licensed U.S. agent requirement for registered NVOCCs is likewise in response the statutory changes in the LoBiondo Act, the analysis above reflects that this change is more than a technical change to match the revised statutory text. Nonetheless, as this change relieves a restriction on registered NVOCCs and their U.S. agents, an immediate effective date for the change is warranted under 5 U.S.C. 553(d).

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. Based on the analysis below, the Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Most of the final rule's changes will clearly have no economic impact on any regulated entities, *i.e.,* updating references to statutory provisions, the amendments relating to nonpublic collaborative discussions by the Commission, and the amendments relating to comments on filed agreements.

With respect to the amendments to the regulations governing OTI licensing, financial responsibility, and general duties, the Commission recognizes that the majority of businesses affected by these proposed changes (OTIs) qualify as small entities under the guidelines of the Small Business Administration. The final rule will not, however, result in a significant economic impact on these entities. The regulatory changes include: (1) Expanding the class of entities that must obtain a license to include those holding themselves out or advertising as OTIs; (2) eliminating the requirement that U.S. agents of foreign-based, registered NVOCCs be licensed; and (3) expanding the prohibition on common carriers transporting cargo for noncompliant OTIs to include OFFs that have not met the financial responsibility requirements.

These changes are expected to have minimal, if any, economic impact. As

[7] The proposed regulatory text in the NPRM expressly referenced the 45-day review period. The final rule does not include this reference, reflecting that certain types of filed agreements are effective on filing and are not subject to the review period. *See, e.g.,* 46 CFR 535.302, 535.311.

explained above, the Commission expects that requiring entities that hold themselves out or advertise as OTIs to obtain a license and bond, insurance, or other surety will have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Further, to the extent that eliminating the license requirement for U.S. agents of foreign-based, registered NVOCCs has any effect, it will be to reduce the regulatory burden on those agents as well as registered NVOCCs.[8] Finally, the changes to the prohibition on transporting cargo for noncompliant OTIs will have little, if any, economic impact on common carriers, including NVOCCs. NVOCCs will continue to be able to rely on the Commission's website, which contains an easily searchable database of OTIs, to ascertain both NVOCC and OFF compliance with the relevant requirements.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water, or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. In addition to correcting references to statutory provisions, the proposed rule would make changes to the regulations governing Commission meetings in part 503, the regulations governing OTI licensing, financial responsibility, and general duties in part 515, and the regulations governing the submission of comments on filed agreements in part 535. This rulemaking thus falls within the categorical exclusion for actions regarding access to public information under part 503 (§ 504.4(a)(24)), actions related to the issuance, modification, denial and revocation of ocean transportation intermediary licenses (§ 504.4(a)(1)), and actions related to the consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35)). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 503

Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 532

Common carriers, Exports, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 545

Antitrust, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission is amending 46 CFR parts 503, 515, 530, 532, 535, and 545 as follows:

PART 503—PUBLIC INFORMATION

■ 1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 303; E.O. 13526 of January 5, 2010 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

■ 2. Amend § 503.72 by revising paragraph (a) to read as follows:

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75, 503.76, and 503.84, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

* * * * *

■ 3. Amend § 503.78 by revising paragraph (a) to read as follows:

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79 through 503.81 or § 503.84.

* * * * *

■ 4. Add § 503.84 to subpart I to read as follows:

§ 503.84 Nonpublic Collaborative Discussions.

(a) *General.* Notwithstanding § 503.72, a majority of the Commissioners may hold a meeting that is not open to public observation to discuss official agency business if:

(1) No formal or informal vote or other official agency action is taken at the meeting;

(2) Each individual present at the meeting is a Commissioner or an employee of the Commission;

(3) At least one (1) Commissioner from each political party is present at the meeting, if there are sitting Commissioners from more than one party; and

(4) The General Counsel of the Commission is present at the meeting.

(b) *Disclosure of nonpublic collaborative discussions.* Except as provided under paragraph (c) of this section, not later than two (2) business days after the conclusion of a meeting

[8] When originally proposing the licensed U.S. agent requirement in 1998, the Commission stated that it expected that most U.S. agents would already be licensed and the impact of the requirement would be *de minimis.* 1998 NPRM, 63 FR at 70714. The Commission expects that removing the requirement will likewise have minimal, if any, economic impact on registered NVOCCs or their U.S. agents.

under paragraph (a) of this section, the Commission shall make available to the public, in a place easily accessible to the public:

(1) A list of the individuals present at the meeting; and

(2) A summary of the matters discussed at the meeting, except for any matters the Commission properly determines may be withheld from the public under § 503.73.

(c) *Exception.* If the Commission properly determines matters may be withheld from the public under § 503.73, the Commission shall provide a summary with as much general information as possible on those matters withheld from the public.

(d) *Ongoing proceedings.* If a meeting under paragraph (a) of this section directly relates to an ongoing proceeding before the Commission, the Commission shall make the disclosure under paragraph (b) of this section on the date of the final Commission decision.

■ 5. Amend § 503.85 by revising paragraph (a) introductory text to read as follows:

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of §§ 502.73 through 503.75, the following records shall be maintained by the Secretary of the agency:

* * * * *

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 6. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 7. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

(a) Except as otherwise provided in this part, no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission.

(b) For purposes of this part, a person is considered to be ''in the United States'' if such person is resident in, or incorporated or established under, the laws of the United States.

■ 8. Amend § 515.4 by revising paragraph (b) to read as follows:

§ 515.4 License; when not required.

* * * * *

(b) *Agents, employees, or branch offices of an ocean transportation intermediary.*

(1) A disclosed agent, individual employee, or branch office of an ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such ocean transportation intermediary.

(2) An ocean transportation intermediary must report branch offices to the Commission in Form FMC–18 or under the procedures in § 515.20(e).

(3) An ocean transportation intermediary is fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of the ocean transportation intermediary's business.

* * * * *

■ 9. Amend § 515.19 by revising paragraph (g)(1)(vii) to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

* * * * *

(g) * * *

(1) * * *

(vii) Knowingly and willfully accepting cargo from or transporting cargo for the account of:

(A) an NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(B) an OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; and

* * * * *

■ 10. Amend § 515.21 by revising paragraph (a) introductory text, and paragraphs (a)(1), and (a)(2) to read as follows:

§ 515.21 Financial Responsibility Requirements.

(a) *Form and amount.* Except as otherwise provided in this part, no person may advertise, hold oneself out, or act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The bond, insurance, or other surety covers the transportation-related activities of an ocean transportation intermediary.

(1) Any person in the United States advertising, holding oneself out, or acting as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of $50,000.

(2) Any person in the United States advertising, holding oneself out, or acting as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of $75,000.

* * * * *

■ 11. Amend § 515.27 by revising paragraph (a), paragraph (b) introductory text, and paragraphs (b)(1), and (c) to read as follows:

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier may knowingly and willfully accept cargo from or transport cargo for the account of:

(1) An NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(2) An OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part.

(b) A common carrier can obtain proof of an NVOCC or OFF's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's website *www.fmc.gov* as provided in paragraph (d) of this section, to verify that the NVOCC or OFF has complied with the applicable licensing, registration, tariff, and financial responsibility requirements; or

* * * * *

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under 46 U.S.C. 41104(a)(11), unless the common carrier knew that such NVOCC or OFF was not in compliance with the applicable tariff or financial responsibility requirements.

* * * * *

PART 530—SERVICE CONTRACTS

■ 12. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

■ 13. Amend § 530.6 by revising paragraph (d) to read as follows:

§ 530.6 Certification of shipper status.

* * * * *

(d) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with

46 U.S.C. 41104(a)(12) upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

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

Authority: 46 U.S.C. 40103.

■ 15. Amend § 532.2 by revising paragraph (e) to read as follows:

§ 532.2 Scope and applicability.

* * * * *

(e) The prohibition in 46 U.S.C. 41104(a)(2)(A);

* * * * *

■ 16. Amend § 532.7 by revising paragraph (c) to read as follows:

§ 532.7 Recordkeeping and audit.

* * * * *

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(a)(1), 41104(a)(2)(A) or other acts prohibited by the Shipping Act.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 17. The authority citation for part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

■ 18. Amend § 535.602 by revising paragraph (b)(6) to read as follows:

§ 535.602 Federal Register notice.

* * * * *

(b) * * *

(6) A request for comments, including relevant information and documents, regarding the agreement and the date by which comments should be submitted in order to be most useful to the Commission's review of the agreement.

■ 19. Amend § 535.603 by revising paragraph (a) to read as follows:

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments, including relevant information and documents, regarding a filed agreement. Commenters may submit the comment by email to *secretary@fmc.gov* or deliver to Secretary, Federal Maritime Commission, 800 N Capitol St. NW, Washington, DC 20573–0001. The Commission will treat such comments as confidential in accordance with § 535.608.

* * * * *

■ 20. Amend § 535.608 by revising paragraph (a) to read as follows:

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under 46 U.S.C. ch. 403, all information and documents submitted to the Commission by the filing party(ies) or third parties regarding an agreement will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, replies to requests for additional information, and third-party comments.

* * * * *

PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

■ 21. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

■ 22. Amend § 545.1 by revising paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) 46 U.S.C. 40502 authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the Shipping Act of 1984 (''Act''). 46 U.S.C. 41104(a)(10) prohibits carriers from unreasonably refusing to deal or negotiate. 46 U.S.C. 40307(a)(3) exempts from the antitrust laws any activity within the scope of the Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

* * * * *

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–02493 Filed 2–19–20; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200204–0046]

RIN 0648–BJ28

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule modifies the red snapper Federal charter vessel/headboat (for-hire) component's annual catch target (ACT) for the 2020 and subsequent fishing years. The purpose of this final rule and the framework action is to allow for greater harvest of red snapper by the Federal for-hire component while continuing to constrain landings to the Federal for-hire component and total recreational annual catch limits (ACL).

DATES: This final rule is effective March 23, 2020.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment (EA), a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-fishery-management-plan-reef-fish-resources-gulf-mexico-modification*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The FMP, which includes red snapper, was prepared by the Council and is implemented by NMFS 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.*).

On November 12, 2019, NMFS published a proposed rule for the framework action and requested public comment (84 FR 61003). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework actions and implemented by this final rule is described below.

All weights described in this final rule are in round (whole) weight.

Background

The current red snapper stock ACL is equal to the acceptable biological catch (ABC) of 13.74 million lb (6.23 million kg); 51 percent is allocated to the commercial sector and 49 percent to the recreational sector. The recreational sector's ACL is further divided into the private angling component (57.7 percent) and Federal for-hire component (42.3 percent). In addition, ACTs are in place for the recreational sector and its respective components. The ACT is a level of catch reduced from the ACL to account for management uncertainty. The separate recreational component ACLs and ACTs were implemented in 2015 and were set to expire in 2022 (81 FR 86971, December 2, 2016). However, Amendments 50A–F to the FMP continue the separation of the private angling and Federal for-hire components. These amendments were approved on November 6 and the final rule for Amendments 50 A–F was effective on February 6, 2020 (85 FR 6819, February 6, 2020).

The regulations require NMFS to project the component fishing seasons based on the respective ACTs. The ACTs were implemented to reduce the likelihood of exceeding the private angling or Federal for-hire component ACLs, as well as the total recreational ACL. The commercial sector does not have an ACT because it is managed under an individual fishing quota program that effectively constrains landings to the commercial ACL.

Because the Federal for-hire component has not exceeded its ACL since the components were separated, the Council developed a framework action in 2018 to reduce the 20 percent buffer between the Federal for-hire component ACL and ACT for 2019 only (84 FR 7828, March 5, 2019). The 2018 framework action set the Federal for-hire component ACT 9 percent less than the component ACL. This buffer was based on the application of the Council's ACL/ACT Control Rule, which recommends a buffer based on factors such as recent harvest overages, the percent standard error in Federal for-hire landing estimates, stock status, and whether in-season accountability measures (AMs) are used.

The reduction in the Federal for-hire component's ACL/ACT buffer was effective only for 2019 to coincide with the second year of temporary changes to the management of the private angling component. All five Gulf states received exempted fishing permits (EFPs) from NMFS for the 2018 and 2019 fishing years to allow them to test limited state management of the private angling component. Each state was allocated a percentage of the private angling ACL and each state determined whether to manage to a reduced portion of its ACL. The Council determined that the reduction in the Federal for-hire component ACT buffer should be limited to 2019 because of the increased risk of the recreational sector ACL being exceeded after the EFPs are no longer in effect. Under the EFPs, any overages by the private-angling component are deducted from the subsequent year's state ACL.

In the current framework action, the Council did not consider decreasing the private angling component ACT buffer because the Council had already submitted to NMFS for review Amendments 50A–F to the FMP. These amendments delegate authority to each of the Gulf states to establish specific management measures applicable to private anglers in Gulf Federal waters who are landing red snapper in that state, including the length of the fishing season. Similar to the EFPs, these amendments allocate a percentage of the private angling ACL, each state determines whether to manage to a reduced portion of its ACL, and any overage of the state's ACL would be deducted from that state's ACL the following fishing year. Given the changes in private recreational component management established in Amendments 50A–F, the Council determined that it is appropriate to keep the 9 percent Federal for-hire ACL/ACT buffer beyond 2019.

Management Measures Contained in This Final Rule

For red snapper, this final rule sets the Federal for-hire component ACL/ACT buffer at 9 percent below the component ACL which results in a Federal for-hire component ACT of 2.848 million lb (1.292 million kg). The 9 percent buffer results in a component ACT that is 344,000 lb (156,036 kg) greater than the ACT using the previous 20 percent buffer. NMFS expects this increase in the ACT to result in a Federal for-hire season that is approximately 7 to 8 days longer in 2020 than if the lower ACT were used to project the season.

Comments and Responses

NMFS received 43 comments on the proposed rule for the framework action from individuals, charter fishing organizations, and non-governmental organizations. Most of the comments (26 comments) were in favor of reducing the Federal for-hire component buffer between the ACL and ACT, noting that the for-hire component will increase its accountability with improved data collection, there will be economic benefits from a longer Federal for-hire season, and the Gulf states will be managing the private angling component through Amendments 50A–F to the FMP. Thirteen comments opposed reducing the buffer between the ACL and ACT and four comments did not address the proposed action. In addition, several comments included suggested changes to red snapper management that are outside the scope of the proposed rule, such as changes to recreational bag limits and fishing seasons, reallocation of the red snapper total allowable catch, and state management of the Federal for-hire component. Comments specific to the proposed rule and the framework action are grouped as appropriate and summarized below, each followed by NMFS' respective response.

Comment 1: The Federal for-hire component ACT should not be increased to help ensure that red snapper landings do not exceed the recreational ACL and that there is no delay in the recovery of the stock.

Response: NMFS disagrees that keeping the lower Federal for-hire component ACT is necessary to ensure landings do not exceed the recreational ACL and the red snapper stock continues to rebuild on schedule. An ACT is a level of catch set below an ACL to account for management uncertainty. Through an emergency rule in 2014, NMFS implemented a recreational ACT for red snapper that is 20 percent below the recreational ACL, and used that ACT to determine the length of the recreational fishing season (79 FR 27768, May 15, 2014). A framework action implemented in 2015 made this ACT more permanent (80 FR 14328, March 19, 2015). When the Federal for-hire component and private angling components were separated in 2015, the recreational ACL was allocated between the components, with corresponding ACTs set 20 percent below the component ACLs (80 FR 22422, April 22, 2015). Using this lower level of catch to estimate the season length

reduces the likelihood the ACL will be exceeded in a given year.

NMFS has been successful in constraining Federal for-hire component landings below the component ACL. With the exception of 2018, the Federal for-hire component has not exceeded its ACT. In 2018, Federal for-hire landings were above the ACT, but still 13 percent below the component ACL. In 2019, NMFS reduced the buffer between the Federal for-hire component ACL and ACT to 9 percent and set a Federal for-hire component season from June 1 through August 1 (84 FR 7828; March 5, 2019). Preliminary landing estimates for 2019 show only 91 percent of the component ACT and 83 percent of the component ACL have been harvested through August 31, 2019.

Further, as previously explained, through Amendment 50 to the FMP, each Gulf state is now setting its private angling season, is required to constrain landings to the state ACL, and must pay back any overage of its ACL the following the fishing year. There have been concerns about how NMFS will assess whether the state ACLs and the overfishing limit (OFL) have been exceeded because each state's ACL was calculated using landings from the Marine Recreational Information Program, but each state is monitoring its landings using its own reporting system, which may result in estimates that are not directly comparable to the ACL. NMFS is working with the Gulf states to develop a peer-reviewed calibration that is expected to be available in the spring of 2020. When the calibration is available, NMFS intends to apply it to the state ACLs established in the final rule implementing Amendments 50A–F, and implement catch levels in the appropriate state currencies. This will help ensure that total red snapper landings do not exceed that overfishing limit and that the red snapper stock continues to rebuild as anticipated.

Comment 2: The Federal for-hire component should not have a longer fishing season than the private angling component.

Response: NMFS disagrees that the Federal for-hire component season should be constrained by the length of the private angling season. The Council and NMFS separated the recreational sector into the private angling and Federal for-hire components, in part, to allow for the development and implementation of management measures better tailored to the specific needs of the separate components. Through EFPs in 2018 and 2019, and now through Amendments 50A–F to the FMP, the Gulf states are setting the season for the private angling component. These state seasons may be longer or shorter than the Federal for-hire component season depending on the management strategy implemented by each state.

Comment 3: The buffer between the for-hire component ACL and ACT should be based on biological factors and not by the amount of fish that are harvested.

Response: Biological factors were taken into account when establishing the recreational sector and component ACLs and ACTs. The 9 percent buffer between the ACL and ACT for the Federal for-hire component was derived from the Council's ACL/ACT Control Rule. This control rule uses factors such as stock status, recent harvest overages, the percent standard error in Federal for-hire landing estimates, and whether in-season AMs are in place. Biological factors such as age and size at maturity as well as the size composition of the stock are accounted for in stock assessments, which dictate the stock status. In addition, stock assessments are the basis for setting red snapper ABCs and OFLs upon which the sector and component ACLs and ACTs are based.

Comment 4: Before reducing the buffer between the Federal for-hire component ACL and ACT, other actions, NMFS should take into account the effects of other actions on the red snapper stock, such as state management of the private angling component and the potential decrease in juvenile red snapper target bycatch reduction goal from shrimp trawls.

Response: The framework action implemented through this final rule includes an EA, in which the effects of the action, including cumulative effects, are analyzed. In the cumulative effects analysis, NMFS identified several reasonably foreseeable Gulf reef fish actions, including state management of the private angling component, and concluded that these actions in combination with the reduction of buffer between the Federal for-hire component ACL and ACT, and other past or present actions are unlikely to result in significant impacts. NMFS did not include in that analysis any anticipated impacts from the implementation of Amendment 18 to the FMP for the Shrimp Fishery of the Gulf of Mexico U.S. Waters (Shrimp Amendment 18). Shrimp Amendment 18 was approved on October 25, 2019, and, when implemented, will reduce the target reduction goal for juvenile red snapper mortality in the Federal Gulf penaeid shrimp trawl fishery, which may allow for an increase in shrimp trawl effort. Analyses in that amendment indicate that lowering the target reduction goal should have no impact on red snapper rebuilding. NMFS has prepared an addendum to the cumulative effects analysis in the EA for this framework action to include Shrimp Amendment 18, and has determined that impacts from the current framework action in combination with any impacts from the implementation of Shrimp Amendment 18 as well as other past actions, present actions, and reasonably foreseeable future actions described in the EA, are not expected to be significant.

Classification

The Regional Administrator, Southeast Region, has determined that this final rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. None of the public comments that were received specifically addressed the certification and NMFS has not received any new information that would affect its determination that this rule would not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: February 6, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.41, revise paragraph (q)(2)(iii)(B) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed. The component ACT is 2.848 million lb (1.292 million kg), round weight.

* * * * *

[FR Doc. 2020–02699 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RTID 0648–XY078

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl 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 using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2020 Pacific cod total allowable catch allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 16, 2020, through 1200 hours, A.l.t., April 1, 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 A season apportionment of the 2020 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI is 22,723 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).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2019 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 20,723 mt and is setting aside the remaining 2,000 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl 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 using trawl 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 February 13, 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: February 14, 2020.

Karyl K. Brewster-Geisz,

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

[FR Doc. 2020–03374 Filed 2–14–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200205–0047]

RIN 0648–BJ03

Fisheries of the Exclusive Economic Zone Off Alaska; Rockfish Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS revises regulations to implement Amendment 119 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 107 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). This final rule requires that the operator of a federally permitted catcher vessel using hook-and-line, pot, or jig gear in the Bering Sea and Aleutian Islands and Gulf of Alaska retain and land all rockfish (*Sebastes* and *Sebastolobus* species) caught while fishing for groundfish or Pacific halibut. This action is necessary to improve identification of rockfish species catch by vessels using electronic monitoring,

provide more precise estimates of rockfish catch, reduce waste and incentives to discard rockfish, reduce overall enforcement burden, and promote more consistent management between State and Federal fisheries. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the BSAI FMP, the GOA FMP, and other applicable law.

DATES: Effective March 23, 2020.

ADDRESSES: Electronic copies of Amendment 119 to the BSAI FMP, Amendment 107 to the GOA FMP (collectively Amendments 119/107), the Regulatory Impact Review (RIR; referred to as the Analysis), and the National Environmental Policy Act Categorical Exclusion evaluation document prepared for this action may be obtained from *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and by email to *OIRA_Submission@omb.eop.gov* or by fax to (202)–395–5806.

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

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the Gulf of Alaska (GOA) under the GOA FMP and manages the groundfish fisheries in the EEZ of the Bering Sea and Aleutian Islands (BSAI) under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the GOA FMP and BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations governing fishing by U.S. vessels in accordance with the FMPs appear at 50 CFR parts 600 and 679.

This final rule implements Amendment 119 to the BSAI FMP and Amendment 107 to the GOA FMP (collectively Amendments 119/107). The Council submitted Amendments 119/107 for review by the Secretary of Commerce, and NMFS published a notice of availability (NOA) for Amendments 119/107 on August 22, 2019 (84 FR 43783). The comment period on the NOA for Amendments 119/107 ended on October 21, 2019. The Secretary of Commerce approved Amendments 119/107 on November 19, 2019 after accounting for information from the public, and determining that Amendments 119/107 are consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. NMFS published a proposed rule to implement Amendments 119/107 and the regulatory amendments on October 2, 2019 (84 FR 52442). The comment period on the proposed rule ended on November 1, 2019. NMFS received one comment on the proposed Amendments 119/107 and the proposed rule. A summary of this comment and the response by NMFS are provided under the heading ''Comments and Responses'' below.

In this final rule ''rockfish'' is defined as any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish) in the BSAI and GOA and *Sebastes melanops* (black rockfish) and *Sebastes mystinus* (blue rockfish) in the GOA (see § 679.2). This final rule also uses the term ''prohibited species status'' to mean status conferred by a NMFS management action issued under § 679.20(d)(2) that prohibits retention of a species.

The following discussion summarizes rockfish management, the need for this final rule, and the anticipated effects of the final rule. A detailed review of the provisions of Amendments 119/107, the proposed regulations to implement Amendments 119/107, and the rationale for these actions are provided in the Analysis and the preamble to the proposed rule (84 FR 52442, October 2, 2019).

Background

Rockfish Management

Many rockfish species (*Sebastes* and *Sebastolobus* spp.) are commonly caught incidentally in other fisheries. Except for thornyhead rockfish (*Sebastolobus* spp.), rockfish have a closed swim bladder, which regulates buoyancy. Quick changes in pressure that occur when rockfish are caught and brought to the surface damage internal organs; therefore, rockfish are susceptible to high mortality when brought to the surface from depth. Virtually no rockfish survive when caught without the use of special handling procedures to return the rockfish to depth as soon as possible.

NMFS prohibits directed fishing for most rockfish species at the beginning of the year because the total allowable catch for these species does not support directed fishing. The term ''directed fishing'' is defined in regulations at § 679.2. When NMFS prohibits directed fishing for a groundfish species, retention of the catch of that species is allowed up to a maximum retainable amount (MRA). The MRA is the proportion or percentage of retained catch of a species prohibited for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species). Additionally when the total allowable catch for rockfish species or species group is reached, NMFS prohibits retention of that species or species group. As a result, catcher vessels (CVs) using hook-and-line, pot, or jig gear in the BSAI and GOA annually discard a proportion of their incidental catch of rockfish. Because most rockfish do not survive being caught, the discard of rockfish may be considered wasteful, as these fish could otherwise be used for human consumption. A detailed review of rockfish management is provided in Section 2.6 of the Analysis and in the preamble to the proposed rule (84 FR 52442, October 2, 2019).

Need for the Final Rule

This final rule modifies regulations to require operators of CVs using hook-and-line, pot, or jig gear in groundfish and halibut fisheries of the Federal exclusive economic zone (EEZ) retain and land all rockfish. This requirement is established for multiple reasons, including: (1) Improving the identification of rockfish species catch by vessels using electronic monitoring (EM); (2) providing more precise estimates of rockfish catch; (3) reducing waste and incentives to discard rockfish; (4) reducing overall enforcement burden; and (5) promoting more consistent management between State of Alaska (State) and Federal fisheries. Each of these reasons are summarized below. A detailed review of each of these reasons is provided in the Analysis and in the preamble to the proposed rule (84 FR 52442, October 2, 2019).

This final rule could improve the identification of rockfish species by vessels using EM. EM studies focused on the accuracy of species identification have shown that in most cases it is possible to identify fish to the species or species group required for management. However, some rockfish species are difficult to identify and continue to be challenging for EM to identify. These rockfish species include shortraker rockfish (*Sebastes borealis*), rougheye rockfish (*Sebastes aleutianus*), blackspotted rockfish (*Sebastes melanostictus*), and various other rockfish species that are less commonly caught. This final rule could improve the identification of rockfish species by requiring all catch to be retained and landed where it could be verified, thereby reducing potential errors in EM identification of catch composition.

This final rule could provide more precise estimates of rockfish catch. Most rockfish species have specialized habitat needs, which means they are more sparsely distributed than most other groundfish species. As a result, at-sea discard rates can be variable, which results in less precise estimates of total rockfish removals (see Section 2.7.1.3 of the Analysis). Requiring full retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear would allow the total catch of rockfish to be sorted, weighed, and reported via eLandings instead of extrapolated from at-sea discard rates. Therefore, this final rule would likely result in much better information on the incidental catch of rockfish by CVs using hook-and-line, pot, or jig gear.

This final rule could reduce waste and incentives to discard. Since the majority of rockfish do not survive being caught, discards of rockfish increases waste. Many factors affect why a vessel operator discards rockfish. The most common reason for discards, inferred by available data, is regulatory discard, which occurs when an MRA is exceeded during a fishing trip or if a rockfish species is on prohibited species status (see Section 2.7.1.4 of the Analysis). Removing the MRA regulations and requirements to discard when a rockfish species is on prohibited species status associated with rockfish caught by CVs using hook-and-line, pot, or jig gear and, instead, requiring full retention could reduce waste.

This final rule could reduce overall enforcement burden. This final rule would no longer require CVs using hook-and-line, pot, or jig gear to comply with MRA regulations for rockfish. This would likely reduce the number of enforcement cases associated with rockfish MRA violations, and therefore, allow the NMFS Office of Law Enforcement (NMFS OLE) to pursue other priorities. Overall, this final rule simplifies current regulations and promotes more consistency in the regulations. This alone is likely to increase compliance and reduce enforcement burden (see Section 2.7.2.11 of the Analysis).

This final rule could promote more consistent management between State and Federal fisheries. Rockfish retention requirements for CVs using hook-and-line, pot, or jig gear differ between fisheries in Federal waters and State waters. Vessel operators that fish in both Federal waters and State waters are subject to two different sets of regulations concerning management of rockfish incidental catch. Sections 2.6.4 and 2.7.2.5 of the Analysis illustrate the complexity of rockfish retention requirements. The State already has full retention requirements for all rockfish in some areas, which include parts of the Eastern GOA, Prince William Sound, and Cook Inlet. This final rule would establish Federal regulations that are very similar, although not identical, to existing State regulations on management of rockfish incidental catch in these management areas. Federal and State management inconsistencies may be eliminated if the State mirrors Federal full retention requirements in all areas.

Summary of Amendments 119/107

This final rule will require full retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear targeting groundfish and halibut in the GOA and BSAI. The rationale for requiring full retention is provided in the preamble to the proposed rule (84 FR 52442, October 2, 2019), and is summarized in the previous section of this preamble.

Elements of This Final Rule

This section describes the changes to current regulations. This final rule implements two management measures that revise the regulations at 50 CFR part 679: (1) Requiring full retention and landing of rockfish by CVs using hook-and-line, pot, or jig gear; and (2) limiting the amount of rockfish that can enter commerce.

Measure 1: Require Retention of Rockfish

This final rule revises regulations to require retention and delivery of all rockfish caught by CVs using hook-and-line, pot, and jig gear in the BSAI and GOA. Additionally, this final rule requires full retention of rockfish by CVs using hook-and-line, pot, or jig gear, even if the rockfish species is prohibited for directed fishing or on prohibited species status (as defined in § 679.20(d)(2)). When on prohibited species status, all retained rockfish would be prohibited from entering commerce, except as fish meal.

Measure 2: Limit Amount of Rockfish That Can Enter Commerce

This final rule also establishes a means to limit the amount of rockfish caught as incidental catch that can enter commerce through barter, sale, or trade through the implementation of a maximum commerce allowance (MCA). The Council determined, and NMFS agrees, that an MCA of 15 percent balances the need to incentivize vessel operators to retain all rockfish without encouraging increased rates of rockfish incidental catch under the full retention requirement. The 15 percent MCA for rockfish will be applied as a percentage of the total retained groundfish and halibut landed during each delivery to limit the amount of rockfish allowed to enter commerce. Section 2.7.2.4 of the Analysis and the preamble to the proposed rule (84 FR 52442, October 2, 2019) provides further explanation as to why the Council recommended and NMFS is implementing an overall MCA of 15 percent.

Yelloweye rockfish has a value that is two to three times more than other rockfish species. Due to concerns that vessel operators could change their fishing behavior to target yelloweye rockfish up to the 15 percent MCA, this final rule establishes a separate limit for yelloweye rockfish of 5 percent MCA in all areas, except the Southeast Outside District of the GOA (SEO) defined in Figure 3 of part 679. This limit would be established within the 15 percent overall MCA for all rockfish species. This more restrictive MCA for yelloweye rockfish, within the overall 15 percent MCA for all other rockfish, is intended to limit the incentive for vessel operators to target yelloweye rockfish. Section 2.7.2.4.1 of the Analysis and the preamble to the proposed rule (84 FR 52442, October 2, 2019) discuss the rationale for the yelloweye rockfish MCA in detail.

The selection of the appropriate MCA percentage has some trade-offs. Low MCA percentages prioritize the avoidance of rockfish while fishing but increase the number of trips that may have retained rockfish that cannot be sold. This could affect a vessel operator's compliance with full rockfish retention. Higher MCA percentages could result in more retention compliance. However, higher MCA percentages could also result in increased rockfish catch as vessel operators could seek areas with higher rockfish incidental catch, or change fishing behavior to engage in top-off fishing. ''Top-off fishing'' occurs when a vessel operator deliberately targets a valuable species that is closed to directed fishing in an attempt to reach the full MRA of that species.

The Council and NMFS considered a range of MCA percentages, and this final rule sets an MCA of 15 percent (including a 5 percent MCA for yelloweye rockfish, as described above). This percentage balances the concern that an MCA that is too restrictive could increase effects on vessels and processors and create incentives to discard rockfish, with the concern that a less restrictive MCA could incentivize vessel operators to engage in top-off fishing for rockfish species and increase

rockfish incidental catch. Section 2.7.2.4 of the Analysis demonstrates that a 15 percent MCA would allow vessel operators to sell all rockfish caught for 84 to 89 percent of the trips that were analyzed. The 15 percent MCA should limit financial incentives for vessel operators to catch more rockfish (Section 2.7.2.4 of the Analysis). For the remaining 11 to 16 percent of the trips that were analyzed, vessel operators would be able to sell most rockfish that were caught. Amounts in excess of the MCA would not be allowed to enter commerce, except as fish meal.

Fish meal is considered a processed fish product that enters commerce. The Council recommended allowing rockfish in excess of the selected MCA to be processed into fish meal to address concerns raised by processors in communities such as Kodiak, Alaska. Vessel operators delivering fish to Kodiak and similar Alaska communities have limited options for discarding fish delivered to a processor that cannot process retained rockfish or other species for human consumption. Allowing rockfish in excess of the MCA to be processed into fish meal is unlikely to provide any financial incentives to target rockfish, due to the low value of fish meal. Section 2.7.2.2 of the Analysis discusses the impacts of allowing rockfish to be processed into fish meal in more detail.

This final rule requires full retention of rockfish even if NMFS places a rockfish species on prohibited species status, which would prevent any retention of incidental catch under current regulations. When NMFS places a rockfish species on prohibited species status, the MCA for that rockfish species would be zero percent. This is discussed in detail in Section 2.7.2.6 of the Analysis. NMFS's OLE expressed concern that there could be compliance issues if the Council did not recommend full retention when a rockfish species is on prohibited species status, as varying obligations to retain rockfish could generate confusion and create potential loopholes that would affect the ability to enforce the management measures implemented by this rule. Generally, prohibiting retention removes financial incentives for vessel operators to continue to harvest a species. Under this action, when a rockfish species is placed on prohibited species status NMFS will set the MCA to zero percent to remove financial incentives to harvest more rockfish than the true incidental catch. Setting the MCA to zero percent for rockfish species on prohibited species status may also result in CVs using hook-and-line, pot, or jig gear avoiding areas that have high incidental catch rates of those species.

Amounts of rockfish that are retained in excess of the MCA could not be sold. However, this surplus rockfish could be used by vessel crew, donated, processed into fish meal, or discarded by processing plant personnel. The Council and NMFS anticipate that most rockfish landed are likely to be processed; however, the decision to purchase, process, or discard rockfish is at the discretion of each individual processor. The Council and NMFS anticipate that most rockfish caught in excess of the MCA will be used in some way through personal use or charitable donations, thereby reducing waste and increasing the use of incidentally caught rockfish. Providing options such as retaining rockfish for personal use or donating it to charitable organizations would give vessel operators who dislike discarding dead fish an incentive to comply with the regulations associated with full retention of rockfish.

During the February 2019 Council meeting, public comments identified a concern about the potential for increased retention of yelloweye rockfish (*Sebastes ruberrimus*) due to its relatively high value compared to other rockfish species. As noted above, yelloweye rockfish has a value that is two to three times greater than other rockfish species. As a result, vessel operators could potentially change their fishing behavior to target yelloweye rockfish up to the 15 percent MCA. Section 2.7.2.4.1 of the Analysis provides additional detail on yelloweye rockfish value and retention rates. Due to these concerns, this final rule establishes a separate limit for yelloweye rockfish of 5 percent MCA in all areas, except the SEO defined in Figure 3 of part 679. This limit would be established within the 15 percent overall MCA for all rockfish species. This more restrictive MCA for yelloweye rockfish, within the overall 15 percent MCA, is intended to limit the incentive for vessel operators to target yelloweye rockfish. To aid the reader in understanding this provision, we provide the following example of how an MCA would be calculated and applied:

A vessel operator retains all rockfish during an individual fishing quota (IFQ) halibut trip and delivers 1,000 pounds of halibut and 200 pounds of various rockfish species, of which 50 pounds is yelloweye rockfish. The MCA for rockfish is 150 pounds (1,000 * 0.15). The MCA for yelloweye rockfish is 50 pounds (1,000 * 0.05). The vessel operator could sell all yelloweye rockfish and 100 pounds of other rockfish species. Fifty pounds of rockfish could not enter commerce but could be donated, used by vessel crew, or processed into fish meal.

To assist in resolving inconsistencies in management between State and Federal fisheries in the SEO, the Council recommended that current full retention requirements for demersal shelf rockfish (DSR) in the SEO remain unchanged. In the SEO (one of seven areas in the GOA), vessel operators would be required to retain all rockfish; however, the MCA would be different in the SEO from other areas of the GOA. The MCA for DSR species in the SEO would be limited to 10 percent of the aggregate round weight of retained IFQ halibut and groundfish, excluding sablefish, and one percent of the aggregate round weight of retained sablefish. This is necessary to avoid inconsistency in management between Federal and State fisheries as discussed in Sections 2.6.5 and 2.6.6 of the Analysis.

Regulatory Changes Made by the Final Rule

The following provides a brief summary of the regulatory changes implemented through this final rule. This final rule will—

- Revise § 679.5(c)(3)(iv)(A)(3) to clarify that CVs using hook-and-line, pot, or jig gear are not required to record MRAs for rockfish because MRAs do not apply in full retention requirements.
- Add § 679.7(a)(5) to prohibit discard of rockfish from CVs using hook-and-line, pot, or jig gear.
- Revise § 679.7(f)(8) to clarify that rockfish are not required to be discarded.
- Revise § 679.20(d)(1)(iii)(B) to clarify that rockfish are not required to be discarded when rockfish are closed to directed fishing.
- Revise § 679.20(d)(2) to clarify that rockfish are still required to be retained by CVs using hook-and-line, pot, or jig gear, even if a species is on prohibited species status.
- Revise § 679.20(j) to include the full retention requirement, description of the MCA, and requirements for disposal of rockfish in excess of the MCA.
- Revise Table 10 and Table 11 to 50 CFR part 679 by adding a footnote to the rockfish column referencing § 679.20(j).

Comments and Responses

NMFS received one comment letter on the proposed rule. NMFS summarizes and responds to this comment below.

Comment 1: This rule will increase the burden on enforcement and gut protections for rockfish.

Response: NMFS disagrees. Section 2.7.2.11 of the Analysis identifies several benefits that could reduce the burden on enforcement. This final rule simplifies current regulations and promotes more consistency in the regulations. This alone is likely to increase compliance and reduce enforcement burden.

Full retention with a limit on the amount that can enter commerce has been in place for DSR in the SEO of the GOA since 2005. This final rule expands those requirements to all areas and for all species of rockfish caught by CVs using hook-and-line, pot and jig gear. NMFS OLE's experience enforcing these regulations was analyzed, and the analysis determined that the enforcement burden is less under full retention with an MCA limit, as compared with the MRA regulations currently in place.

This final rule will not affect the status of a rockfish stock in the BSAI or GOA. The acceptable biological catch and TAC for rockfish species will continue to be established through the annual harvest specifications process. This final rule will not change the processes by which NMFS manages the catch of a rockfish species to stay within its TAC, and is not expected to increase the overall catch and mortality of rockfish relative to current management practices.

Changes From Proposed to Final Rule

NMFS has made a minor change to the regulatory text at § 679.20(j)(2) to clarify that, unless a rockfish species is on prohibited species status, the MCA of 15 percent will apply throughout the BSAI and GOA apart from the SEO. This change is intended only to emphasize that the MCA provisions at § 679.20(j)(2) except as described in either § 679.20(j)(3), which applies to the SEO, or § 679.20(j)(4), which applies when a rockfish species is on prohibited species status. This minor change is consistent with the description in the preamble to the proposed rule, which stated that full retention requirements in the SEO area will remain the same to ensure consistency between State and Federal management.

In addition, NMFS made a minor change to the regulatory text at § 679.7(a)(5)(i) and § 679.20(j)(1) to clarify that this final rule applies to catcher vessels fishing for groundfish or IFQ or CDQ halibut using hook-and-line, jig, or pot gear in either the BSAI or GOA, as opposed to vessels fishing in both the BSAI and GOA.

Classification

Pursuant to Sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendments 119/107, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

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

Regulatory Impact Review (RIR)

An RIR (Analysis) was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendments 119/107 and the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule. As part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: *https://www.fisheries.noaa.gov/action/amendment-119-fmp-groundfish-bering-sea-and-aleutian-islands-and-amendment-107-fmp.* This rule does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following website: *https://www.fisheries.noaa.gov/region/alaska.*

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), and, as included in the preambles to the proposed rule and this final rule, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule, and why each one of the other significant alternatives to the action considered by the agency that affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preambles to this final rule and the proposed rule (84 FR 52442, October 2, 2019) and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule (84 FR 52442, October 2, 2019). NMFS received no comments specifically on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) 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 $11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Directly Regulated by This Final Action

The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. NMFS estimates that 169 CVs were active using hook-and-line, pot, or jig gear in the BSAI, and 949 CVs were active using hook-and-line, pot, or jig gear in the GOA. Of these CVs, 136 in the BSAI and 932 in the GOA are considered small entities. Therefore, NMFS estimates a total of 1,068 small entities could be directly regulated by this final rule.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. Small entities would be required to comply with the requirements to retain rockfish. A full retention requirement for CVs using hook-and-line, pot, or jig gear could have operational implications for vessel operators. Since a CV using hook-and-line, pot, or jig gear would be required to retain all incidental catch of rockfish, this could reduce the CV's hold space, thereby displacing more valuable target species. Because this action would allow most of a CV's rockfish catch to enter commerce, the cost of requiring retention is estimated to be largely offset by the value of the rockfish. Therefore, the costs are expected to be minimal.

Section 2.7.2 of the Analysis describes the expected effects of requiring rockfish retention. The Council and NMFS determined that the benefits of the revised regulations outweigh the costs of these additional requirements on the existing fleet. This final rule would meet the objectives of the action while minimizing adverse impacts on fishery participants.

This final rule requires full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA. The management measures include full retention of rockfish even if the species is on prohibited species status, but in that situation retained rockfish would be prohibited from entering commerce (*i.e.,* prohibited from being sold). Most of the analysis of expected effects focuses on hook-and-line gear, due to the amount of rockfish incidental catch encountered by hook-and-line gear compared to pot and jig gears. Section 2.7.2.1 of the Analysis indicates that the impact of requiring CVs using pot or jig gear to retain and land all rockfish catch would likely be minimal in relation to CVs using hook-and-line gear.

There are no significant alternatives to this final rule that would accomplish the objectives of requiring full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule contains no new recordkeeping or recording requirements. Landed fish must be reported under existing Federal and State regulations. A more detailed explanation of current recordkeeping and reporting requirements for CVs using hook-and-line, pot, or jig gear can be found at § 679.5. Therefore, this final rule meets the objectives of the action without changing the reporting burden for fishery participants.

Federal Rules That May Duplicate, Overlapping, or Conflict With This Final Action

No duplication, overlap, or conflict between this final action and existing Federal rules has been identified.

Collection-of-Information Requirements

This action does not contain a collection-of-information requirement.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 5, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.5, revise paragraph (c)(3)(iv)(A)(*3*) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(3) * * *

(iv) * * *

(A) * * *

(*3*) *Retain and record discard quantities over the MRA.* When a CV is fishing in an IFQ fishery and the fishery for Pacific cod is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount (MRA) for Pacific cod as defined in Tables 10 or 11 to this part. Quantities over this amount must be discarded and recorded as discard in the logbook.

* * * * *

■ 3. In § 679.7, add paragraph (a)(5), and remove and reserve paragraphs (f)(8)(i)(A) and (f)(8)(ii)(A) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(5) *Rockfish by catcher vessels using hook-and-line, jig, or pot gear.*

(i) For any person, to discard rockfish from a catcher vessel required to have a Federal fisheries permit that is fishing for groundfish or IFQ or CDQ halibut using hook-and-line, jig, or pot gear in the BSAI or GOA until that fish has been landed.

(ii) Exceed the maximum commerce allowance amount established under § 679.20(j).

* * * * *

(f) * * *

(8) * * *

(i) * * *

(A) [Reserved]

* * * * *

(ii) * * *

(A) [Reserved]

* * * * *

■ 4. In § 679.20, revise paragraphs (d)(1)(iii)(B), (d)(2), and (j) to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(B) *Retention of incidental species.* Except as described in § 679.20(e)(3)(iii) and § 679.20(j), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except rockfish species caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j)

* * * * *

(j) *Full retention of rockfish by catcher vessels using hook-and-line, pot, or jig gear*—(1) *Retention and landing requirements.* The operator of a catcher vessel that is required to have a Federal fisheries permit using hook-and-line, pot, or jig gear, must retain and land all rockfish that is caught while fishing for groundfish or IFQ or CDQ halibut in the BSAI or GOA.

(2) *Maximum commerce allowance (MCA) for rockfish in the BSAI and GOA.* Except as described in §§ 679.20(j)(3) and (4), when rockfish is closed to directed fishing, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of rockfish retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of rockfish that is less than or equal to 15 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of yelloweye rockfish that is less than or equal to 5 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of rockfish retained by catcher vessels under paragraphs (j)(2)(i) and (ii) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade except as fish meal.

(3) *MCA of DSR in Southeast Outside District of the GOA (SEO) when closed to directed fishing.* When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(3)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade except as fish meal.

(4) *MCA for rockfish when on prohibited species status.* When a rockfish species is placed on prohibited species status under § 679.20(d)(2), the MCA is set to 0 percent and no amount of that rockfish species may enter commerce through sale, barter, or trade except as fish meal. The operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), may put rockfish retained and landed in excess of the MCA specified in this paragraph to any use, including but not limited to personal consumption or donation, but such rockfish must not enter commerce through sale, barter, or trade except as fish meal.

■ 5. Revise Table 10 to part 679 to read as follows:

BILLING CODE 3510–22–P

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])																
Code	Species	Pollock	Pacific cod	DW Flat (2)	Rex sole	Flathead sole	SW Flat (3)	Arrow-tooth	Sablefish	Aggregated rockfish[7]	SR/RE ERA (1)	DSR SEO (C/Ps only) (5)	Atka mackerel	Aggregated forage fish[9]	Skates (10)	Other species (6)	Grenadiers (12)	Squids
110	Pacific cod	20	n/a[9]	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20
121	Arrowtooth	5	5	20	20	20	20	n/a	1	5	0	0	20	2	5	20	8	20
122	Flathead sole	20	20	20	20	n/a	20	35	7	15	7	1	20	2	5	20	8	20
125	Rex sole	20	20	20	n/a	20	20	35	7	15	7	1	20	2	5	20	8	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
152/151	Shortraker/rougheye (1)	20	20	20	20	20	20	35	7	15	n/a	1	20	2	5	20	8	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	n/a	2	5	20	8	20
270	Pollock	n/a	20	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20
710	Sablefish	20	20	20	20	20	20	35	n/a	15	7	1	20	2	5	20	8	20
Flatfish, deep-water[2]		20	20	n/a	20	20	20	35	7	15	7	1	20	2	5	20	8	20
Flatfish, shallow-water[3]		20	20	20	20	20	n/a	35	1	5	(1)	10	20	2	5	20	8	20
Rockfish, other (4)		20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
172	Dusky rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
Rockfish, DSR-SEO (5)		20	20	20	20	20	20	35	7	15	7	n/a	20	2	5	20	8	20
Skates[10]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	n/a	20	8	20
Other species (6)		20	20	20	20	20	20	35	1	5	(1)	10	20	2	5	n/a	8	20
Aggregated amount of non-groundfish species[11]		20	20	20	20	20	20	35	1	5	(1)	10	20	2	5	20	8	20

Notes to Table 10 to Part 679

1	Shortraker/rougheye rockfish			
		SR/RE	*Sebastes* borealis (shortraker) (152)	
			S. aleutianus (rougheye) (151)	
		SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).	
	Where an MRA is not indicated, use the MRA for SR/RE included under Aggregated Rockfish			
	Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).			
2	Deep-water flatfish	Dover sole (124), Greenland turbot (134), Kamchatka flounder (117), and deep-sea sole		
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole (122), rex sole (125), or arrowtooth flounder (121)		
4	Other rockfish	Western Regulatory Area	means other rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means other rockfish	
		Other rockfish		
		S. aurora (aurora) (185)	*S. variegates* (harlequin)(176)	*S. brevispinis* (silvergrey)(157)
		S. melanostomus (blackgill)(177)	*S. wilsoni* (pygmy)(179)	*S. diploproa* (splitnose)(182)
		S. paucispinis (bocaccio)(137)	*S. babcocki* (redbanded)(153)	*S. saxicola* (stripetail)(183)
		S. goodei (chilipepper)(178)	*S. proriger* (redstripe)(158)	*S. miniatus* (vermilion)(184)
		S. crameri (darkblotch)(159)	*S. zacentrus* (sharpchin)(166)	*S. reedi* (yellowmouth)(175)
		S. elongatus (greenstriped)(135)	*S. jordani* (shortbelly)(181)	
		S. entomelas (widow)(156)	*S. flavidus* (yellowtail)(155)	
	In the Eastern Regulatory Area only, Other rockfish also includes *S. polyspinis* (northern)(136)			
5	Demersal shelf rockfish (DSR)	*S. pinniger* (canary)(146)	*S. maliger* (quillback)(147)	*S. ruberrimus* (yelloweye)(145)
		S. nebulosus (china)(149)	*S. helvomaculatus* (rosethorn)(150)	
		S. caurinus (copper)(138)	*S. nigrocinctus* (tiger)(148)	
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO). Catcher vessels in the SEO have full retention of DSR (see § 679.20(j)).		
6	Other species	Sculpins (160)	Octopuses (870)	Sharks (689)
7	Aggregated rockfish	Aggregated rockfish (see § 679.2) means any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish), *Sebastes melanops* (black rockfish), and *Sebastes mystinus* (blue rockfish), except in:		
		Southeast Outside District	where DSR is a separate species group for those species marked with an MRA	

		Eastern Regulatory Area	where SR/RE is a separate species group for those species marked with an MRA
		Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).	
8	n/a	Not applicable	
9	Aggregated forage fish (all species of the following taxa)	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
		Capelin smelt (family *Osmeridae*)	516
		Deep-sea smelts (family *Bathylagidae*)	773
		Eulachon smelt (family *Osmeridae*)	511
		Gunnels (family *Pholidae*)	207
		Krill (order *Euphausiacea*)	800
		Laternfishes (family *Myctophidae*)	772
		Pacific Sand fish (family *Trichodontidae*)	206
		Pacific Sand lance (family *Ammodytidae*)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*)	208
		Surf smelt (family *Osmeridae*)	515
10	Skates Species and Groups	Alaska (*Bathyraja. Parmifera*)	703
		Aleutian (*B. aleutica*)	704
		Whiteblotched (*Raja binoculata*)	705
		Big Skates (*Raja binoculata*)	702
		Longnose Skates (*R. rhina*)	701
		Other Skates (*Rathyraja* and *Raja* spp.)	700
11	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	
12	Grenadiers	Giant grenadiers (*Albatrossia pectoralis*)	214
		Other grenadiers (all grenadiers that are not Giant grenadiers)	213

■ 6. Revise Table 11 to part 679 to read as follows:

Table 11 to Part 679—BSAI Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES																	
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Kam-chatka	Yellow fin sole	Other flatfish [2]	Rock sole	Flat head sole	Green-land turbot	Sable-fish[1]	Short-raker/ rougheye[9]	Aggregated rockfish[6]	Squids[7]	Aggregated forage fish[7]	Other species [4]	Grenadiers (7)
110	Pacific cod	20	na[5]	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3	8
117	Kamchatka	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3	8
122	Flathead sole	20	20	20	35	35	35	35	35	35	na	35	15	7	15	20	2	20	8
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20	8
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20	8
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20	8
134	Greenland turbot	20	20	20	20	35	35	20	20	20	20	na	15	7	15	20	2	20	8
136	Northern	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
141	Pacific Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
152 / 151	Shortraker / Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20	8
193	Atka mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
710	Sablefish[1]	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20	8
Other flatfish[2]		20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20	8
Other rockfish[3]		20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
Other species[4]		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na	8

Aggregated amount non-groundfish species[8]	20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8

[1] **Sablefish**: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).

[2] **Other flatfish** includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder and Kamchatka flounder.

[3] **Other rockfish** includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.

[4] The **Other species** includes sculpins, sharks, skates, and octopuses.

[5] **na** = not applicable

[6] **Aggregated rockfish** includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish. Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).

[7] **Forage fish, grenadiers, and squids** are all defined at Table 2c to this part.

[8] All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

[9] Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).

[FR Doc. 2020–02708 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 85, No. 34
Thursday, February 20, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–19–0096; SC20–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2020–2021 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and producer allotments of Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2020–2021 marketing year.

DATES: Comments must be received by April 20, 2020.

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

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. The Order now in effect states that salable quantities and producer allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish quantities and percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil for the 2020–2021 marketing year, which begins on June 1, 2020.

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

Pursuant to §§ 985.50, 985.51, and 985.52, the Order requires the Committee to meet each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. When such considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee recommends salable quantity limitations and producer allotments to regulate the quantity of Far West spearmint oil available to the market.

According to § 985.12, ''salable quantity'' is the total quantity of each class of oil (Scotch or Native) that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The total industry allotment base is the aggregate of all allotment bases held individually by producers as prescribed in § 985.53(d)(1). The total allotment base is revised each year on June 1 due to producer base being lost because of the ''bona fide effort'' production provision of § 985.53(e).

Each producer's prorated share of the salable quantity of each class of oil, or

their ''annual allotment'' as defined in § 985.13, is calculated by using an allotment percentage. The percentage is derived by dividing the salable quantity by the total industry allotment base for that same class of oil.

The Committee met on October 16, 2019, to consider its marketing policy for the 2020–2021 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil would be necessary. With a 7–1 vote, the Committee recommended a salable quantity and allotment percentage for Scotch spearmint oil of 838,404 pounds and 38 percent. The member voting in opposition to the recommendation favored volume regulation, but at a level closer to 30 percent. The Committee voted unanimously on its recommended salable quantity and allotment percentage for Native spearmint oil of 1,230,531 pounds and 49 percent.

This proposed action would establish the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2020–2021 marketing year, which begins on June 1, 2020. Salable quantities and allotment percentages have been in effect each season since the Order's inception in 1980.

Scotch Spearmint Oil

The Committee's recommended 2020–2021 marketing year salable quantity and allotment percentage for Scotch spearmint oil represent an increase from the previous year's levels. The proposed 2020–2021 marketing year salable quantity of 838,404 pounds is 6,323 pounds more than the 2019–2020 marketing year salable quantity of 832,081 pounds. The allotment percentage, recommended at 38 percent for the 2020–2021 marketing year, is the same as the percentage in effect the previous year. The total estimated allotment base for the coming marketing year is estimated at 2,206,325 pounds. This figure represents a one-percent increase over the 2019–2020 marketing year total allotment base of 2,184,480.

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for established acreage of Scotch spearmint oil, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil over past years. Production has decreased from 1,113,346 pounds produced in 2016 to an estimated 567,623 pounds produced in 2019.

Industry reports also indicate that trade demand for Far West Scotch spearmint oil has decreased over the past five years. Scotch spearmint oil sales have averaged 832,522 pounds per year over the last five years, while sales have averaged just 720,992 pounds over the last three years. For the 2020–2021 marketing year, the Committee estimates trade demand to be 750,000 pounds, a little higher than the rolling three-year average. In addition to declining spearmint oil demand, increasing production of Scotch spearmint oil in competing markets, most notably Canada and the U.S. Midwest, has put additional downward pressure on the Far West Scotch spearmint oil market.

Given the general decline in demand and anticipated market conditions for the coming year, the Committee decided it was prudent to estimate that the Scotch spearmint oil trade demand for the 2020–2021 marketing year trade would be 750,000 pounds, 55,000 pounds lower than the prior year. Should the proposed volume regulation levels prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that would be required during the 2020–2021 marketing year (471,029 pounds) by subtracting the estimated salable carry-in on June 1, 2020, (278,971) from the estimated trade demand (750,000). This minimum salable quantity represents the estimated minimum amount of Scotch spearmint oil that would be needed to satisfy estimated trade demand for the coming year. To ensure that the market would be fully supplied, the Committee recommended a 2020–2021 marketing year salable quantity of 838,404 pounds. The recommended salable quantity of 838,404 pounds, combined with an estimated 278,971 pounds of salable quantity carried in from the previous year, would yield a total available supply of 1,117,375 pounds Scotch spearmint oil for the 2020–2021 marketing year, and would leave an estimated 367,375 pounds of salable oil to carry into the 2021–2022 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner. Salable quantities established under volume regulation over the last four seasons have exceeded sales, leading to a gradual build of Scotch spearmint oil salable carry-in.

The Committee estimates that there will be 278,971 pounds of salable carry-in of Scotch spearmint oil on June 1, 2020. If current market conditions are maintained and the Committee's projections are correct, salable carry-in would increase to 367,375 pounds at the beginning of the 2021–2022 marketing year. This level would be above the quantity that the Committee generally considers favorable (150,000 pounds). However, the Committee anticipates that this higher salable carry-in would be manageable given the expected declining production levels of Scotch spearmint oil. The Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers will not produce enough oil in the 2020–2021 marketing year to fill all of their base allotment. Therefore, it is anticipated that the actual quantity of Scotch spearmint oil carried into the next marketing year will be less than the quantity calculated above.

Spearmint oil held in reserve is oil that has been produced in excess of a producer's marketing year allotment and is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. The oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in the reserve pool, which was completely depleted at the beginning of the 2014–2015 marketing year, has been gradually increasing over the past five years. The Committee reported that 132,984 pounds of Scotch spearmint oil were held in the reserve pool as of May 31, 2019. The Scotch spearmint oil reserve is expected to be about the same at the end of the 2019–2020 marketing year. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, if the industry experiences an unexpected increase in demand.

The Committee recommended a producer allotment percentage of 38 percent for the 2020–2021 marketing year for Scotch spearmint oil. During its October 16, 2019, meeting, the

Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (471,029 pounds) by the total estimated allotment base (2,206,325 pounds), resulting in 21.3 percent. However, producers and handlers at the meeting indicated that the computed percentage (21.3 percent) might not adequately supply the potential 2020–2021 Scotch spearmint oil market demand and may also result in inadequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 38 percent. The total estimated allotment base (2,206,325 pounds) for the 2020–2021 marketing year, multiplied by the recommended salable allotment percentage (38 percent), yields 838,404 pounds, which is the recommended salable quantity for the 2020–2021 marketing year.

The 2020–2021 marketing year computational data for the Committee's recommendations is detailed below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2020: 278,971 pounds.* This figure is the difference between the 2019–2020 marketing year total available supply of 1,028,971 pounds and the 2019–2020 marketing year estimated trade demand of 750,000 pounds (revised down from the original estimate of 805,000 pounds).

(B) *Estimated trade demand of Scotch spearmint oil for the 2020–2021 marketing year: 750,000 pounds.* This figure was established at the Committee meeting held on October 16, 2019.

(C) *Salable quantity of Scotch spearmint oil required from the 2020–2021 marketing year production: 471,029 pounds.* This figure is the difference between the estimated 2020–2021 marketing year trade demand (750,000 pounds) and the estimated carry-in on June 1, 2020 (278,971 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil production that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated Scotch spearmint oil allotment base for the 2020–2021 marketing year: 2,206,325 pounds.* This figure represents a one-percent increase over the 2019–2020 total actual allotment base of 2,184,480 pounds, as prescribed by § 985.53(d)(1). The one-percent increase equals 21,845 pounds. This total estimated allotment base is revised each year on June 1 in accordance with § 985.53(e).

(E) *Computed Scotch spearmint oil allotment percentage for the 2020–2021 marketing year: 21.3 percent.* This percentage is computed by dividing the minimum required salable quantity (471,029 pounds) by the total estimated allotment base (2,206,325 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2020–2021 marketing year: 38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (21.3 percent) and input from producers and handlers at the October 16, 2019, meeting. The recommended 38 percent allotment percentage reflects the Committee's belief that the computed percentage (21.3 percent) may not adequately supply the anticipated 2020–2021 marketing year Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2020–2021 marketing year: 838,404 pounds.* This figure is the product of the recommended salable allotment percentage (38 percent) and the total estimated allotment base (2,206,325 pounds) for the 2020–2021 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2020–2021 marketing year: 1,117,375 pounds.* This figure is the sum of the 2020–2021 marketing year recommended salable quantity (838,404 pounds) and the estimated carry-in on June 1, 2020 (278,971 pounds).

For the reasons stated above, the Committee believes that the recommended salable quantity and allotment percentage would adequately satisfy trade demand, would result in a reasonable carry-in for the following year, and would contribute to the orderly marketing of Scotch spearmint oil.

Native Spearmint Oil

The Committee recommended a Native spearmint oil salable quantity of 1,230,531 pounds and an allotment percentage of 49 percent for the 2020–2021 marketing year. These figures are, respectively, 161,918 pounds and 7 percentage points lower than the levels established for the 2019–2020 marketing year.

The Committee utilized handlers' anticipated sales estimates of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2020 production will total 1,493,686 pounds, similar to last year's production but down from 1,694,684 pounds produced in 2016. Committee figures show that total Native spearmint acres remained relatively static and that the estimated yield, at 165.7 pounds per acre, was up from 160.9 pounds per acre in 2017. Sales of Native spearmint oil for the 2017–2018 marketing year spiked to 1,565,515 pounds. Sales for the current marketing year have cooled a bit, but the Committee still estimates sales through the 2019–2020 marketing year of 1,330,000 pounds, which is near the 7-year average.

The Committee expects that 274,277 pounds of salable Native spearmint oil from prior years will be carried into the 2020–2021 marketing year. This amount is up from the 211,828 pounds of salable oil carried into the 2019–2020 marketing year.

Further, the Committee estimates that there will be 1,153,192 pounds of Native spearmint oil in the reserve pool at the beginning of the 2020–2021 marketing year. This figure is 101,237 pounds higher than the quantity of reserve pool oil held by producers the previous year and is consistent with the gradual increase in reserves that the industry has experienced over the past three marketing years.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as its main source of high-quality Native spearmint oil, with market demand similar to the past year. A sharp spike in demand for Native spearmint oil was experienced by handlers late in the 2017–2018 marketing year, spurred by the popularity of a new product in the market. This sharp spike in demand caused the remaining available 2017–2018 marketing year salable quantity to be depleted. While sales in the 2020–2021 marketing year are expected to come down from the 2017–2018 levels, the Committee still anticipates demand to be relatively high.

The Committee estimates the 2020–2021 marketing year Native spearmint oil trade demand to be 1,347,042 pounds. This figure is based on input provided by producers at six production area meetings held in mid-October 2019, as well as estimates provided by handlers and other meeting participants at the October 16, 2019, meeting. This figure represents an increase of 17,042 pounds from the previous year's estimate. The average estimated trade demand for Native spearmint oil derived from the producer meetings was 1,347,042 pounds, whereas the handlers' estimates ranged from 1,150,000 to 1,450,000 pounds. The average of Native spearmint oil sales over the last three years is 1,366,094 pounds. The quantity marketed over the most recent full marketing year, 2018–2019, was 1,245,076 pounds. The

Committee chose to be slightly conservative in the establishment of its trade demand estimate for the 2020–2021 marketing year to avoid oversupplying the market.

The estimated 2020–2021 marketing year carry-in of 274,277 pounds of Native spearmint oil, plus the recommended salable quantity of 1,230,531 pounds, would result in an estimated total available supply of 1,504,808 pounds of oil during the 2020–2021 marketing year. With the corresponding estimated trade demand of 1,347,042 pounds, the Committee projects that 157,766 pounds of oil will be carried into the 2021–2022 marketing year, resulting in a decrease of 116,511 pounds year-over-year. The Committee estimates that there will be 1,153,192 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2021–2022 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released to satisfy that demand.

The Committee recommended a producer allotment percentage of 49 percent for the 2020–2021 marketing year. During its October 16, 2019, meeting, the Committee calculated an initial producer allotment percentage by dividing the minimum required salable quantity (1,072,765 pounds) by the total estimated allotment base (2,511,288 pounds), resulting in 42.7 percent. However, producers and handlers at the meeting expressed that the computed percentage of 42.7 percent may not adequately supply the potential 2020–2021 Native spearmint oil market demand or result in adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 49 percent. The total estimated allotment base (2,511,288 pounds) for the 2020–2021 marketing year multiplied by the recommended salable allotment percentage (49 percent) yields 1,230,531 pounds, the recommended salable quantity for the year.

The 2020–2021 marketing year computational data for the Committee's recommendations is further outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2020: 274,277 pounds.* This figure is the difference between the revised 2019–2020 marketing year total available supply of 1,604,277 pounds and the revised 2019–2020 marketing year estimated trade demand of 1,330,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2020–2021 marketing year: 1,347,042 pounds.* This estimate was established by the Committee at the October 16, 2019, meeting.

(C) *Salable quantity of Native spearmint oil required from the 2020–2021 marketing year production: 1,072,765 pounds.* This figure is the difference between the estimated 2020–2021 marketing year estimated trade demand (1,347,042 pounds) and the estimated carry-in on June 1, 2020 (274,277 pounds). This is the minimum amount of Native spearmint oil that the Committee believes would be required to meet the anticipated 2020–2021 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2020–2021 marketing year: 2,511,288 pounds.* This figure represents a one-percent increase over the 2019–2020 total actual allotment base of 2,486,424 pounds as prescribed in § 985.53(d)(1). The one-percent increase equals 24,864 pounds of oil. This estimate is revised each year on June 1, due to adjustments resulting from the bona fide effort production provisions of § 985.53(e).

(E) *Computed Native spearmint oil allotment percentage for the 2020–2021 marketing year: 42.7 percent.* This percentage is calculated by dividing the required salable quantity (1,072,765 pounds) by the total estimated allotment base (2,511,288 pounds) for the 2020–2021 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2020–2021 marketing year: 49 percent.* This is the Committee's recommendation based on the computed allotment percentage (42.7 percent) and input from producers and handlers at the October 16, 2019, meeting. The recommended 49 percent allotment percentage is also based on the Committee's belief that the computed percentage (42.7 percent) may not adequately supply the potential market for Native spearmint oil in the 2020–2021 marketing year.

(G) *Recommended Native spearmint oil 2020–2021 marketing year salable quantity: 1,230,531 pounds.* This figure is the product of the recommended allotment percentage (49 percent) and the total estimated allotment base (2,511,288 pounds). This amount is less than the estimated trade demand for the 2020–2021 marketing year but could be increased as needed through an intra-seasonal increase in the salable quantity and allotment percentage.

(H) *Estimated available supply of Native spearmint oil for the 2020–2021 marketing year: 1,504,808 pounds.* This figure is the sum of the 2020–2021 recommended salable quantity (1,230,531 pounds) and the estimated carry-in on June 1, 2020 (274,277 pounds).

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 838,404 pounds and 38 percent, and 1,230,531 pounds and 49 percent, respectively, would match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices. This proposed rule, if finalized, would be similar to regulations issued in prior seasons.

The salable quantities in this proposed rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage. The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs and under the Committee's direction.

In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2020–2021 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of the proposed salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This proposal would also provide producers with information regarding the amount of spearmint oil that should be produced for the 2020–2021 season to meet anticipated market demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this

proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 39 producers and 94 producers of Scotch and Native spearmint oil, respectively, in the regulated production area and approximately 8 spearmint oil handlers subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil have ranged from $14.00 to $17.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2018 U.S. season average spearmint oil producer price per pound was $16.80. Multiplying $16.80 per pound by 2017–2018 marketing year spearmint oil utilization of 1,963,028 million pounds yields a crop value estimate of about $33.0 million. Total 2017–2018 spearmint oil utilization, reported by the Committee, was 717,952 pounds and 1,245,076 pounds for Scotch and Native spearmint oil, respectively.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the $16.80 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 36 of the 39 Scotch spearmint oil producers and 89 of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third-party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Multiplying 1.20 by the 2018 producer price of $16.80 yields a handler free on board (f.o.b.) price per pound estimate of $20.16.

Multiplying this handler f.o.b. price by spearmint oil utilization of 1,963,028 pounds results in an estimated handler-level spearmint oil value of $39.6 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about $5.0 million, which is well below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the 8 handlers had a 2018–2019 marketing year spearmint oil sales value that exceeded the $30 million SBA threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as small entities and all of the handlers of spearmint oil may be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2020–2021 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this proposal is provided in §§ 985.50, 985.51, and 985.52.

The Committee estimated trade demand for the 2020–2021 marketing year for both classes of oil at 2,097,042 pounds and expects that the combined salable carry-in will be 553,248 pounds. The combined required salable quantity is 1,543,794 pounds. Under volume regulation, total sales of spearmint oil by producers for the 2020–2021 marketing year would be held to 2,622,183 pounds (the recommended salable quantity for both classes of spearmint oil of 2,068,935 pounds plus 553,248 pounds of carry-in).

This total available supply of 2,622,183 pounds should be more than adequate to supply the 2,097,042 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2019, the total reserve pool for both classes of spearmint oil stood at 1,184,939 pounds. Furthermore, that quantity is expected to rise over the course of the 2019–2020 marketing year to 1,308,651. Should trade demand increase unexpectedly during the 2020–2021 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The recommended allotment percentages, upon which 2020–2021 marketing year producer allotments are based, are 38 percent for Scotch spearmint oil and 49 percent for Native spearmint oil. Without volume regulation, producers would not be held to these allotment levels, and could sell unrestricted quantities of spearmint oil.

The USDA econometric model used to evaluate the Far West spearmint oil market estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about $2.10 per pound without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in the 2020–2021 marketing year also would likely dampen prospects for improved producer prices in future years because of the excessive buildup in stocks.

In addition, the econometric model estimated that spearmint oil prices would fluctuate with greater amplitude in the absence of volume regulation. The coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980–2018 (the years in which the Order has been in effect), is 25 percent, compared to 49 percent for the 20-year period (1960–1979) immediately prior to the establishment of the Order. Since higher CV values correspond to greater variability, this is an indicator of the price stabilizing impact of the Order.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and would not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee rejected the idea of not regulating volume for either class of spearmint oil because of the severe, price-depressing effects that would likely occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended for both classes of spearmint oil. Ultimately, the action recommended by the Committee was to maintain the allotment

percentage for Scotch spearmint oil (which would slightly increase the salable quantity) and to decrease both the salable quantity and allotment percentage for Native spearmint oil from the levels established for the 2019–2020 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages recommended would achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry would return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages proposed herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2020–2021 and future marketing years.

Costs to producers and handlers, large and small, resulting from this proposal are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

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

This proposed rule would establish the salable quantities and allotment percentages for Scotch spearmint oil and Native spearmint oil produced in the Far West during the 2020–2021 marketing year. Accordingly, this proposal would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 16, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 985.235 is added to read as follows:

§ 985.235 Salable quantities and allotment percentages—2020–2021 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2020, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 838,404 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,230,531 pounds and an allotment percentage of 49 percent.

Dated: February 10, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–03008 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 19–195 and 11–10; Report No. 3139; FRS 16468]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** of January 30, 2020, regarding Petitions for Reconsideration filed in the Commission's rulemaking proceeding. The document contained the incorrect deadline for filing replies to an opposition to the Petitions. This document corrects the deadline for replies to an opposition to the Petitions.

DATES: The proposed rule published on January 30, 2020, at 85 FR 5366, is corrected as of February 20, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ray, Attorney Advisor, Wireline Competition Bureau, Competition Policy Division, (202) 418–0357.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 30, 2020, in FR Doc. 2020–01657, on page 5366, in the first column, correct the **DATES** section to read:

DATES: Oppositions to the Petitions must be filed on or before February 14, 2020. Replies to an opposition must be filed on or before February 24, 2020.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03400 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200210–0049]

RIN 0648–BJ51

Fisheries of the Northeastern United States; Framework Adjustment 32 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement Framework Adjustment 32 to the Atlantic Sea Scallop Fishery Management Plan that establishes scallop specifications and other measures for fishing years 2020 and 2021. In addition, Framework 32 would implement measures to protect small scallops and reduce bycatch of flatfish and address regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Comments must be received by March 6, 2020.

ADDRESSES: The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework Adjustment 32 and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of Framework 32 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 32, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-32.*

You may submit comments on this document, identified by NOAA–NMFS–2019–0148, 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-2019-0148,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Framework 32.''

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: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework 32 to the Atlantic Sea Scallop FMP on December 5, 2019. The Council submitted a draft of the framework, including a draft EA, for NMFS review and approval on December 24, 2019. This action proposes to approve and implement Framework 32, which establishes scallop specifications and other measures for fishing years 2020 and 2021, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2020, measures to reduce bycatch of flatfish, and default specifications for fishing year 2021.

NMFS will implement these Framework 32 measures, if approved, as close as possible to the April 1 start of fishing year 2020. If NMFS implements these measures after the start of the fishing year, 2020 default allocation measures will go into place on April 1, 2020. The Council reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2020 Fishing Year, and Default Specifications for Fishing Year 2021

The Council set the proposed OFL based on a fishing mortality (F) of 0.64, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in August 2018. The proposed ABC and the equivalent total ACL for each fishing year are based on an F of 0.51, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 100.1 million lb (45,414 mt) for 2020 and 80.3 million lb (36,435 mt) for the 2021 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2021 when the Council develops the next framework adjustment.

Table 1 outlines the proposed scallop fishery catch limits. After deducting the

incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (72 FR 20090; April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.,* the larger ''trip boat'' fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.,* the smaller ''day boat'' fleet); and the remaining 0.5 percent is allocated to limited access scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746; July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC ACLs, meaning that the LAGC ACL is equal to the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.46.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2020 AND 2021 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

Catch limits	2020 (mt)	2021 (mt) [1]
Overfishing Limit	56,186	47,503
Acceptable Biological Catch/ACL (discards removed)	45,414	36,435
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	454	364
ACL for fishery	44,370	35,481
Limited Access ACL	41,930	33,530
LAGC Total ACL	2,440	1,951
LAGC IFQ ACL (5 percent of ACL)	2,219	1,774
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	222	177
Limited Access ACT	37,819	30,242
APL (after set-asides removed)	22,370	([1])
Limited Access Projected Landings (94.5 percent of APL)	21,140	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,230	923
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,119	839
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	112	84

[1] The catch limits for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2021 that will be based on the 2020 annual scallop surveys.
[2] As a precautionary measure, the 2021 IFQ annual allocations are set at 75 percent of the 2020 IFQ Annual Allocations.

This action would deduct 1.25 million lb (567 mt) of scallops annually for 2020 and 2021 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million-lb (567-mt) allocation, NMFS has already allocated 86,953 lb (39,441 kg) to previously funded multi-year projects as part of the 2019 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2020 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 454 mt for 2020 and 364 mt for 2021. The Council may adjust the 2021 observer set-aside when it develops specific, non-default measures for 2021.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2020 and 2021 (Table 2). Proposed 2020 DAS allocations are the same as those allocated to the limited access fleet in 2019. Framework 32 would set 2021 DAS allocations at 75 percent of fishing year 2020 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2021 specifications action is delayed past the start of the 2021 fishing year. The proposed allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2019 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2020 AND 2021

Permit category	2020	2021 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

If NMFS implements these Framework 32 measures after the April 1 start of fishing year 2020, default DAS allocations, which were established in Framework Adjustment 30 to the Scallop FMP (84 FR 11436; March 27, 2019), would go into place on April 1. Full-time vessels would receive 18 DAS, part-time vessels would receive 7.20 DAS, and occasional vessels would receive 1.50 DAS. The allocations would later be increased in accordance with Framework 32, if approved. NMFS will notify all limited access permit holders of both default and Framework 32 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 32 be approved and implemented after April 1, 2020.

Changes to Fishing Year 2020 Sea Scallop Access Area Boundaries

For fishing year 2020 and the start of 2021, Framework 32 would keep the Mid-Atlantic Access Area (MAAA) and Closed Area I Access Area (CAI) open as access areas. In addition, this action would open three areas new areas, *i.e.,* Nantucket Lightship-South-Deep Access Area (NLS–S–D) (Table 3), Nantucket Lightship-North Access Area (NLS–N) (Table 4), and Closed Area II Access Area (CAII) (Table 5). The boundaries for these areas would change slightly compared to previous years to better direct fishing on the scallops intended for harvest, to protect small scallops, and to reduce flatfish bycatch.

TABLE 3—NANTUCKET LIGHTSHIP-SOUTH-DEEP SCALLOP ACCESS AREA

Point	N latitude	W longitude
NLSSD1	40°22′	69°30′
NLSSD2	40°15′	69°30′
NLSSD3	40°15′	69°00′
NLSSD4	40°28′	69°00′
NLSSD5	40°28′	69°17′
NLSSD1	40°22′	69°30′

TABLE 4—NANTUCKET LIGHTSHIP-NORTH SCALLOP ACCESS AREA

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSH2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

TABLE 5—CLOSED AREA II SCALLOP ACCESS AREA

Point	N latitude	W longitude	Note
CAIIA1	41°30′	67°20′	.....
CAIIA2	41°11′	67°20′	.....
CAIIA3	41°11′	66°41′	.....
CAIIA4	41°00′	66°41′	.....
CAIIA5	41°00′	(1)	(2)
CAIIA6	41°30′	(3)	(2)
CAIIA1	41°30′	67°20′	.....

[1] The intersection of 41°00′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00′ N lat. and 66°09.33′ W long.
[2] From Point CAIIA5 connected to Point CAIIA6 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.

Fishing Year 2020 Sea Scallop Closed Area Boundaries

Framework 32 would close three areas to scallop fishing for various reasons. This action would close the Closed Area II-Southwest and Extension Scallop Rotational Area (Table 6) to scallop fishing. Closing this area would protect small scallops that have not yet recruited to the fishery. In addition, closing this area is expected to reduce bycatch of Georges Bank yellowtail flounder and northern windowpane flounder on Georges Bank.

TABLE 6—CLOSED AREA II-SOUTHWEST AND EXTENSION SCALLOP CLOSED AREA

Point	N latitude	W longitude	Note
CAIISWE1	41°11′	67°20′	.....
CAIISWE2	41°11′	66°41′	.....
CAIISWE3	41°0′	66°41′	.....
CAIISWE4	41°0′	(1)	(2)
CAIISWE5	40°40′	(3)	(2)
CAIISWE6	40°40′	67°20′	.....
CAIISWE1	41°11′	67°20′	.....

[1] The intersection of 41°0′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0′ N lat. and 66°09.33′ W long.
[2] From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 66°43.31′ W long.

This action would also close the Nantucket Lightship-Triangle Scallop Rotational Area (Table 7). The Council is proposing to close this area because it is a small area with low scallop densities that could be used for research purposes in the absence of fishing.

TABLE 7—NANTUCKET LIGHTSHIP-TRIANGLE SCALLOP CLOSED AREA

Point	N latitude	W longitude
NLST1	40°28′	69°30′
NLST2	40°28′	69°17′
NLST3	40°22′	69°30′
NLST1	40°28′	69°30′

Finally, Framework 32 would close the Stellwagen Bank Scallop Rotational Area (Table 8) through fishing year 2021. This closure would protect a substantial number of small scallops that have not recruited into the fishery. This closure would be re-assessed after 1 year to confirm that it is in fact protecting small scallops and improving yield-per-recruit. In addition, closing this area is expected reduce bycatch of northern windowpane flounder on Stellwagen Bank.

TABLE 8—STELLWAGEN BANK SCALLOP CLOSED AREA

Point	N latitude	W longitude
SB1	42°26′	70°27′
SB2	42°26′	70°15′

TABLE 8—STELLWAGEN BANK SCALLOP CLOSED AREA—Continued

Point	N latitude	W longitude
SB3	42°20′	70°15′
SB4	42°20′	70°27′
SB1	42°26′	70°27′

Areas Reverting to Open Area

Framework 32 would open two areas previously managed as part of the area rotation program because they no longer meet the criteria for either closure or controlled access, specifically the Nantucket Lightship-Hatchet Scallop Rotational Area and the Nantucket Lightship-West (NLS–W) Scallop Rotational Area. These areas would become part of the open area and could be fished as part of the DAS program or on LAGC IFQ trips. Because fishing year 2019 carryover access area fishing will continue in NLS–W until May 30, 2020, this area would not revert to open area until May 31, 2020.

Extension of CAII Seasonal Closure To Mitigate Flatfish Bycatch

Framework 32 would extend the existing seasonal closure in CAII an additional 15 days to reduce bycatch of northern windowpane flounder and Georges Bank yellowtail flounder. The current seasonal closure in CAII occurs from August 15–November 15 of each year. The dates of this seasonal closure were developed in Framework Adjustment 24 to the Scallop FMP (78 FR 27088; May 9, 2013). This action would extend that closure for 15 additional days from August 15—November 30 for the 2020 fishing year only.

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 9 provides the proposed limited access full-time allocations for all of the access areas for the 2020 fishing year and the first 60 days of the 2021 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 9) on any one trip.

TABLE 9—PROPOSED SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2020 AND 2021

Rotational access area	Scallop possession limit	2020 scallop allocation	2021 scallop allocation (Default)
Closed Area I Flex [1]	18,000 lb (8,165 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg)
Closed Area II.		18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship-North.		9,000 lb (4,082 kg)	0 lb (0 kg)
Nantucket Lightship-South-Deep.		18,000 lb (8,165 kg)	0 lb (0 kg)
Mid-Atlantic.		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)

TABLE 9—PROPOSED SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2020 AND 2021—Continued

Rotational access area	Scallop possession limit	2020 scallop allocation	2021 scallop allocation (Default)
Total		90,000 lb (40,823 kg)	18,000 lb (8,165 kg)

[1] Closed Area I flex allocation could be landed from either Closed Area I or the Mid-Atlantic Access Area.

Closed Area I Flex Allocation

Framework 32 would allocate 9,000 lb (4,082 kg) of flexible allocation (flex allocation) in CAI to limited access full-time vessels (Table 9). Because of uncertainty about the condition of the resource in CAI, a full-time limited access vessel may choose to land its CAI allocation from either CAI or the MAAA for the 2020 fishing year and the first 60 days of the 2021 fishing year. For example, a vessel could take a trip in CAI and land 5,000 lb (2,268 kg) from that area, leaving the vessel with 4,000 lb (1,814 kg) of the CAI flex allocation available, which could be landed from the MAAA, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip. Framework 32 would not allocate any flex allocation to part-time limited access vessels.

Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges

Framework 32 would allocate each full-time limited access vessel 9,000 lb (4,082 kg) of allocation to both CAI and NLS–N. To accommodate one-for-one access area allocation changes among all available access areas, this action would allow full-time limited access vessels to exchange access area allocation in 9,000-lb (4,082-kg) increments. The owner of a vessel issued a full-time limited access scallop permit would be able to exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 9,000 lb (4,082 kg), from one access area for 9,000 lb (4,082 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 18,000 lb (8,165 kg) from one access area for 18,000 lb (8,165 kg) allocated to another full-time vessel for another access area. One-for-one access area allocations for part-time limited access vessels would remain unchanged and must occur in the increments of a possession limit, *i.e.,* 12,000 lb (5,443 kg).

Changes to the Crew Restrictions for Trips in Nantucket Lightship-South-Deep Access Area

The scallops in the NLS–S–D are a 7-year-old class of animals that have experienced abnormally slow growth and have been tracked closely since 2015 (*i.e.,* 35–75 mm shell height). Some larger scallops (*i.e.,* > 75 mm shell height) were observed in the NLS–S–D during the 2019 surveys, though a comparison of shell height to meat weight relationships suggest that these scallops have lower yield than similar sized scallops in other areas. However, due to the abundance of these scallops, Framework 32 would allocate 18,000 lb (8,165 kg) of scallops in NLS–S–S to each limited access full-time and limited access full-time small dredge vessel. Because these scallops are smaller than those normally harvested in the area rotation program, Framework 32 would allow two additional crew members aboard both limited access full-time (10 in total) and limited access full-time small dredge vessels (8 in total). This would allow vessels to add additional crew members to increase the shucking capacity of the vessel and reach the possession limit in a time more consistent with other access areas.

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 10 provides the proposed limited access part-time allocations for all of the access areas for the 2020 fishing year and the first 60 days of the 2021 fishing year. These allocations could be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 10) on any one trip.

TABLE 10—PROPOSED SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2020 AND 2021

Rotational access area	Scallop possession limit	2020 scallop allocation	2021 Scallop allocation (default)
Closed Area II	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg)
Mid-Atlantic.		24,000 lb (10,886 kg)	7,200 lb (3,266 kg)
Total		36,000 lb (16,329 kg)	7,200 lb (3,266 kg)

Payback Measures for 2020 Default Poundage Allocations in NLS–W

During the development of Framework 30 in 2018, the projected biomass in the NLS–W was high and this area was expected to be able to support a default trip in fishing year 2020. However, the 2019 scallop surveys observed an unexpected decrease in biomass in the NLS–W and 2020 projections of exploitable biomass suggest that this area cannot support additional access area fishing in 2020. Framework 32 would not allocate effort into the NLS–W, but instead would revert NLS–W to part of the open area. If NMFS implements these Framework 32 measures after the April 1 start of fishing year 2020, default access area allocations, which were established in Framework 30 would go into place on April 1. Full-time vessels would receive 18,000 lb (8,165 kg) of NLS–W allocation and part-time vessels would receive 7,200 lb (3,266 kg) of NLS–W allocation. Because of this discrepancy, this action would set payback measures intended to disincentivize vessels from fishing in NLS–W using 2020 default allocations.

If Framework 32 implementation is delayed, and a vessel fishes any of its fishing year 2020 default NLS–W access area allocation established through Framework 30, that vessel would lose

its CAII allocation established through Framework 32. This does not prohibit vessels from fishing the remainder of their fishing year 2019 NLS–W allocation during the first 60 days of fishing year 2020. If Framework 32 is delayed, NMFS will notify all limited access permit holders of these payback measures and other fishing year 2020 default allocations.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action would implement a 2,219-mt ACL for 2020 and a 1,774-mt default ACL for 2021 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. Framework 28 (82 FR 15155; March 27, 2017) changed the way the LAGC IFQ allocations are set from a direct percentage of the ACL to a percentage of the APL. The purpose of this change was to help ensure that the allocation of potential catch between the fleets is more consistent with the concept of spatial management by allocating catch to the LAGC IFQ fleet based on harvestable scallops instead of total biomass. Since Framework 28, the LAGC IFQ allocation has been equal to 5.5 percent of the projected landings (5 percent for LAGC IFQ vessels and 0.5 percent for LAGC IFQ vessels that also have a limited access scallop permit). The annual allocation to the LAGC IFQ-only fleet for fishing years 2020 and 2021 based on APL would be 1,119 mt for 2020 and 839 mt for 2021 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 32 measures after the April 1 start of the 2020 fishing year, the default 2020 IFQ allocations would go into place automatically on April 1, 2020. Because this action would implement IFQ allocations greater than the default allocations, NMFS will notify IFQ permit holders of both default 2020 and Framework 32 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 32 be approved.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action would implement a 222-mt ACL for 2020 and a default 177-mt ACL for 2021 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 112 mt for 2020 and 84 mt for 2021 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 32 would allocate LAGC IFQ vessels a fleet-wide number of trips in CAI, NLS–N, NLS–S–D, and MAAA for fishing year 2020 and default trips in the MAAA for fishing year 2021 (see Table 11). The scallop catch associated with the total number of trips for all areas combined (2,855 trips) for fishing year 2020 is equivalent to the 5.5 percent of total projected catch from access areas.

TABLE 11—FISHING YEARS 2020 AND 2021 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2020	2021 [1]
Closed Area I	571	0
Nantucket Lightship-North	571	0
Nantucket Lightship-South-Deep	571	0
Mid-Atlantic	1,142	571
Total	2,855	571

[1] The LAGC IFQ access area trip allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

4. Northern Gulf of Maine (NGOM) Total Allowable Catch (TAC). This action proposes a 350,000-lb (158,757-kg) NGOM TAC for fishing year 2020 and a 265,000-lb (120,202-kg) default NGOM TAC for fishing year 2021. The final rule for NGOM portions of the Framework 29 (83 FR 12857; March 26, 2019) developed a methodology for splitting the NGOM TAC between the LAGC and the limited access fleets. Framework 32 would continue splitting the TAC using this methodology. The limited access portion of the TAC may only be fished by vessels participating in the RSA program that are participating in a project that has been allocated NGOM RSA allocation. The LAGC portion of the TAC may be fished by NGOM and LAGC IFQ vessels on trips with a 200-lb (90.7-kg) possession limit until the TAC has been harvested. Table 12 describes the division of the TAC for the 2020 and 2021 (default) fishing years.

During the 2018 fishing year the LAGC fleet exceeded its portion of the NGOM TAC by 3,718-lb (1,686-kg). This triggers a pound-for-pound deduction to the LAGC portion of the NGOM TAC to account for the overage. Because the final catch accounting data for the 2018 fishing year was not available in time to implement this deduction in the 2019 fishing year, the LAGC portion of the NGOM TAC for the 2020 fishing year would be reduced by 3,718 lb (1,686 kg) to account for the overage. The resulting LAGC NGOM TAC would be 206,282 lb (93,567 kg) and the total 2020 NGOM TAC would be 346,282 lb (157,071 kg).

TABLE 12—NGOM TACS FOR FISHING YEAR 2020 AND 2021

Fleet	2020		2021 [1]	
	lb	kg	lb	kg
LAGC	206,282	93,567	167,500	75,977
Limited access	140,000	63,503	97,500	44,225
Total	346,282	157,071	265,000	120,202

[1] The NGOM TACs for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

5. Scallop Incidental Catch Target TAC. This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2020 and 2021 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action proposes that vessels participating in RSA projects would be able to harvest RSA compensation from the MAAA and the open area. All vessels would be prohibited from harvesting RSA compensation pounds in all other access areas. Vessels would be prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 32 would prohibit the harvest of RSA from any access areas under default 2021 measures. At the start of 2021, RSA compensation could only be harvested from open areas. The Council would re-evaluate this default prohibition measure in the action that would set final 2021 specifications.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes eight revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.4(a)(2)(ii)(G)(*1*)(*ii*), would correct a typo referencing NGOM permits. The second revision, at § 648.10(f)(4)(ii), would clarify that vessels only need to send in a daily catch report through their vessel monitoring system (VMS) on trips greater than 24 hours. NMFS no longer requires this report on trips less than 24 hours because all of the information provided can be determined from the required pre-landing report. The third revision at § 648.14(i)(1)(iii)(A)(*4*) would clarify that all NGOM vessels are prohibited from possessing scallops in Federal waters of the NGOM management area when declared into the state waters fishery exemption program. The fourth revision would remove paragraph § 648.14(i)(3)(i)(B) because possession limits for all LAGC vessels are clearly articulated in § 648.14(i)(1)(iii). The fifth revision at § 648.14(i)(4)(i)(G) would clarify that LAGC IFQ vessels can possess more than 40 lb (18.1 kg) of shucked scallops on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) while not fishing in a scallop access area. The sixth revision, at § 648.52(b), would clarify that LAGC vessels declared into the NGOM scallop fishery may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line shoreward possession limit for vessels declared into the NGOM fishery. The seventh revision at § 648.52(c), would clarify that LAGC IFQ vessels on a properly declared Northeast multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration can possess more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. The final revision, at § 648.53(h)(5), would clarify that LAGC IFQ permit owners can temporarily transfer IFQ more than once (*i.e.,* re-transfer) in a given fishing year.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea Scallop FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA has been prepared for Framework 32, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA consists of Framework 32 analyses, the draft IRFA, and the preamble to this proposed rule.

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2020, with 2021 default measures. A description of the action, why it is being considered, and the legal basis for this action are contained in the Council's Framework 32 document and the preamble of this proposed rule, and are not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. There would be economic impacts to small entities associated with this proposed rule. Those impacts are described in detail in the draft of Framework 32, specifically, in the IRFA (Section 7.1.2) and in the Economic and Social Impacts section (Section 6.6).

Federal Rules Which May Duplicate, Overlap or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. As explained in the section below, the proposed regulations are expected to result in lower profits for small entities compared to fishing year 2019. Framework 32 provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state (see **ADDRESSES**). Fishing year 2018 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that held full-time limited access permits in 2018, including 249 dredge, 54 small-dredge, and 12 scallop trawl permits. In the same year, there were also 32 part-time limited access permits in the scallop fishery. No vessels were issued occasional limited access permits in 2018. NMFS issued 245 LAGC IFQ permits and 102 LAGC NGOM permits in 2018. About 127 of the IFQ vessels and 41 NGOM vessels actively fished for scallops in 2018. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.6 of Framework 32 provides extensive information on the number and size of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as

a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those impacted by this proposed rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, ownership entities are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement between the two owners for the additional vessels would be considered a separate ownership entity for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2018 permits and contains average gross sales associated with those permits for calendar years 2016 through 2018. Matching the potentially impacted 2018 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2018 ownership data results in 167 distinct ownership entities for the limited access fleet and 95 distinct ownership entities for the LAGC IFQ fleet. Of these, 158 of the limited access distinct ownership entities and 95 LAGC IFQ entities are categorized as small entities. The remaining nine of the limited access and none of the LAGC IFQ entities are categorized as large entities. There were 41 distinct small business entities with NGOM permits in 2018 permits.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council's preferred alternative (Alternative 3, Sub-option 2) would allocate each full-time limited access vessel 24 open area DAS and 90,000 lb (40.8 mt) of access area allocation. This is estimated to result in about 46.6 million lb (20,865 mt) of landings for the limited access fishery after the set asides are removed (Table 14), and about 51.6 million lb (23,405 mt) of landings including set-asides and LAGC sub-ACL (Table 13). The allocation for LAGC IFQ vessels with IFQ permits only would be about 2.5 million pounds (1,134 mt) and, including those limited access vessels with IFQ permits, would be about 2.7 million lb (1,225 mt) (Table 15). This alternative is expected to have negative impacts on the net revenues and profits of small entities regulated by this action in 2020 compared to the status quo scenario. The decline in revenue per entity between fishing year 2019 levels and the proposed fishing year 2020 levels (Table 13) is as a result of declining allocations between these two fishing years, *i.e.,* lower projected landings by about 10.1 million lb (4,581 mt) in the Framework 32 preferred alternative compared to fishing year 2019 allocations. As described in the Economic Impacts Section 6.6.3 of Framework 32, and summarized in Table 14, fleetwide net revenue for limited access vessels would be lower for the preferred alternative by about $64 million (12.7 percent) compared to the fleetwide net revenue in fishing year 2019.

TABLE 13—ECONOMIC IMPACTS FOR 2020 COMPARED WITH 2019: ESTIMATED LANDINGS (MILLION lb), REVENUES, PRODUCER SURPLUS AND TOTAL ECONOMIC BENEFITS

[In 2001 constant dollars, million $]

Section	4.3.1.1	4.3.1.2.1	4.3.1.2.2	4.3.1.3.1	4.3.1.3.2 (Framework 32 preferred)	Status quo/ fishing year 2019
Description/alternatives	No action (alt. 1)	CAII ext open 22 DAS (alt. 2, sub-opt. 1)	CAII ext open 24 DAS (alt. 2, sub-opt. 2)	CAII ext closed 22 DAS (alt. 3, sub-opt. 1)	CAII ext closed 24 DAS (alt. 3, sub-opt. 2)	
Landings	27.6	50.4	52	50	51.6	62.543
Revenue	$194.11	$331.95	$340.54	$329.45	$337.77	$409.398
Producer Surplus	$139.78	$262.30	$269.23	$259.81	$266.46	$331.81
Total Economic Benefits	$146.15	$290.71	$299.24	$288.08	$296.33	$388.13
Net Values or Difference From Fishing Year 2019 Values						
Landings	−34.94	−12.14	−10.54	−12.54	−10.94	0.00
Revenue	−$215.29	−$77.45	−$68.86	−$79.95	−$71.63	$0.00
Producer Surplus	−$192.03	−$69.51	−$62.58	−$72.00	−$65.35	$0.00
Total Economic Benefits	−$241.98	−$97.42	−$88.89	−$100.05	−$91.80	$0.00

TABLE 14—NET SCALLOP REVENUE FOR LIMITED ACCESS VESSELS IN FISHING YEAR 2020 AND PERCENT CHANGE FROM THE FISHING YEAR 2019

[Revenues in 2019 dollars]

Section	4.3.1.1	4.3.1.2.1	4.3.1.2.2	4.3.1.3.1	4.3.1.3.2 (framework 32 preferred)	Status quo/ fishing year 2019
Alternatives	No action (alt. 1)	CAII ext open 22 DAS (alt. 2, sub-opt. 1)	CAII ext open 24 DAS (alt. 2, sub-opt. 2)	CAII ext closed 22 DAS (alt. 3, sub-opt. 1)	CAII ext closed 24 DAS (alt. 3, sub-opt. 2)	24 DAS flex 18000
Landings (limited access vessels, million lb)	23.901	45.409	47.009	45.049	46.605	56.7
Total Scallop Net Rev. (limited access vessels, mill. $)	$242.59	$431.57	$444.24	$428.34	$440.26	$504.28
Net scallop Rev. per entity (million $)	$1.35	$2.40	$2.47	$2.38	$2.45	$3.08
% change in net scallop revenue	−51.90%	−14.42%	−11.91%	−15.06%	−12.70%	0%

Under the preferred alternative, allocation for the LAGC IFQ fishery, including the limited access vessels with IFQ permits, will be about 17.8 percent lower than the allocation under the status quo. In terms of net revenue, this difference is expected to be of similar magnitude and negative for the preferred alternative relative to fishing year 2019 levels. Therefore, preferred alternative will have negative economic impacts on the LAGC IFQ fishery compared to fishing year 2019 levels (Table 15).

TABLE 15—IMPACTS OF THE LAGC IFQ ALLOCATION FOR 2020 FISHING YEAR

Section	4.3.1.1	4.3.1.2.1	4.3.1.2.2	4.3.1.3.1	4.3.1.3.2 Framework 32 preferred	Status quo/ fishing year 2019
Alternatives	No action (alt. 1)	CAII ext open 22 DAS (alt. 2, sub-opt. 1)	CAII ext open 24 DAS (alt. 2, sub-opt. 2)	CAII ext closed 22 DAS (alt. 3, sub-opt. 1)	CAII ext closed 24 DAS (alt. 3, sub-opt. 2)	24 DAS flex 18000
Allocation for IFQ only vessels (lb)	1,264,608	2,402,634	2,487,292	2,383,564	2,465,907	2,999,315
Allocation for limited access vessels with IFQ permits (lb)	126,461	240,263	248,729	238,356	246,591	299,932
Total Allocation for IFQ fishery (lb)	1,391,069	2,642,897	2,736,021	2,621,921	2,712,497	3,299,247
% Change in estimated scallop landings (and revenue) per business entity from Status Quo	−57.84%	−19.89%	−17.07%	−20.53%	−17.78%	0.00%

Under the preferred alternative for the NGOM measures (Alternative 2, Sub-Option 2), the TAC for the NGOM would be set at 350,000 lb (158,757 kg) in 2020. The first 70,000 lb (31,751 kg) would be allocated to the LAGC component of the fishery. The remaining poundage would be split 50/50 between the LAGC and the limited access components of the fishery. For the 2020 fishing year, the overall shares for LAGC vessels would be 210,000 lb (95,254 kg), and for limited access vessels the overall shares would be 140,000 lb (63,503 kg) (Table 12). The limited access share of the NGOM TAC could be utilized only for RSA compensation fishing.

The NGOM TAC for the preferred alternative would be higher than the TAC for the No Action alternative, Alternative 1, (overall TAC of 170,000 lbs (77,111 kg)). As a result, the net revenue for the LAGC NGOM fishery would be expected to increase by 75 percent under the preferred alternative, compared to the No Action alternative, resulting in positive impacts on the profits of NGOM LAGC entities.

Economic impacts of the Framework 32 preferred alternatives, including fishery specifications, access area trip allocations for the limited access and LAGC IFQ fisheries, NGOM measures, and other measures to reduce fishery impacts are expected to be negative for the scallop vessels and small business entities compared to the fishing year 2019 measures. Alternative 2, Sub-Option 2 is the only other alternative that would meet the objectives of Framework 32. Alternative 2, Sub-Option 2 would be very similar to the preferred alternative (Alternative 3, Sub-Option 2) except it would not close the Closed Area II-Southwest and Extension Area to scallop fishing. Alternative 2, Sub-Option 2 would have the highest landings and net revenues in 2020 (see Table 13, Table 14, and Table 15). Although Alternative 2, Sub-Option 2 net revenues would be slightly higher than net revenues for the preferred alternative, the preferred alternative would close the Closed Area II-Southwest and Extension Area to scallop fishing to protect small scallops for future harvest and to reduce flatfish bycatch. We have determined that the preferred alternative is optimal because it would minimize risks associated with stock biomass uncertainties while protecting small scallops and reducing flatfish bycatch in the Closed Area II-Southwest and Extension Area.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 11, 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 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEAST UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 648.4, revise paragraph (a)(2)(ii)(G)(*1*)(*ii*) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(ii) * * *

(G) * * *

(*1*) * * *

(*ii*) *NGOM and Incidental scallop permit.* A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph (a)(2)(ii)(G)(*1*)(*ii*). The owners of a vessel issued a NGOM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity each fishing year to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

* * * * *

■ 3. In § 648.10, revise paragraph (f)(4)(i) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) * * *

(4) * * *

(i) For trips greater than 24 hours, the owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine RSA trips, and trips accompanied by a NMFS-certified observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept; and

(D) Total pounds of all fish kept.

* * * * *

■ 4. In § 648.14:

■ a. Add paragraphs (i)(1)(iii)(A)(*4*) and (*5*);

■ b. Remove paragraph (i)(1)(iv)(E) and remove and reserve paragraph (i)(3)(i)(B); and

■ c. Revise paragraph (i)(4)(i)(G).

The revisions and deletions should read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(*5*) Fish for, possess, or retain scallops in the Stellwagen Bank Scallop Closed Area, as described in § 648.62(e), unless transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(4) * * *

(i) * * *

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the state waters exemption program, specified at § 648.54, or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 5. In § 648.51:

■ a. Add paragraph (c)(1);

■ b. Remove the semicolon at the end of paragraph (c)(2) and add a period in its place; and

■ c. Add paragraph (e)(3)(iv).

The additions read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(1) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 10 people aboard, including the operator, when not docked or moored in port.

* * * * *

(e) * * *

(3) * * *

(iv) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 8 people aboard, including the operator, when not docked or moored in port.

* * * * *

■ 6. In § 648.52, revise paragraphs (b) and (c) to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

* * * * *

■ 7. In § 648.53, revise paragraphs (a)(8), (b)(3), and (h)(5)(i) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(8) The following catch limits will be effective for the 2020 and 2021 fishing years:

TABLE 1 TO PARAGRAPH (a)(8)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2020 (mt)	2021 (mt) [1]
Overfishing Limit	56,186	47,503
Acceptable Biological Catch/ACL (discards removed)	45,414	36,435
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	454	364
ACL for fishery	44,370	35,481
Limited Access ACL	41,930	33,530
LAGC Total ACL	2,440	1,951
LAGC IFQ ACL (5 percent of ACL)	2,219	1,774
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	222	177
Limited Access ACT	37,819	30,242
APL (after set-asides removed)	22,370	([1])
Limited Access Projected Landings (94.5 percent of APL)	21,140	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,230	923
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,119	839

TABLE 1 TO PARAGRAPH (a)(8)—SCALLOP FISHERY CATCH LIMITS—Continued

Catch limits	2020 (mt)	2021 (mt) [1]
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	112	84

[1] The catch limits for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2021 that will be based on the 2020 annual scallop surveys. The 2021 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in paragraph (a)(6)(iii)(B) of this section, the 2021 IFQ annual allocations are set at 75 percent of the 2020 IFQ Annual Allocations.

(b) * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2020 and 2021 are as follows:

TABLE 2 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2020	2021 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. The 2021 DAS allocations are set at 75 percent of the 2020 allocation as a precautionary measure.

* * * * *

(h) * * *

(5) * * *

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.,* lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.,* re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

* * * * *

■ 8. In § 648.59, revise paragraphs (b)(3)(i)(B), (b)(3)(ii), (c), (e), and (g)(3)(v) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2020 and 2021 fishing years:

(*1*) *Full-time vessels.* (*i*) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area I Flex [1]	18,000 lb (8,165 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg)
Closed Area II.		18,000 lb (8,165 kg)	0 lb (0 kg)
Nantucket Lightship-North.		9,000 lb (4,082 kg)	0 lb (0 kg)
Nantucket Lightship-South-Deep.		18,000 lb (8,165 kg)	0 lb (0 kg)
Mid-Atlantic.		36,000 lb (16,329 kg)	18,000 lb (8,165 kg)
Total		90,000 lb (40,823 kg)	18,000 lb (8,165 kg)

[1] Closed Area I flex allocation can be landed from either Closed Area I or the Mid-Atlantic Access Area pursuant to the area boundaries defined § 648.60(c).

(*ii*) For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60. For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(iii) For the 2020 fishing year and the first 60 days of the 2021 fishing year, a full-time limited access vessel may choose to land its Closed Area I Access Area allocation from either Closed Area I or the Mid-Atlantic Access Area as described in the § 648.60(c) and (a), respectively. For example, a vessel could take a trip in the Closed Area I Access Area and land 5,000 lb (2,268 kg) from that area, leaving the vessel with 4,000 lb (1,814 kg) of the Closed Area I flex allocation available, which could be landed from the Mid-Atlantic Access Area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(*iv*) If implementation of the fishing year 2020 specifications is delayed beyond April 1, 2020, the start of the 2020 fishing year, any full-time limited access vessel that harvests any portion of its default 2020 Nantucket Lightship-West Access Area allocation, as described in the § 648.60(f), will have 18,000 lb deducted from its fishing year 2020 Closed Area II Access Area allocation.

(*2*) *Part-time vessels.* (*i*) For a part-time limited access vessel, the

possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area II	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg)
Mid-Atlantic		24,000 lb (10,886 kg)	7,200 lb (3,266 kg)
Total		36,000 lb (16,329 kg)	7,200 lb (3,266 kg)

(*ii*) For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60(a), (c), and (f). For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the possession limit is not exceeded on any one trip.

(*iii*) If implementation of fishing year 2020 specifications is delayed beyond the April 1, 2020, start of the 2020 fishing year, any part-time limited access vessel that harvests any portion of its default 2020 Nantucket Lightship-West Access Area allocation, as described in the § 648.60(f), will have 12,000 lb (5,443 kg) deducted from its fishing year 2020 Closed Area II Access Area allocation.

(*3*) *Occasional limited access vessels.* (*i*) For the 2020 fishing year only, an occasional limited access vessel is allocated 7,500 lb (3,402 kg) of scallops with a trip possession limit at 7,500 lb of scallops per trip (3,402 kg per trip). Occasional limited access vessels may harvest the 7,500 lb (3,402 kg) allocation from only the Mid-Atlantic Access Area.

(*ii*) For the 2021 fishing year, occasional limited access vessels are allocated 1,500 lb (680 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 1,500 lb of scallops per trip (680 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges*—(A) *Full-time limited access vessels.* (*1*) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 9,000-lb (4,082-kg) increments. For example, a full-time vessel may exchange 9,000 lb (4,082 kg) from one access area for 9,000 lb (4,082 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 18,000 lb (8,165 kg) from one access area for 18,000 lb (8,165 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 9,000-lb (4,082-kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(*2*) In fishing year 2020, full-time limited access vessels are allocated 9,000 lb (4,082 kg) of scallops that may be landed from either Closed Area I or the Mid-Atlantic Access Area as described in the § 648.60(c) and (a), respectively. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from either Closed Area I or the Mid-Atlantic Access Area. For example, if a Vessel A exchanges 9,000 lb (4,082 kg) of Closed Area I flex allocation for 9,000 lb (4,082 kg) of Nantucket Lightship-North allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the Mid-Atlantic Access Area and may only land this allocation from Nantucket Lightship-North, but Vessel B could land the flex allocation from either Closed Area I or the Mid-Atlantic Access Area.

(B) *Part-time limited access vessels.* The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B)(*2*) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 12,000 lb (5,443 kg), a part-time limited access vessel may exchange no more or less than 12,000 lb (5,443 kg), from one access area for no more or less than 12,000 lb (5,443 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel

owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2019, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2020 (April 1, 2020 through May 30, 2020).

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2020 and 2021 are:

(1) 2020: Mid-Atlantic Access Area.

(2) 2021: No access areas.

* * * * *

(g) * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2020 and 2021 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2020	2021 [1]
Closed Area I	571	0
Nantucket Lightship-North	571	0
Nantucket Lightship-South-Deep ...	571	0
Mid-Atlantic	1,142	571
Total	2,855	571

[1] The LAGC IFQ access area trip allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

■ 9. Revise § 648.60 to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area.* The Mid-Atlantic Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (a)

Point	N latitude	W longitude
MAA1	39°30′	73°10′
MAA2	39°30′	72°30′
MAA3	38°30′	73°30′
MAA4	38°10′	73°30′
MAA5	38°10′	74°20′
MAA6	38°50′	74°20′
MAA7	38°50′	73°42′
MAA1	39°30′	73°10′

(b) *Closed Area II-Southwest and Extension Scallop Rotational Area.* The Closed Area II-Southwest and Extension Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (b)

Point	N latitude	W longitude	Note
CAIISWE1	41°11′	67°20′	.....
CAIISWE2	41°11′	66°41′	.....
CAIISWE3	41°0′	66°41′	.....
CAIISWE4	41°0′	(1)	(2)
CAIISWE5	40°40′	(3)	(2)
CAIISWE6	40°40′	67°20′	.....
CAIISWE1	41°11′	67°20′	.....

[1] The intersection of 41°0′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0′ N lat. and 66°09.33′ W long.

[2] From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 66°43.31′ W long.

(c) *Closed Area I Scallop Rotational Area.* The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (c)

Point	N latitude	W longitude
CAIA1	41°30′	68°30′
CAIA2	40°58′	68°30′
CAIA3	40°54.95′	68°53.37′
CAIA4	41°04′	69°01′
CAIA5	41°30′	69°23′
CAIA1	41°30′	68°30′

(d) *Closed Area II Scallop Rotational Area.* (1) *Closed Area II Scallop Rotational boundaries.* The Closed Area II Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (d)

Point	N latitude	W longitude	Note
CAIIA1	41°30′	67°20′	.....
CAIIA2	41°11′	67°20′	.....
CAIIA3	41°11′	66°41′	.....
CAIIA4	41°00′	66°41′	.....
CAIIA5	41°00′	(1)	(2)
CAIIA6	41°30′	(3)	(2)
CAIIA1	41°30′	67°20′	.....

[1] The intersection of 41°00′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00′ N lat. and 66°09.33′ W long.

[2] From Point CAIIA5 connected to Point CAIIA6 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.

(2) *Season.* (i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(ii) For the 2020 scallop fishing year, a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of November 16 through November 30, unless transiting pursuant to § 648.59(a).

(e) *Nantucket Lightship-South-Deep Scallop Rotational Area.* The Nantucket Lightship South-Deep Rotational Area is defined by straight lines connecting the following points in the order stated

(copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (e)

Point	N latitude	W longitude
NLSSD1	40°22′	69°30′
NLSSD2	40°15′	69°30′
NLSSD3	40°15′	69°00′
NLSSD4	40°28′	69°00′
NLSSD5	40°28′	69°17′
NLSSD1	40°22′	69°30′

(f) *Nantucket Lightship West Scallop Rotational Area.* From April 1, 2020 through May 30, 2020, the Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (f)

Point	N latitude	W longitude
NLSW1	40°20′	70°00′

TABLE 6 TO PARAGRAPH (f)—Continued

Point	N latitude	W longitude
NLSW2	40°43.44′	70°00′
NLSW3	40°43.44′	69°30′
NLSW4	40°20′	69°30′
NLSW1	40°20′	70°00′

(g) *Nantucket Lightship-North Scallop Rotational Area.* The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 7 TO PARAGRAPH (g)

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSN2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

(h) *Nantucket Lightship-Triangle Scallop Rotational Area.* The Nantucket Lightship Triangle Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 8 TO PARAGRAPH (h)

Point	N latitude	W longitude
NLST1	40°28′	69°30′
NLST2	40°28′	69°17′
NLST3	40°22′	69°30′
NLST1	40°28′	69°30′

■ 10. In § 648.62, revise paragraph (b)(1) and add paragraph (e) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

* * * * *

(b) * * *

(1) *NGOM annual hard TACs.* The LAGC and the limited access portions of the annual hard TAC for the NGOM 2020 and 2021 fishing years are as follows:

TABLE 1 TO PARAGRAPH (b)(1)

Fleet	2020		2021 (default)	
	lb	kg	lb	kg
LAGC	206,282	93,567	167,500	75,977
Limited access	140,000	63,503	97,500	44,225
Total	346,282	157,071	265,000	120,202

* * * * *

(e) *Stellwagen Bank Scallop Closed Area.* (1) From April 1, 2020 through March 31, 2022, unless a vessel has fished for scallops outside of the Stellwagen Bank scallop management area and is transiting the area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued a Federal scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the Stellwagen Bank Scallop Closed Area.

(2) From April 1, 2020 through March 31, 2022, the Stellwagen Bank Scallop Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (e)(2)

Point	N latitude	W longitude
SB1	42°26′	70°27′
SB2	42°26′	70°15′
SB3	42°20′	70°15′
SB4	42°20′	70°27′
SB1	42°26′	70°27′

[FR Doc. 2020–03172 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200212–0054]

RIN 0648–BI31

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; 2020–2023 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Proposed specifications; request for comments.

SUMMARY: We are proposing specifications for the 2020 Atlantic deep-sea red crab fishery, including an annual catch limit and total allowable landings limit, projected quotas for

2021–2023, and a clarification to the specifications process. The proposed action is intended to establish the allowable 2020 harvest levels, consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan. This action is necessary to establish allowable red crab harvest levels that will prevent overfishing.

DATES: Comments must be received on or before March 6, 2020.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2020–0007, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0007,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

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 publically accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the specifications document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950 or at *https://www.nefmc.org/management-plans/red-crab.* The specifications document is also accessible via the internet at: *https://www.greateratlantic.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic deep-sea red crab fishery is managed by the New England Fishery Management Council. The Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) includes a specification process that requires the Council to recommend, on a triennial basis, an acceptable biological catch (ABC), an annual catch limit (ACL), and total allowable landings (TAL). The Council's Scientific and Statistical Committee (SSC) provides a recommendation to the Council for the ABC. The Council makes a recommendation to us that cannot exceed the ABC recommendation of its SSC.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following this review, we then publish proposed specifications in the **Federal Register**. After considering public comment, we will publish final specifications in the **Federal Register**.

The FMP was implemented in 2002 and was originally managed under a target total allowable catch (TAC) and days-at-sea (DAS) system that allocated DAS equally across the small fleet of limited access permitted vessels. Amendment 3 to the FMP removed a trip limit restriction, and replaced the target TAC and DAS allocation with a catch limit structure consistent with the ACL and accountability measure requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Under Amendment 3 (76 FR 60379; September 29, 2011), the 2011–2013 red crab specifications were set with an ABC equal to the long-term average landings of the directed red crab fishery (1,775 metric tons (mt)). These specifications were continued for fishing years 2014–2016 (79 FR 24356; April 30, 2014) and 2017–2019 (82 FR 11322, February 22, 2017; 83 FR 4849, February 2, 2018; 83 FR 66161, December 26, 2018).

Proposed Specifications

The biological and management reference points currently in the FMP are used to determine whether overfishing is occurring or if the stock is overfished. There is insufficient information on the species to establish the maximum sustainable yield, optimum yield, or overfishing limit (OFL). ABC is defined in terms of landings instead of total catch because there is insufficient information to estimate dead discards of red crab.

The Council's recommendation for the 2020–2023 red crab specifications are based on the results of the most recent peer-reviewed assessment of the red crab fishery carried out by the Data Poor Stocks Working Group in 2009 and the recommendations of the Council's SSC. The recommended specifications include a 12.7-percent increase for 2020–2023 when compared to the previous specifications. While an OFL has not been determined for the stock, the Council and its SSC assert that the increased catch limit will not result in overfishing and adequately accounts for scientific uncertainty due to past performance of underharvesting past specifications.

Recent landings, landing per unit of effort, port samples, discard information, and economic data suggest there has been no change in the size of the red crab stock since Amendment 3 was implemented in 2011. On August 21, 2019, the SSC recommended a 2,000-mt ABC for fishing years 2020–2023 for the directed fishery. The Council approved the 2,000-mt ABC, ACL, and TAL on September 24, 2019. We are proposing the Council-recommended specifications for fishing year 2020. By providing projected quotas for 2021–2023, we hope to assist fishery participants in planning ahead.

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.262(b) require a pound-for-pound reduction in a subsequent fishing year, through notification consistent with the Administrative Procedure Act. We would publish a notice in the **Federal Register** of any revisions to the projected specifications if an overage occurs. We expect, based on the performance of the red crab fishery over time, that such adjustments would be unlikely. Current fishery projections indicate that no adjustment would be necessary for fishing year 2020. We will provide notice of the final 2021–2023 quotas prior to the start of each respective fishing year.

Proposed Clarifications

We are proposing the following clarifications to specifications regulations based on Council recommendations. First, we are proposing to change the red crab specifications cycle from 3 to 4 years. The Northeast Region Coordinating Council (NRCC), consisting of the New England and Mid-Atlantic Councils, the Atlantic States Marine Fisheries Commission, and NMFS Greater Atlantic Regional Fisheries Office and Northeast Fisheries Science Center recently developed a stock assessment prioritization process to identify assessment needs and schedule stock

assessments. In 2018, the NRCC unanimously approved a new assessment process that changed the frequency of assessments for many stocks. Because of its low level of biological information, relatively low economic value, and lower biological vulnerability, and because of constraints on scientific resources, the NRCC changed the Atlantic deep-sea red crab assessment from a 3-year to a 4-year assessment cycle. Consequently, the Council sought to align the specifications cycle with the new 4-year assessment cycle. Thus, this action proposes specification for 4 years.

Second, under the authority of section 305(d) to the Magnuson-Stevens Act, in compliance with Executive Order 13771, and at the recommendation of the Council, we are proposing to remove the requirements for the Red Crab Plan Development Team (PDT) to meet annually and for the Red Crab Committee to meet before forwarding actions to the Council. Requiring the PDT to meet annually to review the status of the fishery is duplicative and unnecessary. We must monitor fishery catch throughout the year to determine if an accountability measure is necessary. Accountability measures for the fishery require that we close the directed fishery if the TAL has been harvested and implement a pound-for-pound reduction in a subsequent fishing year if an overage occurs, through notification consistent with the Administrative Procedure Act. We would publish a notice in the **Federal Register** of any revisions to these proposed specifications if an overage occurs. Requiring the PDT to review this information would duplicate NMFS effort. Additionally, for the past several specifications cycles, the PDT has forwarded recommendations directly to the Council and no Red Crab Committee has met. This rule proposes to streamline the Council process by removing the requirement for the Red Crab Committee to meet.

Classification

Pursuant to section 304(b)(1)(A) of the Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for 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 13866.

The Chief Counsel for Regulation, 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 Council prepared an analysis of the potential economic impacts of this action, which is included in the Council's document for this action (see **ADDRESSES** to obtain a copy of the supplemental information report) and supplemented by information contained in the preamble of this proposed rule. For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry in commercial fishing (see 50 CFR part 200). A business primarily engaged in commercial fishing (NAICS code 11411) 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 $11 million for all its affiliated operations worldwide. Using this definition, there are two distinct ownership entities and four fishing vessels based on available permit data that are directly regulated by this action. As there are only two business entities, the degree of ownership is not known. A review of revenue data from 2016–2018 indicates that the total value of landings of red crab and other species over the last 3 years averaged $3.47 million, so it is safe to assume that all business entities in the harvesting sector can be categorized as small businesses for purpose of the RFA.

There is no reason to believe small entities will be substantially affected by the proposed action. The proposed action will affect both business entities and the four vessels that participate in the directed red crab fishery, but it is not expected to have any negative impact on the gross or average revenues for the fishery because it increases the quota by 12.7 percent. In addition, this quota is substantially higher than landings in recent years (fishing years 2016 through 2018 landings averaged 1,494 mt (3.29 million lb)). As a result, the proposed action is not expected to constrain landings markets for red crab and is not expected to have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: February 12, 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 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.260, revise paragraphs (a) introductory text, (a)(1) through (3), and (b) to read as follows:

§ 648.260 Specifications.

(a) *Review and specifications process.* The Council, the Red Crab Plan Development Team (PDT), and the Red Crab Advisory Panel shall monitor the status of the red crab fishery and resource.

(1) The Red Crab PDT shall meet at least once every 4 years, or as directed by the Council, to review Stock Assessment reports and generate a Fishery Evaluation (SAFE) Report, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) If new and/or additional information becomes available, the Red Crab PDT shall consider it during this review. Based on this review, the Red Crab PDT shall provide guidance to the Council regarding the need to adjust measures in the Red Crab FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the

framework process specified in § 648.261, or through an amendment to the FMP.

(3) Based on the review, described above, and/or the SAFE Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Red Crab PDT shall recommend to the Council the following specifications for harvest of red crab: An annual catch limit (ACL) set less than or equal to ABC; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each red crab fishing year, specified for a period of up to 4 fishing years.

* * * * *

(b) *SAFE Report.* (1) The Red Crab PDT shall prepare a SAFE Report at least every 4 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 4 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[FR Doc. 2020–03281 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 34
Thursday, February 20, 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

Agency Information Collection Activities

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces and requests comments on the intention of the Office of the Chief Information Officer (OCIO) to request approval for the continuation of and changes to the U.S. Department of Agriculture (USDA) Registration Form to Request Electronic Access Code information collection to allow USDA customers to securely and confidently share data and receive services electronically.

DATES: Comments on this notice must be received on or before April 20, 2020 to be assured of consideration.

ADDRESSES:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Interested persons are invited to submit comments concerning this information collection to Adam Zeimet, 2150 Centre Avenue, Building A—Suite 350, Fort Collins, Colorado 80526. Fax comments should be sent to the attention of Adam Zeimet at fax number (970) 295–5238.

FOR FURTHER INFORMATION CONTACT: Adam Zeimet by telephone at (970) 295–5678, or via email at *Adam.Zeimet@usda.gov.*

SUPPLEMENTARY INFORMATION: Authority for obtaining information from customers is included in the Freedom to E-File Act (7 U.S.C. 7031–7035), the Electronic Signatures in Global and National Commerce Act (E–SIGN) (15 U.S.C. 7001–7031), the E-Government Act of 2002 (44 U.S.C. 3601–3606; 3541–3549), and the GRAMM–LEACH–BLILEY ACT (Pub. L. 106–102, 502–504). Customer information is collected through the USDA eAuthentication Service (eAuth), located at *https://www.eauth.usda.gov.* The USDA eAuth service provides both public citizens as well as federal government employees with a secure single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuth Application service obtains customer information through an electronic self-registration process provided through the eAuth website. This voluntary online self-registration process and identity proofing process (either in-person at a USDA Service Center or online with national credit bureaus) enables USDA customers to obtain accounts as authorized users that will provide single sign-on capability, self-registration, and account management to access USDA Web applications and services via the internet.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of USDA–OCIO—Customer Experience Center—Identity and Access Services Branch (Identity, Credential, and Access Management Program) to request approval for an existing collection.

Title: USDA Registration Form to Request Electronic Access Code.

OMB Number: 0503–0014.

Expiration Date of Approval: 4/30/2020.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA OCIO developed the eAuthentication Service as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a one-time electronic self-registration to obtain an eAuth account for each USDA customer desiring access to on-line services or applications that require user authentication. USDA customers may self-register for an account in accordance to OMB Memorandum M–19–17 and National Institute of Standards and Technology Special Publication 800–63–3 (or superseding publications). An eAuthentication account, without identity verification, provides users with limited access to USDA website portals and applications that have minimal security requirements. A customer with an eAuthentication account, with identity verification, is permitted to conduct official electronic business transactions via the internet, enter into a contract with the USDA, and submit forms electronically via the internet to USDA agencies. Due to the increased risk associated with these types of transactions, the identity of customers must be verified through a process called ''identity proofing''. Identity proofing can be accomplished for USDA customers in two ways: (1) By visiting a Local Registration Authority (LRA) at a USDA Service Center; or (2) Through an integrated online identity proofing service with a National Credit Bureau. The on-line identity proofing service provides registrants with a more efficient mechanism for identity verification. On-line identity proofing requires responses to at least four randomly selected identity questions that are verified by a national credit bureau identity proofing service in an automated interface. Once the user's identity if verified, they may use the associated credential to access USDA resources that utilize eAuthentication services.

Estimate of Burden: Public reporting burden for this collection of information is estimated to take three (3) minutes to complete the self-registration process for an eAuthentication account, without identity verification. Customers needing a higher form of access are required to provide additional information for identity proofing purposes. The data entry for identity verification is estimated to take three (3) minutes. For identity verification through a LRA, the time is estimated to take one (1) hour to travel to a USDA Service Center to visit a Local Registration Authority (expected to be approximately 15% of the registrants), or three (3) minutes when using the on-line identity proofing service (expected to be approximately 85% of the registrants).

Respondents: Individual USDA Customers.

Estimated Number of Respondents per account type:

- *eAuthentication account, without identity proofing:* 103,704
- *eAuthentication account, with identity proofing:* 34,692
  - *In Person ID Proofing (15%):* 5,204
  - *Online/Remote ID Proofing (85%):* 29,488

Estimated Total Number of Respondents: 138,396.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 17,038.3 hours.

Comments are invited on (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of 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 the information on those who respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. Copies of the information collection may be obtained from Mr. Zeimet by calling or emailing your request to the contact information above in the **FOR FURTHER INFORMATION** section. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 10, 2020.

Gary Washington,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 2020–03119 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–KR–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2020–0002]

Information Collection Requests; Farm Loan Programs: Inventory Property Management (OMB Control Number 0560–0234), Direct Loan Servicing-Regular (OMB Control Number 0560–0234), General Program Administration (OMB Control Number 0560–0238) and Guaranteed Farm Loan Program (OMB Control Number 0560–0155)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on the four Farm Loan Programs' information collection requests. The four collection requests in the Farm Loan Programs are: Inventory Property Management, Direct Loan Servicing—Regular, Guaranteed Farm Loan Program and General Program Administration. In the Inventory Property Management, the collected information is used to evaluate applicant requests to purchase inventory property, determine eligibility to lease or purchase inventory property, and ensure the payment of the lease amount or purchase amount associated with the acquisition of inventory property. In the Direct Loan Servicing—Regular, the information is used to determine borrower compliance with loan agreements, assist the borrower in achieving business goals, and regular servicing of the loan account such as graduation, subordination, partial release, and use of proceeds. In the General Program Administration, the information collected is used to ensure that applicants meet statutory eligibility requirements, loan funds are used for authorized purposes, and the Government's interest in security is adequately protected. In the Guaranteed Farm Loan Program, the collected information is needed to make and service loans guaranteed by FSA to eligible farmers and ranchers by commercial lenders and nontraditional lenders.

DATES: We will consider comments that we receive by April 20, 2020.

ADDRESSES: We invite you to submit comments on this notice. In your comments, please include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by the following method: Federal eRulemaking Portal; Go to *http://www.regulations.gov* and search for Docket ID FSA–2020–0001.

You may also send comments to the Desk Officer for Agricultures, Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503. Comments will be available for public inspection online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to the collection activities or to obtain a copy of the information collection request: For the Inventory Property Management and Direct Loan Servicing-Regular, please contact Lee Nault, (202) 720–6834; *lee.nault@usda.gov;* for the Guaranteed Farm Loan Program, please contact Steve Ford, 202–304–7932; *stevefords2@usda.gov* and for the General Program Administration, please contact Niki Chavez, 202–690–61, *niki.chavez@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs; Inventory Management Program.

OMB Control Number: 0560–0234.

Expiration Date: April 30, 2020.

Type of Request: Extension with a revision.

Abstract: FSA's Farm Loan Programs provide supervised credit in the form of loans to family farmers to purchase real estate and equipment and finance agricultural production. Inventory Property Management, as specified in 7 CFR part 767, provides the requirements for the management, lease, and sale of security property acquired by FSA. FSA may take title to real estate as part of dealing with a problem loan either by entering a winning bid in an attempt to protect its interest at a foreclosure sale, or by accepting a deed of conveyance in lieu of foreclosure. Information collections established in the regulation are necessary for FSA to determine an applicant's eligibility to lease or purchase inventory property and to ensure the applicant's ability to make payment on the lease or purchase amount.

The number of response and burden hours decrease in this request. While the overall number of inventory properties on hand increased 13.5 percent from the last collection, the decrease in responses and burden hours is due to reduction int eh estimated number of inventory properties sold. The number projected to be sold has been revised downward to match reported sales percentages over the last several years.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for the information collection is estimated to average 0.57 hours per response.

Type of Respondents: Individuals or households, businesses or other for-profit farms.

Estimated Annual Number of Respondents: 239.

Estimated Number of Reponses per Respondent: 1.

Estimated Total Annual Responses: 239.

Estimated Average Time per Response: 0.57 hours.

Estimated Total Annual Burden on Respondents: 136 hours.

Title: Farm Loan Programs—Direct Loan Servicing—Regular.

OMB Control Number: 0560–0236.

Expiration Date: July 31, 2020.

Type of Request: Extension with a revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and finance agricultural production. Direct Loan Servicing—Regular, as specified in 7 CFR part 765, provides the requirements related to routine servicing actions associated with direct loans. FSA is required to actively supervise its borrowers and provide credit counseling, management advice and financial guidance. Additionally, FSA must document that credit is not available to the borrower from commercial credit sources in order to maintain eligibility for assistance. Information collections established in the regulation are necessary for FSA to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's request for subordination or partial release of security. Borrowers are required to provide financial information to determine graduation eligibility based on commercial lender standards provided to FSA.

FSA is requesting OMB approval on the estimated numbers, which are being provided currently in this request. The burden hours have been increased by 2,114 hours while the annual response have increased by 65. The reason for the increase is due to an overall 10% increase in the number of the borrowers and the use of updated reporting tools to reevaluate previous burden estimates even though the travel times removed from the request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

Estimate of Average Time to Respond: Public reporting burden for collecting information under this notice is estimated to average 0.31 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Type of Respondents: Business or other for profits and farms.

Estimated Number of Respondents: 94,603.

Estimated Average Number of Responses per Respondent: 1,031.

Estimated Total Annual Responses: 97,536.

Estimated Average Time per Response: 0.31.

Estimated Total Annual Burden on Respondents: 30,155 hours.

Title: Farm Loan Programs—General Program Administration.

OMB Control Number: 0560–0238.

Expiration Date: July 31, 2020.

Type of Request: Extension with a revision.

Abstract: General Program Administration, as specified in the 7 CFR 761, contains requirements that are applicable to making and servicing direct loans. The information collections are necessary to ensure that applicants meet statutory eligibility requirements, loan funds are used for authorized purposes, and the Federal Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which loan funds, proceeds derived from the sale of loan security and insurance proceeds, may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed the maximum amount insurable by the Federal Government; and documents that construction plans and specifications to comply with state and local building standards. Since the introduction of Microloan Loan (ML) Program certain forms included in this information collection are no longer being used and others are being used less. In addition, as interest rates have remained well below the limited resource rate, the agency has not conducted limited resource reviews to over 20,400 respondents resulting in a total program changes decrease of 20,181 respondents; 40,105 responses; and 23,943 burden hours. Further, the agency no longer counts respondents' hours of travel time. Respondents may submit applications by mail and many respondents go to the county offices to do regular and customary business with FSA for other FSA programs and can complete and submit the farm loan programs forms during this time; this means no travel time is required specifically for the information collection and therefore, it is no longer included in the burden hour reporting.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

Estimated Respondent Burden: Public reporting burden for this collection of information is estimated to average 1.02 hours per response.

Type of Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 64,802.

Estimated Number of Responses per Respondent: 2.5.

Estimated Total Annual Number of Responses: 164,483.

Estimated Average Time per Response: 1.02 hours.

Estimated Total Annual Burden on Respondents: 168,029 hours.

Title: Farm Loan Programs—Guaranteed Farm Loan.

OMB Control Number: 0560–0155.

Expiration Date: July 31, 2020.

Type of Request: Extension with a revision.

Abstract: This information collection is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating lenders. The basic objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 and 763 are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest. The annual responses have been reduced by 17,315 while the burden hours reduced by 48,997 hours in the request. The reason for the decrease is due to a drop in Guaranteed loans originated between the yeas preceding FY 2017 and FY 2020. Between FY 2016 and FY 2919, the number of Guaranteed loans fell by 24 percent from 10,047 to 7611. In addition, the number of loss claims and status reports received is much lower than FY 2017. The travel times was also removed from this request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for collecting information under this notice is estimated to average 0.84434 minutes

per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Type of Respondents: Businesses or other for-profits and Farms.

Estimated Number of Respondents: 12.8.

Estimated Average Number of Responses per Respondent: 9,700.

Estimated Total Annual Responses: 202,898.

Estimated Average Time per Response: 0.8434.

Estimated Total Annual Burden on Respondents: 171,126 hours.

Requesting Comments

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Steve Peterson,

Acting Administrator, Farm Service Agency.

[FR Doc. 2020–03303 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Professional Standards Training Tracker Tool

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension, without change, of a currently approved collection for assisting state agencies to record, track and manage the required training hours in four major areas (Nutrition, Operations, Administration, Communications and Marketing) to meet the requirements of the Healthy Hunger Free Kids Act (HHFKA) of 2010 Professional Standards Rule. The HHFKA (Section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training courses, FNS developed a web-based application tool with a SQL-server database, which is available to local educational agencies and school food authorities through the FNS public website. While training requirements are mandatory, using the USDA Tracking Tool is voluntary. School nutrition professionals can use any method to track and manage their trainings. These resources facilitate compliance with HHFKA requirements and are provided at no cost to the state, district, or individuals.

DATES: Written comments must be received on or before April 20, 2020.

ADDRESSES: Comments may be sent to: Kaushalya Heendeniya, Food and Nutrition Service, U.S. Department of Agriculture, Braddock Metro Center II, 1320 Braddock Place, Room 415, Alexandria, VA 22314. Comments may also be submitted via email to *kaushalya.heendeniya1@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaushalya Heendeniya at 703–305–0037.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Professional Standards Training Tracker Tool.

Form Number: None.

OMB Number: 0584–0626.

Expiration Date: 06/30/2020.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: The Healthy Hunger Free Kids Act of 2010 (Section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training and training courses, FNS developed a web-based application tool with a SQL-server database, which is available to local educational agencies and school food authorities through the FNS public website, with a login authentication. These resources facilitate compliance with HHFKA requirements and are provided at no cost to the state, district, or individuals. In addition, this Professional Standards Training Tracking Tool application is mobile friendly to ensure easy usage and accessibility across mobile devices. The application is compatible with all mobile operating systems (iOS, Android, and Windows).

The user is able to create a user profile with the following information:

- School District/Address
- School Name/Address
- Individual Name—Contact Information/Email address
- Title of Individual or Role in school nutrition program
- Hiring Date

The user can record the following information for a completed training:

- Key Area
- Training Topic
- Learning Objective
- Training Title
- Training Hours/Minutes
- Date of Training
- Provider or Organization offering training, including state, local or national

- Level of Training by employee position (*e.g.,* employee, manager, etc.)

The manager user has the ability to enter multiple names for one specific training without having to repeatedly enter training information. Certificates of completion are printed for all employees once the annual required training hours are met. The tool also provides the user the ability to export and save results in multiple file formats, including PDF (.pdf), Excel and Word 2000 or higher (.docx). It has a user-centered, simple, intuitive interface. Streamlined and intuitive navigation is offered for easy access to all functionality.

Affected Public: State, Local, and Tribal Government. Respondent groups include state agency personnel and school nutrition professionals.

Estimated Number of Respondents: The total estimated number of respondents is 10,006. This includes 6 State agency personnel and 10,000 school nutrition professionals who voluntarily choose to utilize this tracking tool. All respondents will be offered a 60-minute training refresher webinar to highlight enhancements.

Estimated Number of Responses per Respondent: Total estimated number of responses per respondent across the entire collection is 7. The estimated number of responses per respondent for the tracking tool is five. The tracking tool users will first be required to create their user profile, which will be saved for future use. It is estimated that the user will be updating and managing their records on a quarterly basis. The estimated number of responses per respondent for the training webinar and the recording of trainings is one.

Estimated Total Annual Responses: 70,042.

Estimated Time per Response: The estimated time per response across the entire collection is approximately 14 minutes (0.24 hours). For the training tracker tool, the estimated time of response varies from five to ten minutes depending on familiarity of the tool and the amount of reports created with an average estimated time of 7.5 minutes (0.125 hours) for all participants. The training refresher webinar of 60 minutes (1 hour) will be available for all participants. Participants will record trainings into the tracking tool, which is estimated to take 5 minutes (0.083 hours) to complete.

Estimated Total Annual Burden on Respondents: 17,090.25 hours (rounded to 17,090 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated # respondent	Responses annually per respondent	Total annual responses (Col. bxc)	Estimated Avg. # of hours per response	Estimated total hours (Col. dxe)
Reporting Burden for State, Local, and Tribal Govt					
State agency Personnel	6	5	30	0.125	3.75
Training Webinar	6	1	6	1	6
Recording of Trainings on the Tool	6	1	6	0.083	0.498
School Nutrition Professionals	10,000	5	50,000	0.125	6,250
Training Webinar	10,000	1	10,000	1	10,000
Recording of Trainings on the Tool	10,000	1	10,000	0.083	830
Total Reporting Burden	10,006	7	70,042	0.24	17,090.25

Dated: February 6, 2020.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–03370 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2020, Maximum Portion of Guarantee Authority Available for Fiscal Year 2020, Annual Renewal Fee for Fiscal Year 2020

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice helps to improve applicants' awareness of the Guarantee Fee rates for Guaranteed Loans for fiscal year (FY) 2020, the Maximum Portion of Guarantee Authority Available for FY 2020, and the Annual Renewal Fee for FY 2020 when applying for guaranteed loans under the Business and Industry (B&I) Guaranteed Loan Program.

The Agency has the authority to charge a guarantee fee and an annual renewal fee for loans made under the B&I Guaranteed Loan Program. Pursuant to that authority, and subject to the current appropriated authority, the Agency is establishing an initial guarantee fee rate of 3 percent and an annual renewal fee rate of one-half of 1 percent for the B&I Guaranteed Loan Program.

The initial guarantee fee is paid at the time the Loan Note Guarantee is issued. The annual renewal fee is paid by the lender to the Agency once a year. Payment of the annual renewal fee is required in order to maintain the enforceability of the guarantee.

DATES: This rule is effective February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, USDA, Rural Development, Business Programs, Business and Industry Division, STOP 3224, 1400 Independence Avenue SW, Washington, DC 20250–3224, telephone (202) 720–6802, email *tanner.hinkel@usda.gov.*

SUPPLEMENTARY INFORMATION:

As set forth in 7 CFR 4279.120, the Agency has the authority to charge an initial guarantee fee and an annual renewal fee for loans made under the B&I Guaranteed Loan Program. Pursuant to that authority, and subject to the current appropriated authority, the Agency is establishing an initial guarantee fee rate of 3 percent and an annual renewal fee rate of one-half of 1 percent for the B&I Guaranteed Loan Program. Unless precluded by a subsequent FY 2020 appropriation, these rates will apply to all loans obligated in FY 2020 that are made under the B&I Guaranteed Loan Program. As established in 7 CFR 4279.120(b)(1), the amount of the annual fee on each guaranteed loan will be determined by multiplying the annual fee rate by the outstanding principal loan balance as of December 31, multiplied by the percentage of guarantee.

As set forth in 7 CFR 4279.120(a) and 4279.119(b), each fiscal year, the Agency shall establish a limit on the maximum portion of B&I guarantee

authority available for that fiscal year that may be used to guarantee loans with a reduced guarantee fee or guaranteed loans with an increased percentage of guarantee. The Agency has established that not more than 5 percent of the Agency's apportioned B&I guarantee authority will be reserved for loan guarantee requests with a reduced fee, and not more than 5 percent of the Agency's apportioned B&I guarantee authority will be reserved for guaranteed loan requests with an increased percentage of guarantee. The funds set aside for increased percentages of guarantee and reduced guarantee fees, which were set at 15 percent and 12 percent, respectively pursuant to the 2019 Agency notice, now will change to 5 percent for both with this notice. Once the respective limits are reached, all additional loans will be at the standard fee and guarantee limits. These changes will have the effect of reducing the need for USDA to reprogram funds, which can delay when funds are made available to borrowers at regular terms and are based on past experience in this program. Allowing a reduced guarantee fee or increased percentage of guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.120 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects that the Agency has found particularly meritorious. Subject to annual limits set by the Agency in this notice, the Agency may charge a reduced guarantee fee if requested by the lender for loans of $5 million or less when the borrower's business supports value-added agriculture and results in farmers benefitting financially, promotes access to healthy foods, or is a high impact business development investment located in a rural community that is experiencing long-term population decline; has remained in poverty for the last 30 years; is experiencing trauma as a result of natural disaster; is located in a city or county with an unemployment rate 125 percent of the statewide rate or greater; or is located within the boundaries of a federally recognized Indian tribe's reservation or within tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act. Subject to annual limits set by the Agency in this notice, the Agency may allow increased percentages of guarantee for high-priority projects or loans where the lender needs the increased percentage of guarantee due to its legal or regulatory lending limit.

Congressional Review Act

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

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in, or administering, USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–03338 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–20–CF–0002]

Announcement of the Availability of Disaster Relief Act 2019 Grant Funds for the Community Facilities Technical Assistance and Training Grant

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: As part of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, dated June 6, 2019, the Rural Housing Service's Community Facilities (CF) Technical Assistance and Training (TAT) Grant Program is making available $7,500,000 in supplemental grant funding for eligible expenses related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters. Any funds not awarded under this funding notice will be transferred to the CF Disaster Grant Program. The authority for the Agency to administer the CF TAT Grant Program is provided in Section 6006 of the Agriculture Act of 2014. The grant funds will be administered in accordance with this notice of funds availability.

DATES: The Agency must receive applications in paper postmarked and mailed, shipped, or sent overnight by 4:00 p.m. local time on May 5, 2020. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on April 30, 2020. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to April 27, 2020. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: Applications will be submitted to the USDA Rural Development State Office in the state where the applicant's headquarters is located. A listing of each State Office

can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* If you want to submit an electronic application, follow the instructions for the TAT funding announcement on *http://www.grants.gov.* For those applicants located in the District of Columbia, applications will be submitted to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Electronic applications will be submitted via *http://www.grants.gov.* All applicants can access application materials at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: The Rural Development office in which the applicant is located. A list of the Rural Development State Office contacts can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* Applicants located in Washington, DC can contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Housing Service, an Agency of the United States Department of Agriculture (USDA) herein referred to as the Agency, published a final rule with comment in the **Federal Register** on January 14, 2016, implementing Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) which provides authority to make CF TAT Grants. The purpose of this Notice is to solicit applications for the CF TAT Grant funds made available as part of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20, dated June 6, 2019. This program is designed to provide supplemental grant funding for eligible CF applicants and eligible CF projects related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters.

Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. (See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.)* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, county, state, and/or regional levels. See *https://www.cdc.gov/pwid/vulnerable-counties-data.html.*

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures, such as the strategic placement of overdose reversing devices;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse), such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments in areas with the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts (or Reservation boundary for Indian tribes). State Director and Administrator discretionary points will be awarded to applications that address these Agency Goals.

Paperwork Reduction Act

The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0198.

National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, awards for technical assistance and training under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

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

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@wdc.usda.gov* or (720) 544–2911.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Community Facilities Disaster Technical Assistance and Training Grant.

Announcement Type: Notice of Funds Availability (NOFA).

Catalog of Federal Domestic Assistance Number: 10.766.

Dates: To apply for funds, the Agency must receive mailed-in applications by 4:00 p.m. local time on May 5, 2020. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on April 30, 2020. The Agency will not consider any application received after this deadline. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as

such requests are made prior to April 27, 2020. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Availability of Notice: This Notice is available through the USDA Rural Development site at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

I. Funding Opportunity Description

A. Purpose

Congress authorized the CF TAT Grant program in Title VI, Section 6006 of the Agricultural Act of 2014 (Pub. L. 113–79). Program regulations can be found at 7 CFR part 3570, subpart F, which are incorporated by reference in this Notice. As part of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20, dated June 6, 2019, Congress appropriated additional CF TAT Grant. The purpose of this Notice is to seek applications from entities that will provide technical assistance and/or training with respect to essential community facilities programs. It is the intent of this program to assist entities in rural areas in accessing funding under the Rural Housing Service's CF Programs in accordance with 7 CFR part 3570, subpart F. Funding priority will be made to private, nonprofit or public organizations that have experience in providing technical assistance and training to rural entities. In addition to the requirements listed above, the Agency is seeking applications that are related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters.

II. Award Information

Type of Awards: Grants will be made to eligible entities who will then provide technical assistance and/or training to eligible ultimate recipients.

Available Funds: The Agency is making available $7,500,000. Up to ten percent of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70.

Award Amounts: Grant awards for Technical Assistance Providers assisting Ultimate Recipients within one state may not exceed $250,000. Grant awards made to Ultimate Recipients will not exceed $50,000. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Award Dates: Awards will be made from available funding prior to September 30, 2020.

III. Eligibility Information

Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262. Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264. Restrictions substantially similar to Sections 743, 744, 745, and 746 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) will apply unless noted on the Rural Development website (*https://www.rd.usda.gov/programs-services/community-facilities-technical-assistance-and-training-grant*). Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. In addition, none of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Additionally, no funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: ''These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.'' In addition to the eligibility requirements found at 7 CFR 3570, subpart F (3570.262) and (3570.263), the following requirements must be met:

(i) The eligible CF project must be located in a rural area in a county with a Major Disaster Declaration as declared by the President of the United States. The term rural or rural area is defined in section 343(a)(13)(C) of the CONAct (7 U.S.C. 1991(a)(13)) as a city, town or, unincorporated area that has a population of not more than 20,000 inhabitants. The boundaries for unincorporated areas in determining populations will be based on the CDP. Data from the most recent decennial census of the United States will be used in determining population. Any rural community impacted by a major declared disaster DR–4407 may have the governor in the affected state, or the governor's designee, certify the area's population as a rural area with respect to eligibility for loans, grants, and technical assistance under rural development programs funded by the Department of Agriculture until data from the 2020 United States Census is available. The certification will be provided to the Rural Development State Director of California.

For information on determining if a project is located in an area with a Major Disaster Declaration, go to the CF section of the Rural Development Disaster Assistance site located at: *https://www.rd.usda.gov/programs-services/services/rural-development-disaster-assistance;*

(ii) The project expenses do not need to be in direct relationship or a result of an eligible Disaster Relief Act 2019 disaster;

(iii) The Major Disaster Declaration must be related to the consequences of Hurricanes Michael and Florence and wildfires occurring in calendar year 2018, tornadoes and floods occurring in calendar year 2019, and other natural disasters; and

(iv) The Federal Emergency Management Agency (FEMA) must have provided a notice declaring the Major Disaster Declaration and assigned a FEMA disaster recovery (DR) number.

IV. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.267. All Applicants can access application materials at *http://www.grants.gov.* In addition to the requirements set forth at 7 CFR 3570.267, all Applicants must provide documentation that the project is located in a disaster area as listed in Section III of this Notice. Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications will be submitted to the State Office in which the applicant is headquartered. Electronic submissions should be submitted at *http://www.grants.gov.* A listing of the Rural Development State Offices may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For applicants whose headquarters are in the District of Columbia, they will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged. An applicant can only submit one application for funding.

Application information for electronic submissions may be found at *http://www.grants.gov.*

Applications will not be accepted via FAX or electronic email.

V. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

VI. Application Processing

Applications will be processed and scored in accordance with this NOFA and 7 CFR 3570.273. Those applications receiving the highest points using the scoring factors found at 7 CFR 3570.273 will be selected for funding. Up to 10% of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. In the case of a tie, the first tie breaker will go to the applicant who scores the highest on matching funds. If two or more applications are still tied after using this tie breaker, the next tie breaker will go to the applicant who scores the highest in the multi-jurisdictional category.

Once the successful applicants are announced, the State Office will be responsible for obligating the grant funds, executing all obligation documents, and the grant agreement, as provided by the agency.

VII. Federal Award Administration Information

1. Federal Award Notice. Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice and the grant regulation 7 CFR 3570, subpart F.

Successful applicants will receive a letter in the mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful and ineligible applicants will receive written notification of their review and appeal rights.

2. Administrative and National Policy Requirements. Grantees will be required to do the following:

(a) Execute a Grant Agreement.

(b) Execute Form RD 1940–1.

(c) Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursement. Provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports as set forth at 7 CFR 3570.276.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing CF TAT grant funds and any matching funds, if

applicable. Receipts for expenditures will be included in this documentation.

(g) Provide audits or financial information as set forth in 7 CFR 3570.277.

(h) Complete Form 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15 and other Agency regulations. It also assures that no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the re-lender receives Federal financial assistance. Finally, it assures that nondiscrimination statements are in the recipient's advertisements and brochures.

(i) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(j) Provide a final performance report as set forth at 7 CFR 3570.276(a)(7).

(k) Identify and report any association or relationship with Rural Development employees.

(l) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

(m) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants'' must be signed by corporate applicants who receive an award under this Notice.

3. Reporting.

Reporting requirements for this grant as set forth at 7 CFR 3570.276.

VIII. Federal Awarding Agency Contact

Contact the Rural Development state office in the state where the applicant's headquarters is located. A list of Rural Development State Offices can be found at: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For Applicants located in Washington, DC, please contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov.*

IX. Nondiscrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–03309 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–20–CF–0003]

Community Facilities Technical Assistance and Training Grant for Fiscal Year 2020

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: This Notice announces that the Rural Housing Service (Agency) is accepting Fiscal Year (FY) 2020 applications for the Community Facilities Technical Assistance and Training (TAT) Grant program. The Agency will publish the amount of funding received in the final appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Awards will be made from available funding on or before September 15, 2020.

DATES: The Agency must receive applications in paper postmarked and mailed, shipped, or sent overnight by 4:00 p.m. local time on May 5, 2020. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on April 30, 2020. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to April 27, 2020. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: Applications will be submitted to the USDA Rural Development State Office in the state where the applicant's headquarters is located. A listing of each State Office can be found at *https://www.rd.usda.gov/files/CF_State_Office_*

Contacts.pdf. If you want to submit an electronic application, follow the instructions for the TAT funding announcement on *http://www.grants.gov.* For those applicants located in the District of Columbia, applications will be submitted to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Electronic applications will be submitted via http://www.*grants.gov.* All applicants can access application materials at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: The Rural Development office in which the applicant is located. A list of the Rural Development State Office contacts can be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* Applicants located in Washington, DC can contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Housing Service, an Agency of the United States Department of Agriculture (USDA) herein referred to as the Agency, published a final rule with comment in the **Federal Register** on January 14, 2016, implementing Section 6006 of the Agriculture Act of 2014 (Pub. L. 113–79) which provides authority to make Community Facilities Technical Assistance and Training (TAT) Grants. The final rule became effective on March 14, 2016, and is found at 7 CFR 3570, subpart F. A correction amendment was published in the **Federal Register** on May 6, 2016. The purpose of this Notice is to solicit applications for the FY 2020 TAT Grant Program.

The Agency encourages applications that will help improve life in rural America. (See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.)* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community, county, state, and/or regional levels. See *https://www.cdc.gov/pwid/vulnerable-counties-data.html.*

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures, such as the strategic placement of overdose reversing devices;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse), such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

State Director and Administrator discretionary points will be awarded to applications that address these Agency Goals.

Paperwork Reduction Act

The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0198.

National Environmental Policy Act

All recipients under this Notice are subject to the requirements of 7 CFR part 1970. However, awards for technical assistance and training under this Notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

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

This Executive Order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@wdc.usda.gov* or (720) 544–2911.

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Community Facilities Technical Assistance and Training Grant.

Announcement Type: Notice of Solicitation of Applications (NOSA).

Catalog of Federal Domestic Assistance Number: 10.766.

Dates: To apply for funds, the Agency must receive mailed-in applications by 4:00 p.m. local time on May 5, 2020. Electronic applications must be submitted via *grants.gov* by Midnight Eastern time on April 30, 2020. The Agency will not consider any application received after this deadline. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to April 27, 2020. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Availability of Notice: This Notice is available through the USDA Rural Development site at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

I. Funding Opportunity Description

A. Purpose

Congress authorized the Community Facilities Technical Assistance and Training Grant program in Title VI, Section 6006 of the Agricultural Act of 2014 (Pub. L. 113–79). Program regulations can be found at 7 CFR part 3570, subpart F, which are incorporated by reference in this Notice. The purpose of this Notice is to seek applications from entities that will provide technical assistance and/or training with respect to essential community facilities programs. It is the intent of this program to assist entities in rural areas in accessing funding under the Rural

Housing Service's Community Facilities Programs in accordance with 7 CFR part 3570, subpart F. Funding priority will be made to private, nonprofit or public organizations that have experience in providing technical assistance and training to rural entities.

II. Award Information

Type of Awards: Grants will be made to eligible entities who will then provide technical assistance and/or training to eligible ultimate recipients.

Fiscal Year Funds: FY 2020 Technical Assistance Training (TAT) Grant funds.

Available Funds: The Agency is publishing the amount of funding received in the appropriations act on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Up to ten percent of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70.

Award Amounts: Grant awards for Technical Assistance Providers assisting Ultimate Recipients within one state may not exceed $150,000. Grant awards made to Ultimate Recipients will not exceed $50,000. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Award Dates: Awards will be made from available funding on or before September 15, 2020.

III. Eligibility Information

Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262. Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264. Restrictions substantially similar to Sections 743, 744, 745, and 746 of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) will apply unless noted on the Rural Development website (*https://www.rd.usda.gov/programs-services/community-facilities-technical-assistance-and-training-grant*). Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. In addition, none of the funds appropriated or otherwise made available by this or any other Act may be available for a contract, grant, or cooperative agreement with an entity that requires employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. Additionally, no funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: ''These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection.''

IV. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.267. All Applicants can access application materials at *http://www.grants.gov.* Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications will be submitted to the State Office in which the applicant is headquartered. Electronic submissions should be submitted at *http://www.grants.gov.* A listing of the Rural Development State Offices may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For applicants whose headquarters are in the District of Columbia, they will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Room 0175–S, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged. An applicant can only submit one application for funding.

Application information for electronic submissions may be found at *http://www.grants.gov.*

Applications will not be accepted via FAX or electronic email.

V. Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Awards Management (SAM)

Grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance to 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid DUNS number in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all

grant applications must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via internet at *http://fedgov.dnb.com/webform.* Additional information concerning this requirement can be obtained on the *Grants.gov* website at *http://www.grants.gov.* Similarly, applicants may register for SAM at *https://www.sam.gov* or by calling 1–866–606–8220.

The applicant must provide documentation that they are registered in SAM and their DUNS number. If the applicant does not provide documentation that they are registered in SAM and their DUNS number, the application will not be considered for funding.

VI. Application Processing

Applications will be processed and scored in accordance with this NOSA and 7 CFR 3570.273. Those applications receiving the highest points using the scoring factors found at 7 CFR 3570.273 will be selected for funding. Up to 10% of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. In the case of a tie, the first tie breaker will go to the applicant who scores the highest on matching funds. If two or more applications are still tied after using this tie breaker, the next tie breaker will go to the applicant who scores the highest in the multi-jurisdictional category.

Once the successful applicants are announced, the State Office will be responsible for obligating the grant funds, executing all obligation documents, and the grant agreement, as provided by the agency.

VII. Federal Award Administration Information

1. Federal Award Notice. Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice and the grant regulation 7 CFR 3570, subpart F.

Successful applicants will receive a letter in the mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful and ineligible applicants will receive written notification of their review and appeal rights.

2. Administrative and National Policy Requirements. Grantees will be required to do the following:

(a) Execute a Grant Agreement.

(b) Execute Form RD 1940–1.

(c) Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursement. Provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports as set forth at 7 CFR 3570.276.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing CF TAT grant funds and any matching funds, if applicable. Receipts for expenditures will be included in this documentation.

(g) Provide audits or financial information as set forth in 7 CFR 3570.277.

(h) Complete Form 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4, Assurance Agreement, which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15 and other Agency regulations. It also assures that no person will be discriminated against based on race, color or national origin, in regard to any program or activity for which the re-lender receives Federal financial assistance. Finally, it assures that nondiscrimination statements are in the recipient's advertisements and brochures.

(i) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(j) Provide a final performance report as set forth at 7 CFR 3570.276(a)(7).

(k) Identify and report any association or relationship with Rural Development employees.

(l) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

(m) Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants'' must be signed by corporate applicants who receive an award under this Notice.

3. Reporting. Reporting requirements for this grant as set forth at 7 CFR 3570.276.

VIII. Federal Awarding Agency Contact

Contact the Rural Development state office in the state where the applicant's headquarters is located. A list of Rural Development State Offices can be found at: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* For Applicants located in Washington DC, please contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@wdc.usda.gov.*

IX. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *By mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–03270 Filed 2–19–20; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: U.S. 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 New Mexico Advisory Committee will be held at 3:00 p.m. Mountain Time on Wednesday, March 11, 2020. The purpose of the meeting is for the Committee to discuss its proposed topic of study on wage issues in New Mexico.

DATES: The meeting will be held on Wednesday, March 11, 2020 at 3:00 p.m. Mountain Time.

Public Call Information: Dial: 800–367–2403. Conference ID: 8044244

FOR FURTHER INFORMATION CONTACT: Brooke Peery at *apeery@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID number: 8044244. Any interested member of the public may call this number and listen to the meeting. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. 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. They may be faxed to the Commission at (213) 894–0508, or emailed Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Officer Appointments
III. Discussion: Project Proposal Process
IV. Public Comment
V. Adjournment

Dated: February 14, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–03339 Filed 2–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–66–2019]

Foreign-Trade Zone (FTZ) 122—Corpus Christi, Texas, Authorization of Production Activity, Cheniere Energy, Inc. (Liquified Natural Gas Processing), Portland, Texas

On October 16, 2019, the Port of Corpus Christi Authority, grantee of FTZ 122, submitted a notification of proposed production activity to the FTZ Board on behalf of Cheniere Energy, Inc., within FTZ 122, in Portland, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 57845, October 29, 2019). On February 13, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 13, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–03381 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–28–2020]

Foreign-Trade Zone 107—Polk County, Iowa, Application for Subzone Expansion, Winnebago Industries, Inc., Forest City and Charles City, Iowa

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Iowa Foreign Trade Zone Corporation, grantee of FTZ 107, requesting an expansion of Subzone 107A on behalf of Winnebago Industries, Inc., in Forest City and Charles City, Iowa. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 11, 2020.

Subzone 107A currently consists of the following sites: Site 1 (237.32 acres) North Plant at Highways 9 and 69, South Plant at 4th Street and Crystal Lake Road, Forest City; Site 2 (21 acres) 1200 Rove Avenue, Charles City; and,

Site 3 (7.49 acres) 808 N Lake St., Lake Mills.

The proposed expanded subzone would include the following additional sites: Site 4 (10.63 acres) 305 Nerem Drive, Forest City; and, Site 5 (11.06 acres) 715 East Corporate Drive, Charles City. No authorization for expanded production activity has been requested at this time. The subzone will be subject to the existing activation limit of FTZ 107.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 31, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 15, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 12, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–03382 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments, In Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to determine that two companies under review had no shipments of subject merchandise during the period of review (POR), September 1, 2017 through August 31, 2018. Additionally, Commerce continues to determine that the remaining companies subject to this review are part of the China-wide entity because they failed to file no shipment statements, separate rate applications, or separate rate certifications.

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 2019, Commerce published the preliminary results of the administrative review of the antidumping duty order on certain magnesia carbon bricks from the People's Republic of China (China) for the period September 1, 2017 through August 31, 2018.[1] We invited parties to comment on the *Preliminary Results.* No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results.*

Scope of the Order

The scope of the *Order* covers certain magnesia carbon bricks.[2] For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Final Determination of No Shipments and Status of the China-Wide Entity

Commerce preliminarily found that: (1) Fedmet Resources Corporation (Fedmet); and (2) Fengchi Imp. and Exp. Co., Ltd., Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi) had no reviewable entries, shipments, or sales of subject merchandise to the United States during the POR. As noted in Preliminary Decision Memorandum, we received no shipment statements from Fedmet and Fengchi, and these statements were consistent with the information we received from U.S. Customs and Border Protection (CBP).[3]

No party commented on our preliminary no-shipment finding with respect to Fedmet and Fengchi, and no party submitted record evidence that calls this finding into question. Therefore, for these final results, we continue to find that Fedmet and Fengchi did not have any reviewable entries, shipments, or sales of subject merchandise to the United States during the POR.

With the exceptions of Fedmet and Fengchi, we find all other companies for which a review was requested to be part of the China-wide entity because they failed to file no-shipment statements, separate rate applications, or separate rate certifications. The following companies, accordingly, are part of the China-wide entity: Liaoning Zhongmei High Temperature Material Co., Ltd., Liaoning Zhongmei Holding Co., Ltd., RHI Refractories Liaoning Co., Ltd., Shenglong Refractories Co., Ltd., Yingkou Heping Samwha Minerals, Co., Ltd., and Yingkou Heping Sanhua Materials Co., Ltd.[4] Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. The rate previously established for the China-wide entity is 236.00 percent and is not subject to change as a result of this review.[5]

Assessment Rates

We have not calculated any assessment rates in this administrative review. Based on record evidence, we have determined that Fedmet and Fengchi had no shipments of subject merchandise and, therefore, pursuant to Commerce's assessment practice, any suspended entries that entered under their case numbers will be liquidated at the China-wide entity rate.[6]

For all remaining companies subject to this review, which are part of the China-wide entity, we will instruct CBP to liquidate their entries at the current rate for the China-wide entity (*i.e.,* 236.00 percent). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the

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[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China; Preliminary Results of the Antidumping Duty Administrative Review; 2017–2018,* 84 FR 55287 (October 16, 2019) (*Preliminary Results*); and Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China; 2017–2018,'' dated October 9, 2019 (Preliminary Decision Memorandum).

[2] *See Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China: Antidumping Duty Orders,* 75 FR 57257 (September 20, 2010) (*Order*).

[3] *See* Preliminary Decision Memorandum at 2.

[4] *See* Memorandum, ''Eighth Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China: Customs Data of U.S. Imports,'' dated July 12, 2019.

[5] *See Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results and Final Partial Rescission of the Antidumping Duty Administrative Review*; 2012–2013, 80 FR 19961, 19962 (April 14, 2015).

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

publication date of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 236.00 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction. These final results are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: February 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–03364 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–992]

Monosodium Glutamate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has completed the administrative review of the antidumping duty order on monosodium glutamate (MSG) from the People's Republic of China (China) covering the period of review (POR) November 1, 2017 through October 31, 2018. We continue to find that none of the exporters of subject merchandise demonstrated eligibility for a separate rate; therefore, each is part of the China-wide entity. We also continue to find that that the use of facts otherwise available is warranted with respect to the China-wide entity.

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Leo Ayala or Kathryn Wallace, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945 or (202) 482–6251, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on August 30, 2019.[1] On September 9, 2019, Commerce amended its initiation to include the China-wide entity.[2] On September 10, 2019, Commerce issued a quantity and value (Q&V) questionnaire to the China-wide entity.[3] The China-wide entity failed to submit a response to Commerce's Q&V questionnaire by the established deadline of September 20, 2019. Accordingly, on January 17, 2020, Commerce issued a Post-Preliminary Decision Memorandum, in which it preliminarily applied facts available with an adverse inference (AFA) to the China-wide entity, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the Act), because the China-wide entity failed to cooperate to the best of its ability by failing to provide necessary information requested by Commerce.[4] On February 3, 2020, the petitioner timely submitted its case brief agreeing with the finding and results of Commerce's Post-Preliminary Decision Memorandum.[5] No other case or rebuttal briefs were submitted in this review.

On December 26, 2019, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the deadline for issuing the final results until February 26, 2020.[6]

Scope of the Order

The scope of the *Order* covers MSG, whether or not blended or in solution with other products.[7] For a complete description of the scope of the *Order, see* the *Preliminary Results.*[8]

Final Results of the Review

Commerce preliminarily determined that none of the 28 companies subject to this review demonstrated eligibility for separate rate status. Thus, they were found to be part of the China-wide entity.[9] After amending the initiation of this review, and as explained in the

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[1] *See Monosodium Glutamate from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2017–2018,* 84 FR 45724 (August 30, 2019) (*Preliminary Results*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019) (citing *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019)).

[3] *See* Commerce's Letter, ''Antidumping Duty Administrative Review on Monosodium Glutamate from the People's Republic of China: Quantity and Value Questionnaire,'' dated September 10, 2019.

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Monosodium Glutamate from the People's Republic of China (China): Post-Preliminary Decision Memorandum Concerning the China-Wide Entity,'' dated January 17, 2020 (Post-Preliminary Decision Memorandum).

[5] The petitioner is Ajinomoto Health & Nutrition North America, Inc. (formerly Ajinomoto North America, Inc.). *See* Petitioner's Letter, ''MSG from China: Petitioner's Case Brief,'' dated February 3, 2020 (citing Post-Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Monosodium Glutamate from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review—2017–2018,'' dated December 26, 2019.

[7] *See Monosodium Glutamate from the People's Republic of China: Second Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order,* 80 FR 487 (January 6, 2015) (*Order*).

[8] *See Preliminary Results.*

[9] *See Preliminary Results;* and Appendix for a list of the 28 companies along with the China-wide entity that are subject to this review.

Post-Preliminary Decision Memorandum, Commerce preliminarily applied AFA to the China-wide entity, pursuant to sections 776(a) and 776(b) of the Act, because the China-wide entity failed to cooperate to the best of its ability by failing to provide necessary information requested by Commerce.[10] In the Post-Preliminary Decision Memorandum, Commerce determined a weighted-average dumping margin for the China-wide entity of 56.54 percent.[11] As noted above, no interested party disputed Commerce's preliminary or post-preliminary findings. As there are no changes from the *Preliminary Results* or Post-Preliminary Decision Memorandum, Commerce finds that there is no reason to modify its analysis for these final results. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues already addressed in this review, *see* the *Preliminary Results* or the Post-Preliminary Decision Memorandum.[12]

In these final results of review, we continued to treat all 28 exporters subject to this review as part of the China-wide entity.[13] The weighted-average dumping margin for the China-wide entity is 56.54 percent.[14]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after the publication date of these final results of review.

For the China-wide entity, as well as the companies identified as part of the China-wide entity, we will instruct CBP to assess antidumping duties at an *ad valorem* rate of 56.54 percent to all unliquidated entries of subject merchandise during the POR which were produced or exported by the China-wide entity, including the companies noted in the Appendix.

Cash Deposit Requirements

For all shipments of subject merchandise from China, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act, the cash deposit rate will be equal to the weighted-average dumping margin for the China-wide entity (*i.e.,* 56.54 percent). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with final results within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce applied total AFA to the China-wide entity in the final results of this administrative review in accordance with section 776 of the Act, and the applied AFA rate is based solely on a rate applied in an earlier segment of this proceeding, there are no calculations to disclose.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 11, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Companies/Entities Covered by This Review

1. China-Wide Entity
2. Anhui Fresh Taste International Trade Co., Ltd.
3. Baoji Fufeng Biotechnologies Co., Ltd.
4. Blu Logistics (China) Co., Ltd.
5. Bonroy Group Limited
6. Forehigh Trade and Industry Co., Ltd.
7. Fujian Province Jianyang Wuyi MSG Co., Ltd.
8. Golden Banyan Foodstuffs Industry Co., Ltd.
9. Henan Lotus Flower Gourmet Powder Co.
10. Hong Kong Sungiven International Food Co., Limited
11. Hulunbeier Northeast Fufeng Biotechnologies Co., Ltd.
12. K&S Industry Limited
13. King Cheong Hong International
14. Langfang Meihua Bio-Technology Co., Ltd.
15. Liangshan Linghua Biotechnology Co., Ltd.
16. Lotus Health Industry Holding Group
17. Meihua Group International Trading (Hong Kong) Limited
18. Meihua Holdings Group Co., Ltd., Bazhou Branch
19. Neimenggu Fufeng Biotechnologies Co., Ltd.
20. Pudong Prime Int'l Logistics, Inc.
21. Qinhuangdao Xingtai Trade Co., Ltd.
22. S.D. Linghua M.S.G. Incorporated Co.
23. Shandong Linghua Monosodium Glutamate Incorporated Company
24. Shandong Qilu Biotechnology Group
25. Shanghai Totole Food Ltd.
26. Shijiazhuang Standard Imp & Exp Co., Ltd.
27. Sunrise (HK) International Enterprise Limited
28. Tongliao Meihua Biological Sci-Tech Co., Ltd.
29. Zhejiang Medicines & Health

[FR Doc. 2020–03368 Filed 2–19–20; 8:45 am]

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[10] *See* Post-Preliminary Decision Memorandum.

[11] *See* Post-Preliminary Decision Memorandum at 7.

[12] *See Preliminary Results; see also* Post-Preliminary Decision Memorandum.

[13] *See Preliminary Results;* Post-Preliminary Decision Memorandum and Appendix. In fact, there are no companies which are currently eligible for a separate rate under this antidumping duty order.

[14] *See* Post-Preliminary Decision Memorandum at 7.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Determination of Anti-Circumvention Inquiry

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Protech Diamond Tools Inc. (Protech) is circumventing the antidumping duty order on diamond sawblades and parts

thereof (diamond sawblades) from the People's Republic of China (China).

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2019, Commerce published the preliminary affirmative determination of circumvention of the antidumping duty order on diamond sawblades from China.[1] We received no case or rebuttal briefs with respect to the *Preliminary Determination.* On November 29, 2019, in response to the *Preliminary Determination,* Protech filed a letter which contained untimely filed new factual information. On December 17, 2019, we rejected Protech's letter in response to the *Preliminary Determination* because it contained untimely filed new factual information, and we provided Protech an opportunity to re-submit its letter with the redaction of untimely filed new factual information.[2] On December 18, 2019, Protech submitted two letters in response to the *Preliminary Determination,* which still contained untimely filed new factual information that we had identified in our earlier December 17, 2019 rejection letter. On December 26, 2019, we rejected Protech's two letters because they contained untimely filed new factual information, and we provided Protech with another opportunity to re-submit its letter in response to the *Preliminary Determination* after the redaction of all untimely filed new factual information.[3] Protech did not re-submit its response to the *Preliminary Determination* by the established deadline.[4] Protech also requested a hearing.[5] Because a hearing is limited to arguments raised in case and rebuttal briefs under 19 CFR 351.310(c) and we do not have case briefs on the record, we did not hold a hearing.[6]

We conducted this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h). The current deadline for the final determination is February 24, 2020.

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, Commerce included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection.[7] Pursuant to requests by U.S. Customs and Border Protection (CBP), Commerce included to the customs case reference file the following HTSUS classification numbers: 8202.39.0040 and 8202.39.0070 on January 22, 2015, and 6804.21.0010 and 6804.21.0080 on January 26, 2015.[8]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Scope of the Anti-Circumvention Inquiry

The products covered by this anti-circumvention inquiry are diamond sawblades produced in Canada by Protech with cores and segments produced in China and subsequently exported from Canada by Protech to the United States.[9]

Final Affirmative Determination

Consistent with the *Preliminary Determination,* we determine, on the basis of facts available with an adverse inference, that diamond sawblades made with Chinese cores and Chinese segments joined in Canada by Protech and then subsequently exported from Canada to the United States are circumventing the antidumping duty order on diamond sawblades from China, pursuant to section 781(b) of the Act. Because, as indicated above, we do

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Circumvention,* 84 FR 58130 (October 30, 2019) (*Preliminary Determination*).

[2] *See* Commerce's Letter, ''Rejection of Response to Preliminary Determination'' dated December 17, 2019, which explains Commerce's reasons for rejecting Protech's letter in response to the *Preliminary Determination.*

[3] *See* Commerce's Letter, ''Rejection of Response to Preliminary Determination'' dated December 26, 2019, which explains Commerce's reasons for rejecting Protech's redacted letters in response to the *Preliminary Determination.*

[4] In response to Protech's letters in response to the *Preliminary Determination* dated December 18, 2019, Diamond Sawblades Manufacturers' Coalition (DSMC), the petitioner in this proceeding, submitted its rebuttal brief on December 23, 2019. On December 26, 2019, we rejected DSMC's rebuttal brief because it contained untimely filed new factual information that we had rejected from Protech's letters in response to the *Preliminary Determination. See* Commerce's Letter, ''Rejection of Rebuttal Brief,'' dated December 26, 2019. In the December 26, 2019 letter, we stated that DSMC was allowed to resubmit its redacted rebuttal brief if Protech resubmitted its redacted response to *Preliminary Determination* in a timely manner. Protech did not resubmit its response to the *Preliminary Determination.*

[5] *See* Protech's Letter, ''Request for Hearing, Pursuant to 19 CFR 351.310(c),'' dated November 29, 2019.

[6] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Hearing Request Declined,'' dated February 3, 2020.

[7] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011).

[8] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331 (December 14, 2018) and accompanying Issues and Decision Memorandum at 3.

[9] *See Preliminary Determination,* 84 FR at 58130.

not have any additional information or comments on the record regarding our *Preliminary Determination,* our final determination remains unchanged from our *Preliminary Determination.* Therefore, we determine that it is appropriate to include this merchandise within the scope of the antidumping duty order and to instruct CBP to continue to suspend any entries of diamond sawblades produced in Canada by Protech with Chinese cores and Chinese segments and then subsequently exported from Canada to the United States.

Continued Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), based on this final determination in this anti-circumvention inquiry, Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of diamond sawblades produced (*i.e.,* assembled or completed) using Chinese cores and Chinese segments by Protech in Canada that were entered, or withdrawn from warehouse, for consumption on or after April 29, 2019, the date of initiation of this anti-circumvention inquiry. The suspension of liquidation instructions will remain in effect until further notice. As we explained in the *Preliminary Determination,*[10] Commerce will instruct CBP to require antidumping duty cash deposits equal to the rate established for the China-wide entity, *i.e.,* 82.05 percent,[11] for entries of such merchandise produced and exported by Protech.

Diamond sawblades assembled or completed in Canada using non-Chinese origin cores and/or non-Chinese origin segments are not subject to this anti-circumvention inquiry. However, because Protech failed to cooperate with Commerce's request for information, Commerce preliminarily found that Protech is not currently able to identify diamond sawblades produced with non-Chinese origin cores and/or non-Chinese origin segments. Therefore, in the *Preliminary Determination,* Commerce decided not to implement a certification process at the preliminary stage and Commerce required cash deposits on all entries of diamond sawblades produced and exported by Protech in Canada.[12] We invited parties to comment on this issue in their case briefs. No interested parties submitted case briefs. Therefore, for the final determination, we continue to determine that we will not implement a certification process for diamond sawblades already suspended, and will require cash deposits on all entries of diamond sawblades produced and exported by Protech in Canada, consistent with the *Preliminary Determination.* However, Protech may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.,* a changed circumstances review or administrative review.[13]

Administrative Protective Order

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: February 12, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–03362 Filed 2–19–20; 8:45 am]

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[10] *Id.,* 84 at 58131.

[11] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 64331, 64332 (December 14, 2018).

[12] *See Preliminary Determination,* 84 FR at 58131.

[13] *See, e.g., Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 84 FR 29164 (June 21, 2019), and accompanying Issues and Decision Memorandum at 22; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry,* 84 FR 33920, 33921 (July 16, 2019); *Preliminary Determination,* 84 FR at 58131.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–114]

Certain Glass Containers From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2019, the Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain glass containers (glass containers) from the People's Republic of China.[1] Currently, the preliminary determination is due no later than March 3, 2020.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request to postpone 25 days or more before the scheduled date of the preliminary determination and must state the reasons for postponement. Commerce will grant the request unless it finds compelling reasons to deny the request.

On February 3, 2020, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[3] The petitioner stated that it requests postponement ''to allow all parties ample time to fully analyze the enormous volume of critical information

[1] *See Certain Glass Containers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 84 FR 56174 (October 21, 2019).

[2] The petitioner is the American Glass Packaging Coalition.

[3] *See* Petitioner's Letter ''Certain Glass Containers from the People's Republic of China: Request to Postpone Preliminary Determination,'' dated February 3, 2020.

relevant prior to the preliminary determination in this case.'' [4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than April 22, 2020. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination in this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 12, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–03363 Filed 2–19–20; 8:45 am]

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[4] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR081]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Notice; issuance of an incidental harassment authorization renewal.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) Renewal to Point Blue Conservation Science (Point Blue) to harass marine mammals incidental to seabird research activities in central California.

DATES: This IHA Renewal is valid from February 14, 2020 through July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401.

Electronic copies of the original application, Renewal request, and supporting documents (including NMFS notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of the takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Since that time, we have made minor changes to the Renewal process, none of which materially affects the scope of a Renewal IHA or the conditions for receiving one. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA Renewal when (1) up to another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the *Dates and Duration* section of the initial IHA. The expiration date of the Renewal IHA cannot extend beyond one year from expiration of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- A request for Renewal is received no later than 60 days prior to the needed Renewal. Previously the request was to be received no later than 60 days prior to expiration of the initial IHA. But where authorization under Renewal IHAs will not extend beyond one year from expiration of the initial IHA regardless of when the renewal application is received and where it is up to the applicant to determine when take coverage is needed, a request can be received later than 60 days prior to expiration of the initial IHA provided NMFS has 60 days to process the renewal;
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial IHA dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

For this Renewal IHA, the request was received later than 60 days prior to expiration of the initial IHA. However, the other qualifications were met and these circumstances initiated the agency's consideration of whether the

original 60-day deadline requirement was necessary and appropriate.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. In this case, the agency inadvertently did not provide direct notice to a commenter when the Renewal was first proposed (84 FR 61892; November 14, 2019). Therefore, NMFS republished a notice of proposed Renewal on December 31, 2019 (84 FR 72301) to allow an additional 15 days of public comment (for a total of 60 days), with direct notice provided to that commenter.

A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Comments that were received on the potential Renewal, along with relevant comments on the initial IHA, were considered in the development of this Renewal IHA, and agency responses to applicable comments have been included in this notice.

History of Request

On June 28, 2018, NMFS issued an IHA to Point Blue to take marine mammals incidental to seabird research activities in central California (83 FR 31372; July 5, 2018), effective from July 7, 2018 through July 6, 2019. On August 20, 2019, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report consisting of the report of actual takes from January 1, 2018 through December 31, 2018 plus an updated report of takes from January 1, 2019 through the expiration of the initial IHA on July 6, 2019, which was provided following publication of the first proposed Renewal notice. Both reports are available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* and confirm that the applicant has implemented the required mitigation and monitoring. The reports also show that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. On November 14, 2019 we published a notice of proposed Renewal IHA (84 FR 61892). A second notice of proposed Renewal IHA was published on December 31, 2019 (84 FR 72301) allowing for an additional 15 days of public comment.

Description of the Specified Activities and Anticipated Impacts

Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station annually in central California. The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. The seabird research and monitoring activities planned by Point Blue are identical to those analyzed in the initial IHA issued by NMFS, described in detail in the notice of Proposed IHA (83 FR 20045; May 7, 2018).

Presence of researchers has the potential to disturb pinnipeds hauled out at SEFI, ANO, and PRNS. As in the initial authorization, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) could result from the specified activity (83 FR 31372; July 5, 2018).

Detailed Description of the Activity

A detailed description of the seabird research and monitoring activities for which take is authorized here may be found in the notices of the Proposed and Final IHAs for the initial authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018). The locations (as described in the *Specific Geographic Region* section of the initial IHA), timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. This Renewal is effective from February 14, 2020 through July 6, 2020.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take has been authorized, including information on abundance, status, distribution, and hearing, may be found in the notice of the Proposed IHA for the initial authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the section *Description of Marine Mammals in the Area of Specified Activities* contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notice of the Proposed IHA for the initial authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments received, and determined that neither these nor any other new information affects our initial analysis of potential impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity is found in the notices of the Proposed and Final IHAs for the initial authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018). Specifically, the expected number of survey days, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of authorized takes, which are indicated below in Table 1. As in the initial IHA, the take estimates are based on historical data from the previous five monitoring reports (2013–2014, 2014–2015, 2015–2016, 2016–2017, and 2017–2018) to generate 95 percent confidence interval maximums (assuming normal distribution) using STATA, a general-purpose statistical computer package. Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point harassment scale (see Table 2).

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN

Species	Stock	Stock abundance	Total proposed Level B take	Percentage of stock or population
California sea lion	U.S	257,606	32,623	12.7
Northern elephant seal	California breeding stock	179,000	239	0.13
Harbor seal	California	30,968	304	0.98
Steller sea lion	Eastern U.S	41,638	43	0.10

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the notice announcing the issuance of the initial IHA (83 FR 31372; July 5, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are included in this Renewal:

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue will implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* site surveys will not be conducted if fur seals are present; if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);

(3) Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);

(4) Cease or delay visits if the number of takes that have been authorized are met, if a species for which takes were not authorized is observed (*e.g.,* northern fur seals (*Callorhinus ursinus*) and Guadalupe fur seals (*Arctocephalus townsendi*)), or if pups are present;

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island; and

(10) Require that beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 2. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 2—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information must be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2019 through December 31, 2019. NMFS requires that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report for the 2019 activities to NMFS Office of Protected Resources by April 1, 2020. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report.

Point Blue must also submit a draft monitoring report covering the period from January 1, 2020 through July 6, 2020. This report will be due by October 4, 2020 (90 days after the expiration of the Renewal IHA). A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The reports must contain the informational elements described above, at minimum.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue will immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Point Blue must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information required in the report on unauthorized take. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities covered by the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue must report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue must provide photographs, video footage, or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Public Comments

A notice of NMFS' proposal to issue a Renewal to Point Blue was published on November 14, 2019 (84 FR 61892). A second notice of proposed IHA Renewal was published on December 31, 2019 (84 FR 72301). These notices either described, or referenced descriptions of, Point Blue's activity, the marine mammal species that may be affected by the activity, the potential effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the public comment periods, NMFS received comment letters from the Marine Mammal Commission (Commission). The comments and our responses are provided below.

Comment 1: In their November 22, 2019 letter, the Commission noted that Point Blue's initial IHA did not include the terms and conditions outlining the possibility of a Renewal and that Point Blue did not request the IHA Renewal at least 60 days prior to the expiration of their initial IHA. The Commission also noted that the monitoring report provided by Point Blue covered the period of January 1, 2018 through December 31, 2018, though the initial authorization was valid from July 7, 2018 through July 6, 2019. The Commission claimed that without monitoring data from January 1 until July 6, 2019, it is unclear whether the number of animals taken were within the authorized limits of the initial IHA. Therefore, the Commission recommended NMFS deny Point Blue's request for an IHA Renewal and republish an abbreviated notice of proposed IHA with a 30-day public comment period.

Response: Though the Commission is correct that the Renewal IHA requirements were unintentionally left out of the final authorization for Point Blue's initial IHA, complete information on the terms and conditions for considering a Renewal were included in the notice of the initial proposed IHA (83 FR 20045; May 7, 2018), which also invited the public to comment on both the initial proposed IHA and the potential for a Renewal. It is this notice that is important to ensure the public has sufficient information to comment on a potential Renewal for the specific activity. The purpose of Renewal process language being included in the issued initial IHA itself is to remind the IHA holder of the possibility of seeking a Renewal, if their activities qualify. But this information was in the notice of the proposed initial IHA and is also easily accessible on NMFS' website, so while the information should have been included in the final initial IHA, its omission did not inhibit the Renewal process.

The Commission is correct that Point Blue did not request a Renewal at least 60 days prior to the expiration of their 2018 IHA, but NMFS has since revised the conditions for a Renewal to state that a request for Renewal must be received no later than 60 days prior to the needed Renewal. The purpose of the 60-day deadline was to ensure that NMFS has sufficient time to process the Renewal request. Where authorization under Renewal IHAs will not extend beyond one year from expiration of the initial IHA regardless of when the renewal application is received and where it is up to the applicant to determine when take coverage is

needed, we realized that a Renewal request can be received later than 60 days prior to expiration of the initial IHA provided NMFS has 60 days to process the renewal. The instructions for applying for a Renewal IHA have been revised accordingly.

The initial IHA required a monitoring report covering the period from January 1, 2018 through December 31, 2018 to be submitted by April 1, 2019. As discussed earlier, Point Blue's annual monitoring report is based on a calendar year regardless of the IHA's initiation or expiration dates to ensure that data from all consecutive months can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue submitted their monitoring report on time and the report indicated no impacts of a scale or nature not previously analyzed or authorized, which is required for consideration of a Renewal IHA. Point Blue subsequently provided an updated report of takes from January 1, 2019 through the expiration of the initial IHA on July 6, 2019. In their January 8, 2020 letter, the Commission noted that the updated report contained only a table of reported takes, and suggested that the updated report was inadequate to support NMFS' requirement that the report shows that no impacts of a scale or nature not previously analyzed or authorized had occurred as a result of the activities conducted. When the updated monitoring report is considered in conjunction with the initial monitoring report provided as required by their 2018 IHA, NMFS has determined that the reporting requirements have been satisfied and the monitoring results indicate no impacts of a scale or nature not previously analyzed and authorized.

Comment 2: In their November 22, 2019 letter, the Commission noted that the description of the Renewals process on NMFS's website indicates that NMFS would directly contact all commenters on the initial authorization by email, phone, or postal service to notify them of the proposed IHA Renewal and provide commenters the opportunity to submit additional comment, but that the Commission had not been directly contacted regarding any proposed IHA Renewals to date.

Response: NMFS published a second notice of the proposed Renewal IHA on December 31, 2019 (84 FR 72301) and ensured that the Commission was directly notified by email. NMFS will ensure that the Commission is contacted along with all other persons who commented on the initial IHA on all future proposed IHA Renewals. We regret the oversight, which occurred because the Commission itself has consistently contacted NMFS regarding both proposed initial IHAs and proposed Renewal IHAs, either upon notice of the proposed IHA being posted online by the Office of the Federal Register for public inspection (which occurs the day prior to formal publication) or on the first day of the formal comment period, without notification of the proposed IHA from NMFS.

Comment 3: The Commission noted that Point Blue has been requesting one-year authorizations to take marine mammals incidental to its activities for numerous years, and their activities are likely to continue into the future. The Commission therefore recommended that NMFS authorize the taking of marine mammals incidental to Point Blue's activities via a rulemaking rather than individual IHAs and Renewals for all future Point Blue activities.

Response: NMFS thanks the Commission for their recommendation. Point Blue has submitted a request for MMPA five-year regulations and Letters of Authorization and NMFS published a Notice of Receipt of Point Blue's request on December 4, 2019 (84 FR 66379).

Comment 4: In their January 8, 2020 letter, the Commission alleged that NMFS revised its Renewal process in response to receiving Point Blue's request for Renewal later than 60 days prior to expiration of their IHA. For this reason, and those summarized in the previous comments, the Commission recommended NMFS deny Point Blue's request to renew its 2018 IHA, and refrain from issuing a new IHA without the standard 30-day public comment opportunity for proposed IHAs.

Response: As discussed earlier, NMFS's consideration of when a Renewal IHA application must be submitted has evolved since the initial notice of proposed IHA, and we have revised our procedure for Renewals accordingly. The updated procedure is provided on NMFS' website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*) and will be included in all future authorizations. Additionally, we note that the total of the two comment periods for the Point Blue proposed Renewal IHA was 30 days, which in combination with the initial 30-day comment period on the potential for a Renewal IHA provided a total of 60 days for public comment.

Determinations

The seabird research and monitoring activities conducted by Point Blue, the method of taking, and the effects of the action are identical to those analyzed in the initial IHA, as is the planned frequency of research site visits within the authorization period. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than 13 percent for all stocks). The numbers of marine mammals authorized to be taken are identical to those authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species and stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical

exclusion. Accordingly, NMFS has determined that the issuance of the IHA Renewal qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a Renewal IHA to Point Blue for the taking of marine mammals incidental to conducting seabird research in central California from the date of issuance (February 14, 2020) through July 6, 2020.

Dated: February 14, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–03399 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; NTIA/FCC Web-Based Frequency Coordination System

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 20, 2020.

ADDRESSES: Direct all written comments to Edward F. Drocella, Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 6725, Washington, DC 20230 (or via the internet at *PRAComments@doc.gov*). All comments submitted in response to this notice are a part of the public record and will be made available to the public, which may include posting them on the *Regulations.gov* website. Comments will generally be posted without change. Please do not include information of a confidential nature, such as sensitive personal information or proprietary information. All Personally Identifiable Information (for example, name and address) voluntarily submitted may be publicly accessible. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that comments that include a message stating the confidentiality of the communication will be treated as public comments and will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Edward F. Drocella, Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 6725, Washington, DC 20230, (202) 482–2608, *edrocella@ntia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) hosts a web-based system that collects specific identification information (*e.g.,* company name, location and projected range of the operation, etc.) from applicants seeking authorization by the Federal Communications Commission (FCC) to operate in radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The web-based system provides a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or the need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The website allows proposed radio site information of a non-federal applicant to be analyzed, and a real-time determination made as to whether there is a potential for interference to, or from, existing Federal government radio operations in the vicinity of the proposed site. This web-based coordination helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The information provided by non-federal applicants will also assure the protection of the applicant's station from radio frequency interference from future government operations.

II. Method of Collection

NTIA collects the data by means of an internet web-based system. The applications on the website provide real-time responses to obtain either: (1) A validation of the coordination of a single frequency, or (2) a notification of the unavailability of a frequency at the one site and that further coordination will be required by the FCC and NTIA.

III. Data

OMB Control No: 0660–0018.

Form No.: N/A.

Type of Review: Regular submission (extension of currently approved information collection).

Affected Public: Applicants seeking to operate in the 71–76 GHz, 81–86 GHz, and 92–95 GHz radio frequency bands.

Estimated Total Number of Respondents: 5,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,375.

Estimated Total Annual Cost to Public: $0.00.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–03355 Filed 2–19–20; 8:45 am]

BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights, Issue 21 (Winter 2020)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory highlights.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its twenty first edition of Supervisory Highlights. In this issue of Supervisory Highlights, we report examination findings in the areas of debt collection, mortgage servicing, payday lending and student loan servicing that were completed between April 2019 and August 2019. The report does not impose any new or different legal requirements, and all violations described in the report are based only on those specific facts and circumstances noted during those examinations.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on February 14, 2020.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

The Bureau of Consumer Financial Protection (Bureau) is committed to a consumer financial marketplace that is free, innovative, competitive, and transparent, where the rights of all parties are protected by the rule of law, and where consumers are free to choose the products and services that best fit their individual needs. To effectively accomplish this, the Bureau remains committed to sharing with the public key findings from its supervisory work to help industry limit risks to consumers and comply with Federal consumer financial law.

The findings included in this report cover examinations in the areas of debt collection, mortgage servicing, payday lending, and student loan servicing that were completed between April 2019 and August 2019.

It is important to keep in mind that institutions are subject only to the requirements of relevant laws and regulations. The information contained in *Supervisory Highlights* is disseminated to help institutions better understand how the Bureau examines institutions for compliance with those requirements. This document does not impose any new or different legal requirements. In addition, the legal violations described in this and previous issues of *Supervisory Highlights* are based on the particular facts and circumstances reviewed by the Bureau as part of its examinations. A conclusion that a legal violation exists on the facts and circumstances described here may not lead to such a finding under different facts and circumstances.

We invite readers with questions or comments about the findings and legal analysis reported in *Supervisory Highlights* to contact us at *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

Recent supervisory observations are reported in the area of debt collection, mortgage servicing, payday lending, and student loan servicing.

2.1 Debt Collection

The Bureau's Supervision program has the authority to examine certain entities that engage in consumer debt collection activities, including nonbanks that are larger participants in the consumer debt collection market. Recent examinations of larger participant debt collectors identified one or more violations of the Fair Debt Collection Practices Act (FDCPA).

2.1.1 Failure To Disclose in Subsequent Communications That Communication is From a Debt Collector

Section 807 of the FDCPA prohibits the use of any false, deceptive, or misleading representation or means in the collection of any debt.[1] Specifically, section 807(11) of the FDCPA prohibits a collector from failing to disclose in communications subsequent to the initial written communication that the communication is from a debt collector.[2] Examiners found that one or more debt collectors failed to disclose in their subsequent communications that those communications were from a debt collector. In response to these findings, the collectors revised their section 807(11) policies and procedures, monitoring and/or audit programs, and training.

2.1.2 Failure To Send Notice of Debt

Section 809(a) of the FDCPA requires that within five days after the initial communication with the consumer in connection with the collection of any debt, a debt collector must send a written validation notice unless the information is contained in the initial communication or the consumer has paid the debt.[3] Examiners found that one or more debt collectors failed to send the prescribed validation notice within five days of the initial communication with the consumer regarding collection of the debt, where required. In response to these findings, the collectors revised their section 807(11) policies and procedures, monitoring and/or audit programs, and training.

2.2 Mortgage Servicing

Bureau examinations continue to focus on the loss mitigation process. Examiners determined that one or more servicers violated Regulation X, by failing to provide certain required loss mitigation notices, providing incomplete notices, or not providing notices within the time required by the regulation.[4] These violations were caused, in part, by servicers' efforts to handle an unexpected surge in applications due to natural disasters and impacted both borrowers in disaster areas and those outside of disaster areas. The Bureau had issued a statement regarding supervisory practices during natural disasters.[5] The statement described flexibility in Regulation X that may make it easier for servicers to assist borrowers affected by natural disasters or emergencies but does not lift any requirements. However, since the violations set forth below occurred during a time period where the servicers were making specific efforts to address borrower needs arising from natural disasters, Supervision did not issue any matters requiring attention setting forth needed corrective actions by servicers. Instead, servicers developed plans to enhance staffing capacity in response to any future disaster-related increases in loss mitigation applications.

[1] 15 U.S.C. 1692(e).

[2] 15 U.S.C. 1692(e)(11).

[3] 15 U.S.C. 1692(g)(a).

[4] 12 CFR 1024.41.

[5] Statement on Supervisory Practices Regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency—September 2018, *available at https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/statement-supervisory-practices-regarding-financial-institutions-and-consumers-affected-major-disaster-or-emergency/.*

2.2.1 Loss Mitigation Notice Violations

Regulation X generally requires servicers to send borrowers a written notice acknowledging receipt of a loss mitigation application and notifying borrowers of the servicers' determination that the loss mitigation application is either complete or incomplete within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving a loss mitigation application. The notice includes a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.[6]

In one or more examinations, examiners found that the servicers violated Regulation X by failing to notify borrowers in writing that an application was either complete or incomplete within 5 days of receiving the application.

Regulation X also generally requires servicers to provide consumers with a written notice stating the servicers' determination of which loss mitigation options, if any, it will offer the consumer within 30 days of receiving the complete loss mitigation application.[7]

In one or more examinations, examiners found that the servicers violated Regulation X because the servicers did not provide a written notice stating the servicers' determination of available loss mitigation options within 30 days of receiving the complete loss mitigation application.

Regulation X requires servicers to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application that servicers receive.[8] In addition, Regulation X generally requires servicers to evaluate the borrower for all loss mitigation options available to the borrower and prohibits servicers from evading those requirements by offering a loss mitigation option based upon evaluation of an incomplete loss mitigation application, unless an exception exists.[9] As an exception to that requirement, Regulation X permits servicers to offer a short-term loss mitigation option (short-term payment forbearance program or short-term repayment plan) to a borrower based upon an evaluation of an incomplete loss mitigation application. Regulation X requires servicers that do so to promptly provide a written notice stating that the offered program or plan is based on an evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all available loss mitigation options regardless of whether the borrower accepts the plan.[10]

In one or more examinations, servicers automatically granted short-term payment forbearances if a borrower in a disaster area experienced home damage or incurred a loss of income from the disaster. Borrowers did not submit any form of written application to receive the forbearance. Rather, borrowers spoke with the servicers over the phone about their financial concerns due to the disaster and received the forbearances based on these conversations. The borrowers' conversations with the servicers constituted loss mitigation applications under Regulation X.[11] Examiners found that the servicers violated Regulation X by not providing a written notice with the required consumer information when it offered borrowers the short-term payment forbearance program based upon evaluation of an incomplete loss mitigation application. This consumer information is an important element of the rule because some borrowers may be experiencing a hardship where a longer-term loss mitigation option is more appropriate.[12]

As noted above, because the violations were caused, in part, by servicers' efforts to handle an unexpected surge in applications due to natural disasters and occurred during a time period where the servicers were making specific efforts to address borrower needs arising from the natural disasters, examiners did not issue any matters requiring attention for these violations. Instead, servicers developed plans to enhance staffing capacity in response to any future disaster-related increases in loss mitigation applications.

2.3 Payday Lending

The Bureau's Supervision program covers entities that offer or provide payday loans. Examinations of these lenders identified violations of Regulation Z, Regulation B, and unfair acts or practices.

2.3.1 Failing To Apply Borrowers' Payments to Their Loans

Under the prohibition against unfair acts or practices in sections 1031 and 1036 of the CFPA,[13] an act or practice is unfair when: (1) It causes or is likely to cause substantial injury to consumers; (2) which is not reasonably avoidable by consumers; and (3) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[14]

One or more lenders engaged in unfair acts or practices in violation of the CFPA when borrowers paid more than they owed because the lenders failed to apply borrower payments to their loans in certain circumstances, lacked systems to detect the unapplied payments, and treated borrowers' accounts as delinquent.

Examiners determined that under certain circumstances, borrowers' payments were being processed by lenders but not applied to the borrowers' loan balances in the lenders' systems. The lenders continued to assess interest as if the consumers had not made a payment and incorrectly treated affected consumers as delinquent. A number of consumers ultimately paid more than they owed. The lenders lacked systems to confirm that borrower payments were applied to their loan balances. Consumers who viewed their accounts online were given incorrect information that did not account for the unapplied payment.

The borrowers' overpayments constituted substantial injury. The injury was not reasonably avoidable by the borrowers because the lenders conveyed incorrect information to them about their accounts and failed to timely follow up on borrowers' complaints. The injury was not outweighed by countervailing benefits to consumers or competition because the cost to lenders to implement appropriate accounting controls to reconcile payments against borrowers' loans would have been reasonable; because any cost-savings associated with not investing in such controls placed the lenders' competitors at a competitive disadvantage; and because the lenders' practices conferred no benefits to consumers. The Bureau is

[6] 12 CFR 1024.41(b)(2)(i)(B). This notice is only required if the servicer receives a loss mitigation application 45 days or more before a foreclosure sale.

[7] 12 CFR 1024.41(c)(1). This notice is only required if the servicer receives a loss mitigation application more than 37 days before a foreclosure sale.

[8] 12 CFR 1024.41(b)(1).

[9] 12 CFR 1024.41(c).

[10] 12 CFR 1024.41(c)(2)(iii).

[11] Under Regulation X, a loss mitigation application ''means an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.'' 12 CFR 1024.31.

[12] Amendments to the 2013 Mortgage Rules Under the RESPA (Regulation X) and the TILA (Regulation Z), 81 FR 72247 (October 19, 2016).

[13] 12 U.S.C. 5531, 5536.

[14] 12 U.S.C. 5531(c)(1).

reviewing the lenders' remedial and corrective actions.

2.3.2 Inaccurate Disclosure of Annual Percentage Rate

Regulation Z requires a creditor to disclose the annual percentage rate (APR) for certain transactions.[15] The APR disclosed to a consumer will generally be considered accurate if it is not more than ⅛ of 1 percentage point above or below the APR calculated as Regulation Z requires.[16]

Examiners found that one or more lenders relied on employees to calculate APRs when their loan origination systems were unavailable. Because of errors in calculating the term of the loan, the APRs were sometimes misstated to consumers, thereby violating Regulation Z. Examiners found that the errors resulted from weaknesses in employee training by the lenders. In response to these findings, such training will be improved.

2.3.3 Failure To Include a Fee in Calculation of Finance Charge and Annual Percentage Rate

In addition to requiring disclosure of the APR,[17] Regulation Z requires a creditor to disclose the finance charge associated with certain transactions.[18] A finance charge is ''the cost of consumer credit as a dollar amount'' and includes any charge imposed ''as an incident to or condition of the extension of credit.'' [19]

Examiners found that one or more lenders charged a loan renewal fee to consumers who were refinancing delinquent loans. The fee was not stated in the outstanding loan agreement, and therefore constituted a change in terms. Because the lenders conditioned the new loans on payment of the fee, the fee was a finance charge associated with the new loan that required new transaction disclosures under Regulation Z. However, the lenders did not include the renewal fee in their calculation of the finance charge or APR. Because the fee was omitted from the calculations, the finance charge and APR that the lenders disclosed to consumers violated Regulation Z. Examiners found that a lack of detailed policies and procedures for loan origination and a lack of training on the requirements of Federal consumer financial laws contributed to the violations of Regulation Z. As a result of these findings, the lenders strengthened their policies and procedures and training program. Additionally, the lenders refunded the fee to consumers and explained the reason for the refund.

2.3.4 Failure To Retain Evidence of Compliance With Regulation Z

With certain exceptions, a creditor is generally required to retain evidence of compliance with the requirements of Regulation Z for two years.[20] One or more lenders were unable to provide examiners with evidence of compliance with Regulation Z. While payment histories and loan data were maintained in the systems of record, other loan origination documentation was not consistently maintained, and evidence of compliance with Truth-in-Lending disclosure requirements could not be provided. Examiners found that this violated the record-retention requirements of Regulation Z. The violation resulted in part from a lack of training and of detailed policies and procedures related to record retention. In response to these findings, the lenders developed and implemented a record-retention program to support compliance with the requirements of Regulation Z.

2.3.5 Adverse Action Notices That Failed To Disclose the Principal Reason(s) for the Adverse Action

Regulation B requires a creditor to provide a consumer a notice after taking certain adverse actions.[21] Among the required content of the notice is a statement of the specific reason or reasons for the action taken,[22] which ''must be specific and indicate the principal reason(s) for the adverse action.'' [23] Examiners found that one or more lenders provided consumers with adverse action notices that stated one or more incorrect principal reasons for taking an adverse action. For example, lenders sent numerous incorrect notices due to a coding system error. Examiners found that the relevant adverse action notices violated Regulation B. As a result of this finding, the lenders sent corrected adverse action notices to consumers and made changes to the systems used to generate the notices.

2.3.6 Unfair Imposition of Unauthorized and Undisclosed Fee

Under the prohibition against unfair acts or practices in sections 1031 and 1036 of the CFPA,[24] an act or practice is unfair when: (1) It causes or is likely to cause substantial injury to consumers; (2) which is not reasonably avoidable by consumers; and (3) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[25]

Examiners found that one or more lenders assessed consumers a particular fee as a condition of paying or settling a delinquent loan. The fee was not authorized by the lenders' loan contract, which stated that the expense at issue would be paid by the lender. During the payment or settlement process, the fee was either incorrectly described as a court cost (which the contract would have required the consumer to pay) or not disclosed at all.

Examiners found that imposition of the fee was an unfair act or practice. The fee caused or was likely to cause substantial injury to consumers who were required to pay extra in order to pay or settle their debts. The consumers could not reasonably avoid the fee. Often, consumers were not provided with an itemization of the amount due while paying or settling their debts. If they were provided with an itemization, the fee was inaccurately described as a court cost. The substantial injury was not outweighed by countervailing benefits because there were no benefits to consumers or to competition. Examiners found that the practice resulted in part from a lack of monitoring and/or auditing of the lenders' collection practices.

As a result of this finding, the lenders made changes to their compliance management system and refunded the fee to affected consumers.

2.4 Student Loan Servicing

The Bureau continues to examine student loan servicing activities, primarily to assess whether entities have engaged in any unfair, deceptive or abusive acts or practices prohibited by the CFPA. Examiners found one or more student loan servicers engaged in an unfair practice related to monthly payment calculations.

2.4.1 Inaccurate Monthly Payment Amounts After Servicing Transfer

Under the prohibition against unfair acts or practices in sections 1031 and 1036 of the CFPA,[26] an act or practice is unfair when: (1) It causes or is likely to cause substantial injury to consumers; (2) which is not reasonably avoidable by consumers; and (3) the substantial injury is not outweighed by

[15] 12 CFR 1026.18(e).
[16] 12 CFR 1026.22(a)(2).
[17] 12 CFR 1026.18(e).
[18] 12 CFR 1026.18(d).
[19] 12 CFR 1026.4(a).
[20] 12 CFR 1026.25(a).
[21] 12 CFR 1002.9(a).
[22] 12 CFR 1002.9(a)(2)(i).
[23] 12 CFR 1002.9(b)(2).
[24] 12 U.S.C. 5531, 5536.
[25] 12 U.S.C. 5531(c)(1).
[26] 12 U.S.C. 5531, 5536.

countervailing benefits to consumers or to competition.[27]

In one or more examinations, examiners found that servicers engaged in an unfair act or practice by stating monthly amounts due in periodic statements that exceeded those authorized by consumers' loan notes, where either the servicers automatically debited incorrect amounts or, for borrowers not enrolled in auto debit, the borrowers submitted an inflated payment or were assessed a late fee for failing to submit the inflated payment by the due date. More specifically, during the transfer of private loans between servicing systems, data mapping errors led to inaccurate calculations of monthly payment amounts. The servicers sent periodic statements with the inaccurate monthly payment amounts to consumers, and, for some consumers enrolled in automatic debit, debited the inaccurate amounts from their accounts. Consumers not enrolled in auto debit may have submitted an inflated payment or were assessed late fees for failing to do so by the due date.

The conduct caused or was likely to cause substantial injury to consumers for one of three reasons: (1) Because incorrect amounts were automatically debited from their accounts, (2) because they made payments based on the incorrect periodic statement amounts, or (3) because they incurred late fees when they did not pay the incorrect amounts. Consumers could not reasonably have avoided the injury because they reasonably relied on the servicers' calculations and representations in the periodic statements. The injury from this activity is not outweighed by the countervailing benefits to consumers or competition. For example, the benefits to consumers or competition from avoiding the cost of better monitoring of servicing transfers between entities would not outweigh the substantial injury to consumers. In response to the examination findings, the servicers have conducted reviews to identify and remediate affected consumers. Servicers also implemented new processes to mitigate data mapping errors.

3. Supervision Program Developments

3.1 Recent Bureau Rules and Guidance

3.1.1 Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting

On December 3, 2019, five Federal financial regulatory agencies issued a joint statement on the use of alternative data in underwriting by banks, credit unions, and non-bank financial firms.

The statement from the Bureau, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration notes the benefits that using alternative data may provide to consumers, such as expanding access to credit and enabling consumers to obtain additional products and more favorable pricing and terms. The statement explains that a well-designed compliance management program provides for a thorough analysis of relevant consumer protection laws and regulations to ensure firms understand the opportunities, risks, and compliance requirements before using alternative data.

Alternative data includes information not typically found in consumers' credit reports or customarily provided by consumers when applying for credit. Alternative data include cash flow data derived from consumers' bank account records. The agencies recognize that use of alternative data in a manner consistent with applicable consumer protection laws may improve the speed and accuracy of credit decisions and may help firms evaluate the creditworthiness of consumers who currently may not obtain credit in the mainstream credit system.

3.1.2 CFPB Issues Interpretive Rule on Screening and Training Requirements for Mortgage Loan Originators

On November 15, 2019, the Bureau issued an interpretive rule clarifying screening and training requirements for financial institutions that employ loan originators with temporary authority. The rule went into effect on November 24, 2019.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) established a national system for licensing and registration of loan originators. It contemplates two categories of loan originators, those working for state-licensed mortgage companies and those working for Federally-regulated financial institutions. Section 106 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) establishes a third category, loan originators with temporary authority to originate loans. Loan originators with temporary authority are loan originators who were previously registered or licensed, are employed by a state-licensed mortgage company, are applying for a new state loan originator license, and meet other criteria specified in the statute. Loan originators with temporary authority may act as a loan originator for a temporary period of time, as specified in the statute, in a state while that state considers their application for a loan originator license.

All loan originators must satisfy certain criminal history screening and training requirements. Under the SAFE Act, before issuing a state loan originator license, states must ensure that the individual never has had a loan originator license revoked; has not been convicted of enumerated felonies within specified timeframes; demonstrated financial responsibility, character, and fitness; completed 20 hours of pre-licensing education; and passed state specific testing requirements. Under Regulation Z, which implements the Truth in Lending Act, employers must perform substantially the same screening of certain loan originators before permitting them to originate loans. Employers must also ensure certain training for those loan originators. The interpretive rule clarifies that the employer is not required to conduct the screening and ensure the training of loan originators with temporary authority. The state will perform the screening and training as part of its review of the individual's application for a state loan originator license.

3.1.3 Agencies Announce Dollar Thresholds in Regulation Z and M for Exempt Consumer Credit and Leasing Transactions

On October 31, 2019, the Bureau and Federal Reserve Board announced the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) that will apply for determining exempt consumer credit and lease transactions in 2020. These thresholds are set pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amendments to the Truth in Lending Act and the Consumer Leasing Act that require adjusting these thresholds annually based on the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the Federal Reserve Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Transactions at or below the thresholds

[27] 12 U.S.C. 5531(c)(1).

are subject to the protections of the regulations.

Based on the annual percentage increase in the CPI–W as of June 1, 2019, the protections of the Truth in Lending Act and the Consumer Leasing Act generally will apply to consumer credit transactions and consumer leases of $58,300 or less in 2020. However, private education loan and loans secured by real property (such as mortgages) are subject to the Truth in Lending Act regardless of the amount of the loan.

Although the Dodd-Frank Act generally transferred rulemaking authority under the Truth in Lending Act and the Consumer Leasing Act to the Bureau, the Federal Reserve Board retains authority to issue rules for certain motor vehicle dealers. Therefore, the agencies issued the notice jointly.

3.1.4 Agencies Announce Threshold for Smaller Loan Exemption From Appraisal Requirements for Higher-Priced Mortgage Loans

On October 31, 2019, the Bureau, the Federal Reserve Board, and the Office of the Comptroller of the Currency announced that the threshold for exempting loans from special appraisal requirements for higher-priced mortgage loans during 2020 will increase from $26,700 to $27,200.

The threshold amount went into effect on January 1, 2020, and is based on the annual percentage increase in the CPI–W as of June 1, 2019.

The Dodd-Frank Act amended the Truth in Lending Act to add special appraisal requirements for higher-priced mortgage loans, including a requirement that creditors obtain a written appraisal based on a physical visit to the home's interior before making a higher-priced mortgage loan. The rules implementing these requirements contain an exemption for loans of $25,000 or less and also provide that the exemption threshold will be adjusted annually to reflect increases in the CPI–W. If there is no annual percentage increase in the CPI–W, the agencies will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account.

3.1.5 CFPB Issues Final HMDA Rule To Provide Relief to Smaller Institutions

On October 10, 2019, the Bureau issued a rule which finalizes certain aspects of its May 2019 Notice of Proposed Rulemaking under the Home Mortgage Disclosure Act (HMDA). It extends for two years the current temporary threshold for collecting and reporting data about open-end lines of credit under HMDA. The rule also clarifies partial exemptions from certain HMDA requirements which Congress added in EGRRCPA.

For open-end lines of credit, the rule extends for another two years, until January 1, 2022, the current temporary coverage threshold of 500 open-end lines of credit. For data collection years 2020 and 2021, financial institutions that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years will not need to collect and report data with respect to open-end lines of credit.

For the partial exemptions under the EGRRCPA, the rule incorporates into Regulation C the clarifications from the Bureau's August 2018 interpretive and procedural rule. This final rule further effectuates the burden relief for smaller lenders provided by the EGRRCPA by addressing certain issues relating to the partial exemptions that the August 2018 rule did not address.

This rule finalizes the above aspects of the May 2019 Notice of Proposed Rulemaking, which also proposed raising the permanent coverage thresholds for closed-end mortgage loans and open-end lines of credit. On July 31, 2019, the Bureau reopened the comment period until October 15, 2019 for aspects of the May 2019 Notice of Proposed Rulemaking related to raising the permanent coverage thresholds. The Bureau intends to issue a separate final rule in 2020 addressing these thresholds.

4. Remedial Actions

4.1 Public Enforcement Actions

Maxitransfers Corporation

On August 27, 2019, the Bureau announced a settlement with Maxitransfers Corporation (Maxi), which provides remittance transfer services that allow consumers to send money overseas electronically. This was the Bureau's first action alleging violations of the ''Remittance Transfer Rule'' of the Electronic Fund Transfer Act (EFTA). From October 2013 until May 2017, Maxi sent approximately 14.5 million remittance transfers for U.S. consumers. The Bureau found that Maxi failed to provide certain consumer protection disclosures and did not maintain all of the policies and procedures required under the Remittance Transfer Rule. Maxi also violated the CFPA by stating to consumers that it was not responsible for errors made by its third-party payment agents when in fact under the Remittance Transfer Rule, a provider is liable for any violation by an agent when such agent acts for the provider. The consent order required Maxi to pay a civil money penalty of $500,000 and prohibited Maxi from stating that it is not responsible for the acts of its agents. The consent order also required Maxi to take steps to improve its compliance management to prevent future violations of the CFPA, EFTA, and the Remittance Transfer Rule.

5. Conclusion

The Bureau will continue to publish Supervisory Highlights to aid Bureau-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily accessible resource for information on the Bureau's guidance documents.

Dated: February 10, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2020–03301 Filed 2–19–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Guidance Document Website

AGENCY: Office of the Chief Management Officer, Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: DoD is announcing the availability of a guidance document website. Active guidance documents currently in effect are accessible through the site.

DATES: The site will be publicly available no later than February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Patricia L. Toppings, Chief, Regulatory and Advisory Committee Division, (571) 372–0485.

SUPPLEMENTARY INFORMATION: On October 10, 2019, the President signed Executive Order (E.O.) 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' to support the principles that the American public should only be

subject to binding rules and regulations that are lawfully promulgated and that there must be fair notice of any such obligations. As part of increasing transparency, section 3 of the E.O. requires agencies to publish their guidance documents, and certain information about them, on a single agency website. Accordingly, DoD has established the required guidance website at: *https://open.defense.gov/Regulatory-Program/Guidance-Documents/*. Existing guidance documents currently in effect are accessible through the site.

Dated: February 14, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–03359 Filed 2–19–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place.

DATES: Day 1—Open to the public Tuesday, March 24, 2020 from 9 a.m. to 5 p.m. Day 2—Open to the public Wednesday, March 25, 2020 from 9 a.m. to 1:30 p.m.

ADDRESSES: Meeting address is: Hotel Pacific, 300 Pacific St., Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Sofiya Velgach, (703) 697–9271 (Voice), 703 614–9272 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacmpt@mail.mil* (Email). Mailing address is Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing selection and classification tests for military accession screening.

Agenda

Day 1, Tuesday, March 24, 2020

9 a.m.–9:15 a.m. Welcome and Opening Remarks, Dr. Sofiya Velgach, OASD(M&RA)/AP*
9:15 a.m.–9:45 a.m. Accession Policy Update, Ms. Stephanie Miller, OASD(M&RA)/Director, AP*
9:45 a.m.–10:15 a.m. Milestones and Project Schedules, Dr. Mary Pommerich, OPA/DPAC*
10:15 a.m.–10:30 a.m. Break
10:30 a.m.–11:30 a.m. Device Evaluation Update and Future Use, Dr. Tia Fechter/Dr. Dan Segall, OPA/DPAC*
11:30 a.m.–12 p.m. ASVAB CEP* Update, Dr. Shannon Salyer, OPA/DPAC*
12:00 p.m.–1 p.m. Lunch
1:00 p.m.–1:45 p.m. CAT–ASVAB New Forms Update, Dr. Matt Trippe, HumRRO*
1:45 p.m.–2:15 p.m. TAPAS* Evaluation Project Overview, Dr. Tim McGonigle, HumRRO*
2:15 p.m.–2:45 p.m. Army Way Ahead, Dr. Len White, ARI*
2:45 p.m.–3:15 p.m. Air Force Way Ahead, Dr. Bobbie Dirr, Air Force Personnel Center
3:15 p.m.–3:30 p.m. Break
3:30 p.m.–4 p.m. Marine Corp Way Ahead, Maj Rachel Gonzales, Headquarters Marine Corps
4 p.m.–4:30 p.m. Navy Way Ahead, Dr. Stephen E. Watson, NETC*
4:30 p.m.–4:45 p.m. Public Comments

Day 2, Wednesday, March 25, 2020

9 a.m.–9:30 a.m. Next Generation ASVAB* Overview, Dr. Mary Pommerich, OPA/DPAC*
9:30 a.m.–11 a.m. Status Report on ASVAB* Evaluations, Dr. Mary Pommerich, OPA/DPAC*
11:00 a.m.–11:15 a.m. Break
11:15 a.m.–11:45 a.m. Consolidating Evaluation Findings, Dr. Tia Fechter, OPA/DPAC*
11:45 a.m.–12:45 p.m. Next Generation ASVAB* Shared Vision Dr. Scott Oppler, HumRRO*
12:45 p.m.–1 p.m. Future Topics, Dr. Dan Segall, OPA/Director, DPAC*
1 p.m.–1:15 p.m. Public Comments
1:15 p.m.–1:30 p.m. Closing Comments, Dr. Michael Rodriguez, Chair

Abbreviations key:

ARI = Army Research Institute
ASVAB = Armed Services Vocational Aptitude Battery
ASVAB CEP = ASVAB Career Exploration Program, provided free to high schools nation-wide to help students develop career exploration skills and used by recruiters to identify potential applicants for enlistment
HumRRO = Human Resources Research Organization
NETC = Naval Education Training Command
OASD(M&RA)/AP = Office of the Assistant Secretary of Defense (Manpower & Reserve Affairs)/Accession Policy
OPA/DPAC = Office of People Analytics/Defense Personnel Assessment Center
TAPAS = Tailored Adaptive Personality Assessment System

Meeting Accessibility: Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is based on first-come, first-served basis. All members of the public who wish to attend the public meeting must contact the Designated Federal Officer, not later than 12:00 p.m. on Monday, March 16, 2020, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the Committee at any time about its approved agenda or at any time on the Committee's mission. Written statements should be submitted to the Committee's Designated Federal Officer at the address or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the Committee until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice. Please note that since the Committee operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection. Opportunity for public comments will be provided at the end of the meeting. Public comments will be limited to 5 minutes per person, as time allows.

Dated: February 14, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–03361 Filed 2–19–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders To Improve Systems Serving Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

SUMMARY: On February 13, 2020, we published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2020 for Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders to Improve Systems Serving Children with Disabilities, Catalog of Federal Domestic Assistance (CFDA) number 84.325L. The NIA published with the incorrect estimated available funds, which should be $3,000,000 instead of $1,600,000. We are also correcting the estimated number of awards, which will update the estimated number of awards from 8 to 15.

DATES: This correction is applicable February 20, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Allen, U.S. Department of Education, 400 Maryland Avenue SW, Room 5160, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7875. Email: *Sarah.Allen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 13, 2020, we published in the **Federal Register** an NIA for new awards for FY 2020 for Personnel Development to Improve Services and Results for Children with Disabilities—Leadership Development Programs: Increasing the Capacity of Leaders to Improve Systems Serving Children with Disabilities (85 FR 8255). In the NIA, an error was made regarding the estimated available funds, which should be $3,000,000 instead of $1,600,000. In addition, we are correcting the estimated number of awards from 8 to 15.

Corrections

In FR Doc. 2020–02857 appearing on page 8260 in the **Federal Register** on February 13, 2020, the following corrections are made:

1. On page 8260, in section II. Award Information, in the left column, we are revising the dollar amount following the heading ''Estimated Available Funds'' to read as follows: $3,000,000.

2. On page 8260, in section II. Award Information, in the left column, we are revising the amount following the heading ''Estimated Number of Awards'' to read as follows: 15.

Program Authority: 20 U.S.C. 1463 and 1481.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–03450 Filed 2–18–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advancing the Bioeconomy Workshop

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

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE) is announcing a public workshop entitled, ''Advancing the Bioeconomy: From Waste to Conversion-Ready Feedstocks.'' The Bioenergy Technologies Office (BETO) seeks to gather input from experts on the present state and future potential of using waste streams, particularly municipal solid waste, as a feedstock for producing fuels, products, and power.

DATES: The workshop will be held on February 19, 2020, 8:00 a.m.–5:00 p.m., and February 20, 2020, 8:00 a.m.–12:30 p.m. To attend the workshop, you must contact Dr. Brianna Farber at (202) 586–5188 or Email: *eere_biomass@ee.doe.gov* by February 18, 2020. This event is open to the public but seating is limited. For those who are unable to attend the workshop but wish to submit comments, comments must be submitted on or before February 18th, 2020.

ADDRESSES: The workshop will be held at the DoubleTree by Hilton Washington DC-Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

Comments may be submitted by the following methods:

Email: eere_biomass@ee.doe.gov. Include ''MSW workshop—public'' in the subject line of the message.

Postal Mail: Brianna Farber, Forrestal South 5H, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Due to the potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Dr. Brianna Farber, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; at (202) 586–5188; Email: *eere_biomass@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

BETO seeks to gather input from experts on the present state and future potential of using waste streams as a feedstock for producing fuels, products, and power. BETO intends to cover the following topics at the workshop:

- Presentations on Municipal Solid Waste (MSW) characterization and quality parameters; logistics and preprocessing; and valorization and sustainability
- Discussion sessions on the presentation topics, specifically state of the art/technology, challenges for feedstock production, and R&D prioritization.

Public Participation

Members of the public are welcome to register and attend the workshop. To attend the workshop, you must contact Dr. Brianna Farber at (202) 586–5188 or Email: *eere_biomass@ee.doe.gov* by February 10, 2020. DOE will also accept public comments as described in **ADDRESSES** for purposes of developing the Bioenergy Technologies Office portfolio, but will not respond individually to comments received.

Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus from the meeting participants. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences.

Information on Services for Individuals With Disabilities

Individuals requiring special accommodations at the meeting, please contact Brianna Farber no later than the close of business on February 18, 2020.

Confidential Business Information

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signed in Washington, DC, on February 10, 2020.

Jonathan Male,

Director, Bioenergy Technologies Office.

[FR Doc. 2020–03367 Filed 2–19–20; 8:45 am]

BILLING CODE 6450–01–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 Numbers: RP20–512–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: § 4(d) Rate Filing: Negotiated Rates Filing on 2–11–20 to be effective 3/1/2020.

Filed Date: 2/11/20.

Accession Number: 20200211–5010.

Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: RP20–513–000.

Applicants: Saavi Energy Solutions, LLC, Sempra Gas & Power Marketing, LLC.

Description: Joint Petition For Limited Waiver, et al. of Saavi Energy Solutions, LLC, et al. under RP20–513.

Filed Date: 2/10/20.

Accession Number: 20200210–5199.

Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: RP20–514–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2020–02–11 Non-Conforming Negotiated Rate Amendment to be effective 2/12/2020.

Filed Date: 2/11/20.

Accession Number: 20200211–5154.

Comments Due: 5 p.m. ET 2/24/20.

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: February 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03384 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP19–509–000; CP19–509–001]

Texas Eastern Transmission, LP; Notice of Schedule for Environmental Review of the Marshall County Mine Panels 19e and 20e Project

On September 4, 2019, Texas Eastern Transmission, LP (Texas Eastern) filed an application in Docket No. CP19–509–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Marshal County, West Virginia. On December 19, 2019, Texas Eastern amended its application in Docket No. CP19–509–001. The proposed project, known as the Marshal County Mine Panels 19E and 20E Project (Project), would ensure safe and efficient operation of existing Texas Eastern pipeline facilities for the duration of planned longwall mining activities.

On September 17, 2019 and January 6, 2020, the Federal Energy Regulatory Commission (Commission or FERC) issued two separate Notice of Applications for the Project as amended. Among other things, the notices 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.

Schedule for Environmental Review

Issuance of EA—March 27, 2020
90-day Federal Authorization Decision Deadline—June 25, 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

Texas Eastern proposes to excavate, elevate, and replace certain sections of four natural gas transmission pipelines due to longwall mining activities in Marshall County, West Virginia. The Project would allow for safe and efficient operation of Texas Eastern's existing pipeline facilities for the duration of the longwall mining activities planned by Marshall County Coal Company in the area beneath Texas

Eastern's pipelines. The four mainline segments will remain in-service and be elevated using sandbags and skids for about two years until the longwall mining activities have completed and any potential ground subsidence has settled.

Background

On October 1, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Marshall County Mine Panel 19E Project and Request for Comments on Environmental Issues* (NOI). The Commission issued an additional NOI on January 13, 2020, following the Texas Eastern's Marshal County Mine Panel 20E amendment application. The NOIs were sent to affected landowners; owners of minerals rights; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. Comment letters were received from the Osage Nation Historic Preservation Office and the U.S. Army Corps of Engineers in response to the NOIs. The primary issues raised in the comments are impacts on streams and wetlands and permitting requirements. All substantive comments will be addressed in the EA.

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.,* CP19–501), 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: February 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03388 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2587–065]

Northern States Power Company-Wisconsin; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2587–065.

c. *Date Filed:* December 30, 2019.

d. *Submitted By:* Northern States Power Company—Wisconsin (Northern States Power).

e. *Name of Project:* Superior Falls Hydroelectric Project.

f. *Location:* On the Montreal River, in Iron County, Wisconsin and Gogebic County, Michigan. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* James Zyduck, Northern States Power Company, 1414 West Hamilton Avenue, Post Office Box 8, Eau Claire, WI 54702–0008; (715) 737–1136; email at *James.Zyduck@XcelEnergy.com.*

i. Lee Emery at (202) 502–8379; or email at *lee.emery@ferc.gov.*

j. Northern States Power filed its request to use the Traditional Licensing Process on December 30, 2019 and provided public notice of the request on December 26, 2019. In a letter dated February 13, 2020, the Director of the Division of Hydropower Licensing approved Northern States Power's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration (NOAA) Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Michigan and Wisconsin State Historic Preservation Officers as required by section 106 of the National Historic Preservation Act and implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Northern States Power as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On December 30, 2019, Northern States Power filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2587. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03390 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2765–005.
Applicants: Elk Wind Energy LLC.
Description: Compliance filing: Elk Wind Energy MBR Tariff Update to be effective 2/12/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5059.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER11–2765–006; ER12–1739–006.
Applicants: Elk Wind Energy LLC, Bethel Wind Energy LLC.
Description: Notice of Non-Material Change in Status of Elk Wind Energy LLC, et al.
Filed Date: 2/12/20.
Accession Number: 20200212–5094.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER12–1739–005.
Applicants: Bethel Wind Energy LLC.
Description: Compliance filing: Bethel Wind Energy Market-Based Rate Tariff Update to be effective 2/12/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5056.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–680–001.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: SA682 AEPTX-Taylor EC-Golden Spread EC Interconnection Agr 4th A&R-Amend Pending to be effective 12/4/2019.
Filed Date: 2/11/20.
Accession Number: 20200211–5159.
Comments Due: 5 p.m. ET 3/3/20.

Docket Numbers: ER20–975–000.
Applicants: Crowned Ridge Wind II, LLC.
Description: Baseline eTariff Filing: Crowned Ridge Wind II, LLC Application for MBR Authority to be effective 4/12/2020.
Filed Date: 2/11/20.
Accession Number: 20200211–5153.
Comments Due: 5 p.m. ET 3/3/20.

Docket Numbers: ER20–976–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA, Service Agreement No. 4280, Non-Queue #NQ133 to be effective 4/22/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5010.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–977–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5586; Queue No. AE1–175 to be effective 1/15/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5026.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–978–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Cancellation of Service Agreement No. 370 to be effective 4/13/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5030.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–979–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Cancellation of Rate Schedule Nos. 281 and 263 to be effective 4/13/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5033.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–980–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Blackwater Solar LGIA Filing to be effective 1/30/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5081.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–981–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Sonny Solar LGIA Filing to be effective 1/30/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5082.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–982–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Bird Dog Solar LGIA Filing to be effective 1/30/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5083.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–983–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Wolfskin Solar LGIA Filing to be effective 1/30/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5085.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–984–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Cancel WMPAs SA#5128, 5260, 5374, 5375; Queue#AD1–156, AD1–160, AE1–027, AE1–028 to be effective 3/15/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5086.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–985–000.
Applicants: Arizona Public Service Company.
Description: Notice of Cancellation of Rate Schedule Nos. 200 and 216 of Arizona Public Service Company.
Filed Date: 2/12/20.
Accession Number: 20200212–5097.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–986–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 328, Assignment of LGIA from EDF to TEP to be effective 1/9/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5126.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–987–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 329, Assignment of LT Firm PTP TSA from EDF to TEP to be effective 1/9/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5130.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–988–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 330, Assignment of ST Firm PTP TSA from EDF to TEP to be effective 1/9/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5132.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–989–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 331, Assignment of LT Conditional Firm PTP TSA EDF to TEP to be effective 1/9/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5133.
Comments Due: 5 p.m. ET 3/4/20.

Docket Numbers: ER20–990–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 332, Assignment of ST Conditional Firm PTP TSA EDF to TEP to be effective 1/9/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5137.
Comments Due: 5 p.m. ET 3/4/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–15–000.
Applicants: Cross-Sound Cable Company, LLC.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Incur Obligations and Liabilities, et al. of Cross-Sound Cable Company, LLC.

Filed Date: 2/12/20.
Accession Number: 20200212–5088.
Comments Due: 5 p.m. ET 3/4/20.

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: February 12, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03383 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–431–001.
Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: Compliance filing: AEP submits compliance filing per Commission's 1/17/20 order-Docket No. ER20–431 to be effective 1/21/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5044.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–722–000.
Applicants: Baconton Power LLC.
Description: Amendment to December 31, 2019 Baconton Power LLC tariff filing (to be effective 1/1/2020).
Filed Date: 2/13/20.
Accession Number: 20200213–5129.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–991–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–02–13_SA 1495 NSP-Walleye Wind 1st Rev GIA (G253 J569) to be effective 1/29/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5001.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–992–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–02–13_SA 3048 Washington Parish-Entergy Louisiana 1st Rev GIA (J792) to be effective 1/27/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5002.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–993–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) Rate Filing: EKPC Amd NITSA Lock 12 North Sharkey to be effective 1/20/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5012.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–994–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing re: proxy generator bus name change for the Ontario Control Area to be effective 4/14/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5058.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–995–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: BPA NITSA (SVEC Load) Rev 1 to be effective 2/10/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5062.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–996–000.
Applicants: The Connecticut Light and Power Company.
Description: § 205(d) Rate Filing: Amended and Restated Agreement for CONVEX Services to be effective 2/14/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5065.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–997–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA SA No. 5591; Queue No. AE2–054 to be effective 1/22/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5066.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–998–000.
Applicants: BNP Paribas Energy Trading GP.
Description: Notice of Cancellation of Market-Based Rate Tariff of BNP Paribas Energy Trading GP.
Filed Date: 2/13/20.
Accession Number: 20200213–5082.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–999–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: NITSA/NOA between PNM and Pueblo of Acoma to be effective 3/1/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5083.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–1000–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended GIA San Gorgonio Westwinds II VPI Enterprises Dif Altwind Proj SA No 867 to be effective 4/14/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5092.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–1001–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA No. 5597; Queue No. AD2–025 to be effective 1/16/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5158.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: ER20–1002–000.
Applicants: FirstEnergy Solutions Corp.
Description: Compliance filing: Notice of Succession for Reactive Service Rate Schedule to be effective 1/30/2020.
Filed Date: 2/13/20.
Accession Number: 20200213–5167.
Comments Due: 5 p.m. ET 3/5/20.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC20–1–000.
Applicants: I Squared Capital.
Description: Notification of Self-Certification of Foreign Utility Company Status of I Squared Capital.
Filed Date: 1/30/20.
Accession Number: 20200130–5218.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: FC20–2–000.
Applicants: Enbridge (U.S.) Inc.
Description: Self-Certification of EG or FC of Enbridge (U.S.) Inc.
Filed Date: 2/13/20.
Accession Number: 20200213–5052.
Comments Due: 5 p.m. ET 3/5/20.

Docket Numbers: FC20–3–000.
Applicants: Enbridge (U.S.) Inc.
Description: Self-Certification of EG or FC of Enbridge (U.S.) Inc.
Filed Date: 2/13/20.
Accession Number: 20200213–5053.
Comments Due: 5 p.m. ET 3/5/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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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: February 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03386 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2610–011]

Northern States Power Company-Wisconsin; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2610–011.

c. *Date Filed:* December 30, 2019.

d. *Submitted By:* Northern States Power Company-Wisconsin (Northern States Power).

e. *Name of Project:* Saxon Falls Hydroelectric Project.

f. *Location:* On the Montreal River, in Iron County, Wisconsin and Gogebic County, Michigan. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* James Zyduck, Northern States Power Company, 1414 West Hamilton Avenue, Post Office Box 8, Eau Claire, WI 54702–0008; (715) 737–1136; email at *James.Zyduck@XcelEnergy.com.*

i. Lee Emery at (202) 502–8379; or email at *lee.emery@ferc.gov.*

j. Northern States Power filed its request to use the Traditional Licensing Process on December 30, 2019, and provided public notice of the request on December 26, 2019. In a letter dated February 13, 2020, the Director of the Division of Hydropower Licensing approved Northern States Power's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration (NOAA) Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Michigan and Wisconsin State Historic Preservation Officers as required by section 106 of the National Historic Preservation Act and implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Northern States Power as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On December 30, 2019, Northern States Power filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2610. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03389 Filed 2–19–20; 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: PR20–5–003.
Applicants: Midcoast Pipelines (North Texas) L.P.
Description: Tariff filing per 284.123(b), (e)+(g): Supplement to Amended Statement of Operating Conditions to be effective 11/1/2019.
Filed Date: 2/11/2020.
Accession Number: 202002115023.
Comments Due: 5 p.m. ET 2/24/2020.
284.123(g) Protests Due: 5 p.m. ET 2/24/2020.

Docket Number: PR20–34–000.
Applicants: Interstate Power and Light Company.
Description: Tariff filing per 284.123(b), (e)/: IPL Revised Statement of Operating Conditions to be effective 2/7/2020.
Filed Date: 2/7/2020.
Accession Number: 202002075073.
Comments/Protests Due: 5 p.m. ET 2/28/2020.

Docket Number: PR20–35–000.
Applicants: Wisconsin Power and Light Company.
Description: Tariff filing per 284.123(b), (e)+(g): WPL Statement of Operating Conditions to be effective 2/10/2020.
Filed Date: 2/10/2020.
Accession Number: 202002105067.
Comments Due: 5 p.m. ET 3/2/2020.
284.123(g) Protests Due: 5 p.m. ET 4/10/2020.

Docket Numbers: RP20–515–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel Retention Rates—Spring 2020 to be effective 4/1/2020.
Filed Date: 2/12/20.
Accession Number: 20200212–5017.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: RP20–516–000.
Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Filing to Incorporate Approved Gulf Crossing Zone Fuel Rates to be effective 4/1/2020.

Filed Date: 2/12/20.

Accession Number: 20200212–5050.

Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: RP20–517–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement (Spotlight) to be effective 2/12/2020.

Filed Date: 2/12/20.

Accession Number: 20200212–5101.

Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: RP20–518–000.

Applicants: W&T Offshore, Inc., Marubeni Oil & Gas (USA), LLC.

Description: Joint Petition for Limited Waivers, et al. of W&T Offshore, Inc., et al. under RP20–518.

Filed Date: 2/12/20.

Accession Number: 20200212–5162.

Comments Due: 5 p.m. ET 2/19/20.

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: February 13, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–03387 Filed 2–19–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0075; FRL–9992–84]

Certain New Chemicals; Receipt and Status Information for October 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 10/01/2019 to 10/31/2019.

DATES: Comments identified by the specific case number provided in this document must be received on or before March 23, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0075, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 10/01/2019 to 10/31/2019. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the

chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 10/01/2019 TO 10/31/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–20–0001	2	10/22/2019	CBI	(G) Ethanol production	(G) Biofuel producing Saccharomyces cerevisiae modified, genetically stable.
P–17–0299A	4	10/15/2019	CBI	(G) Paint additive	(G) 2-Propenoic acid, alkyl-, polymers with alkyl acrylate and polyethylene glycol methacrylate alkyl ether.
P–17–0360A	2	10/28/2019	Sasol Chemicals (USA), LLC.	(G) Surfactant for oil and gas recovery.	(S) 2-propanol, 1-amino, compd. with a-sulfo-w-(decyloxy)poly(oxy-1,2-ethanediyl) (1:1);(S) 2-propanol, 1-amino, compd. with a-sulfo-w-(octyloxy)poly(oxy-1,2-ethanediyl) (1:1);.
P–17–0362A	2	10/4/2019	CBI	(G) Industrial flame retardant	(G) Aliphatic phosphoric amide ester.
P–18–0019A	2	10/28/2019	Cabot Corporation.	(S) Dispersive pigment	(G) Substituted Benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl)amino]carbonyl]-1-naphthalenyl]diazenyl]-, sodium salt (1:1).
P–18–0034A	2	9/30/2019	CBI	(S) Polyetheramine carboxylate salt used as a dispersing agent for pigments in industrial paints and coatings.	(G) Polyetheramine carboxylate salt.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 10/01/2019 TO 10/31/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0093A	3	10/15/2019	CBI	(G) Additive to plastics	(G) Pentacyclo[9.5.1.13,9.15,15.17,13]octasiloxane, 1,3,5,7,9,11,13,15-octakis (polyfluoroalkyl)-.
P–18–0094A	3	10/15/2019	CBI	(G) Additive to plastics	(G) Pentacyclo[9.5.1.13,9.15,15.17,13]octasiloxanealkylsubstituted, 3,5,7,9,11,13,15-heptakis(polyfluoroalkyl)-.
P–18–0095A	3	10/15/2019	CBI	(G) Additive to plastics	(G) Pentacyclo[9.5.1.13,9.15,15.17,13]octasiloxanealkanol, 3,5,7,9,11,13,15-heptakis(polyfluoroalkyl)-, acetate.
P–18–0135A	4	10/3/2019	CBI	(G) Ingredient for household products.	(S) 1,2-Decanediol.
P–18–0143A	6	10/1/2019	Huntsman International, LLC.	(G) Anti-corrosive primer for outdoor industrial applications.	(G) Fatty acids, tall-oil polymers with aminoalkyl, dialkyl alkane diamine, polyalkylene polyamine alkanepolyamine fraction, and tris-[(alkylamino) alkyl] phenol.
P–18–0151A	6	10/23/2019	Struers, Inc	(S) A curing agent for curing epoxy systems.	(S) Formaldehyde, reaction products with 1,3-benzenedimethanamine and p-tert-butylphenol.
P–18–0175A	8	10/10/2019	Hexion, Inc	(S) Food can coating, and Non-food contact can coating.	(S) Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol and phenol, Bu ether.
P–18–0177A	3	10/17/2019	Clariant Plastics & Coatings, LLC.	(S) Lubricant and surface protection agent.	(S) Waxes and Waxy substances, rice bran, oxidized.
P–18–0256A	4	10/1/2019	CBI	(G) Chemical Intermediate	(S) Undecanol, branched.
P–18–0299A	3	10/1/2019	CBI	(G) Ink additive	(G) Alkenoic acid, alkyl-, polymers with alkyl methacrylate, cycloalkyl methacrylate, alkylene dimethacrylate, and polyalkene glycol hydrogen sulfate [(branched alkyloxy)alkyl]-(alkenyloxy)alkyl ethers ammonium salts, metal salts.
P–18–0302A	4	9/27/2019	CBI	(G) Chemical intermediate	(S) D-glucaric acid, ammonium salt (1:1).
P–18–0378A	5	9/27/2019	CBI	(G) Industrial coatings additive	(G) Acrylic and Methacrylic acids and esters, polymer with alkenylimidazole, alkyl polyalkylene glycol, alkenylbenzene, alkylbenzeneperoxoic acid ester initiated, compds. with Dialkylaminoalkanol.
P–19–0058A	4	10/15/2019	Essential Industries, Inc.	(S) Wood Coating	(S) Butanoic acid, 3-oxo-, 2-[(2-methyl-1-oxo-2-propen-1-yl)oxy]ethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, methyl 2-methyl-2-propenoate and 2-methyl-2-popenoic acid, ammonium salt.
P–19–0064A	4	10/10/2019	The Sherwin Williams Company.	(G) Polymeric film former for coatings.	(G) 4,4′-methylenebis[2,6-dimethyl phenol] polymer with 2-(chloromethyl)oxirane, 1,4-benzyl diol, 2-methyl-2-propenoic acid, butyl 2-methyl 2-propenoate, ethyl 2-methyl 2-propenoate, and ethyl 2-propenoate, reaction products with 2-(dimethylamino) ethanol.
P–19–0086A	5	10/1/2019	CBI	(G) Monitor oil and gas well performance.	(G) Halogenated sodium benzene akyl carboxylate.
P–19–0087A	5	10/1/2019	CBI	(G) Monitor oil-and-gas well performance.	(G) Halogenated sodium benzene alkyl carboyxlate.
P–19–0088A	3	10/3/2019	CBI	(G) Feedstock for amine recovery.	(S) Ethanamine, N-ethyl-, 2-hydroxy-1,2,3-propanetricarboxylate (1:?).
P–19–0089A	7	10/1/2019	CBI	(G) Well performance tracer	(G) Halogenated sodium benzene alkylcarboxylate.
P–19–0091A	5	10/1/2019	CBI	(G) Well performance tracer	(G) Halogenated benzene alkylcarboxylic acid.
P–19–0092A	4	10/1/2019	CBI	(G) Tracer of well performance	(G) Halogenated benzene alkylcarboxylic acid.
P–19–0103A	4	10/14/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid, ethyl ester.
P–19–0109A	3	9/30/2019	Arch Chemicals, Inc.	(S) Chemical is used as a component of a hoof cleaning formulation to improve the wettability of the overall cleaning solution on the hoof.	(S) Copper, [[2,2',2''-(nitrilo-.kappa.N)tris[ethanol-.kappa.O]](2-)]-; (S) Copper, bis[2-(amino-.kappa.N)ethanolato-.kappa.O]-;.
P–19–0134	5	10/23/2019	Conklin Co., Inc	(S) Binder for moisture cure coatings.	(G) [5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane], [Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane], polymer with [Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-], [Cyclic amine—ketone adduct, reduced], and [1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-].
P–19–0137A	4	10/4/2019	CBI	(G) Component in lubricants	(G) Alkyl oligomeric reaction products.
P–19–0141A	4	9/27/2019	CBI	(S) For use in metal treatment coatings for lubrication and corrosion protection.	(S) Phosphoric Acid, manganese(2+) salt (2:3); (S) Phosphoric acid, manganese(2+) salt (4:5);.
P–19–0141A	5	10/3/2019	CBI	(S) For use in metal treatment coatings for lubrication and corrosion protection.	(M) (S) Phosphoric Acid, manganese(2+) salt (2:3); (S) Phosphoric acid, manganese(2+) salt (4:5);.
P–19–0147A	4	9/30/2019	Croda, Inc	(G) Cleaning additive	(G) alkoxylated butyl alkyl ester.
P–19–0158A	4	10/24/2019	Ashland, Inc	(G) Adhesive	(G) Alkenoic acid polymer with 2-ethyl-2-(hdroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-aklydiol.
P–19–0163A	3	9/27/2019	CBI	(G) Well performance tracer	(G) halogenated sodium benzoate.
P–19–0165A	2	10/16/2019	Arboris, LLC	(G) Plasticizer in rubber and coating in minerals.	(G) Tall oil pitch, fraction, sterol-low.
P–19–0167A	2	10/22/2019	Santolubes Manufacturing, LLC.	(S) Synthetic engine, gear and lubricating oils and greases.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, hexanoate.
P–19–0168A	3	10/1/2019	CBI	(G) Well performance tracer	(G) Halogenated alkylbenzoic acid.
P–19–0169A	3	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0171	2	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0171A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0171A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0172	2	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0172A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0172A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0173	2	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0173A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0173A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid.
P–19–0175A	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0175A	3	10/2/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0175A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0176A	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0176A	3	10/2/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 10/01/2019 TO 10/31/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0176A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0177A	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0177A	3	10/2/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0177A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0178A	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0178A	3	10/2/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0178A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0179A	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0179A	3	10/2/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0179A	4	10/29/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid.
P–19–0180	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0180A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0180A	4	10/22/2019	CBI	(G) Well performance monitor	(G) halogenated alkyl sodium benzoate.
P–19–0181	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0181A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0181A	4	10/22/2019	CBI	(G) Well performance monitor	(G) halogenated alkyl sodium benzoate.
P–19–0182	2	10/1/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0182A	3	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0182A	4	10/22/2019	CBI	(G) Well performance monitor	(G) halogenated alkyl sodium benzoate.
P–19–0183	1	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0183A	2	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0184	1	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0184A	2	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0185	1	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0185A	2	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0186	1	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0186A	2	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0187	1	9/27/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0187A	2	10/4/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–19–0188	1	9/30/2019	Archroma U.S., Inc.	(S) Wetting agent and lubricant during textile processing.	(G) Octadecanamide, N,N-dialkyl, salts.
P–19–0189	1	9/30/2019	CBI	(S) Reactive polymer for use in adhesives and sealants.	(G) Fatty acids, polymers with alkanediol and 1,1′-methylenebis[4-isocyanatobenzene].
P–20–0001	1	10/2/2019	Santolubes Manufacturing, LLC.	(S) Synthetic engine, gear & lubricating oils & greases.	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, nonanoate.
P–20–0002	1	10/2/2019	Santolubes Manufacturing, LLC.	(S) Synthetic engine, gear & lubricating oils & greases.	(S) Fatty Acids, C18-unsatd., dimers, hydrogenated, polymers with alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl) and nonanoic acid.
P–20–0004	1	10/2/2019	Santolubes Manufacturing, LLC.	(S) Synthetic engine, gear & lubricating oils & greases.	(S) Fatty Acids, C18-unsatd., dimers, hydrogenated, polymers with hexanoic acid and alpha-hydro-w-hydroxypoly(oxy-1,4-butanediyl).
P–20–0005	2	10/21/2019	RMC Advanced Technologies Inc.	(G) Additive for plastics and resins.	(G) modified graphene.
P–20–0006	1	10/7/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–20–0007	1	10/7/2019	CBI	(G) Well performance monitor	(G) Halogenated sodium alkylbenzoate.
P–20–0008	1	10/8/2019	Archroma U.S., Inc.	(S) Dye for use with paper, paper products, and nonwoven products produced from paper.	(G) 7-Heteropolycyclicsulfonic acid, 2-[4-[2-[1-[[(2-methoxy-5-methyl-4-sulfophenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]-6-methyl-, compd. with (alkylamino)alkanol and (hydroxyalkyl)amine.
P–20–0009	2	10/21/2019	Resinate Materials Group, Inc.	(S) Intermediate for use in the manufacture of polymers.	(G) Waste plastics, poly(ethylene terephthalate), depolymd. with polyol, polymers with alkanedioic acid and alkanoic acid.
P–20–0010	2	10/18/2019	CBI	(G) Polymerization auxiliary	(G) Carboxylic acid, metal salt, reaction products with metal salt.
P–20–0011	3	10/28/2019	Chitec Technology Co., Ltd.	(G) Light stabilizer	(G) Tetraoxaspiro[5.5]alkyl-3,9-diylbis(alkyl-2,1-diyl) bis(2-cyano-3-(3,4-dimethoxyphenyl)acrylate).
P–20–0012	4	10/31/2019	CBI	(G) Ink Additive	(G) Polyol, polymer with alkyl diisocyanate, alkyl substituted heterocycle blocked.
P–20–0013	1	10/17/2019	Arkema, Inc	(G) UV curable inks	(S) 2-Propenoic acid, 2-methyl-, (2-oxo-1,3-dioxolan-4-yl)methyl ester.
P–20–0014	1	10/21/2019	McTron Technologies.	(G) Water resistant resin additive and Heat resistant binder additive.	(G) Sugars, polymer with alkanetriamine.
SN–19–0006	1	9/30/2019	CBI	(G) Component for 3D Printing formulations.	(S) 2-Propen-1-one, 1-(4-morpholinyl)-.
SN–19–0006A	2	10/9/2019	CBI	(G) Component for 3D Printing formulations.	(S) 2-Propen-1-one, 1-(4-morpholinyl)-/.

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 10/01/2019 TO 10/31/2019

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–18–0012	10/29/2019	4/9/2019	N	(G) Genetically modified yeast.
J–18–0045	10/25/2019	10/16/2019	N	(G) Biofuel producing saccharomyces cerevisiae modified, genetically stable.
J–19–0024	10/25/2019	9/20/2019	N	(G) Biofuel producing saccharomyces cerevisiae modified, genetically stable.
P–13–0238	10/3/2019	9/23/2019	N	(G) Benzoic acid, heteroatom substituted, compd. with (alkylaminoalkoxyalkyl)alkylaminoethanol.
P–14–0596	10/24/2019	9/20/2019	N	(G) Sorbitan, ester, poly(oxy-1,2-ethanediyl) derivs., reaction products with isocyanate homopolymer, imidazole-amine, polyethylene glycol ether and arylated polyethylene glycol ether.
P–16–0132	10/28/2019	10/24/2019	N	(S) Oxirane, 2-methyl-, polymer with oxirane, mono-c16-18 ethers, phosphates.
P–18–0109	9/27/2019	9/25/2019	N	(G) 2-alkenoic acid, 2-alkyl-, alkyl ester, polymer with 2-(dialkylamino)alkyl 2-alkyl-2alkenoate, alkyl 2-alkyl-2-alkenoate and a-(2-alkyl-1-oxo-2-alken-1-yl)-o-alkoxypoly(oxy-1,2alkanediyl), [(1-alkoxy-2-alkyl-1-alken-1-yl)oxy]trialkylsilane-initiated.
P–18–0222	10/21/2019	10/15/2019	N	(S) Silane, ethenyltrimethoxy-, polymer with ethene and 1-propene.
P–18–0272	10/21/2019	10/9/2019	N	(G) Metal, alkylcarboxylate oxo complexes.
P–19–0005	10/23/2019	9/27/2019	N	(G) Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide.
P–19–0024	10/7/2019	10/1/2019	N	(S) Silsesquioxanes, 3-(dimethyloctadecylammonio)propyl me pr, polymers with silicic acid (h4si04) tetra-et ester, (2-hydroxyethoxy)- and methoxyterminated, chlorides.
P–19–0029	10/3/2019	9/19/2019	N	(S) Phosphonium, tributylethyl-, diethyl phosphate (1:1).
P–19–0057	10/10/2019	9/17/2019	N	(S) 2-propanamine, n-[2-[2-(2-methoxyethoxy)ethoxy]ethyl]-2-methyl-.
P–19–0132	10/17/2019	10/17/2019	N	(G) Fatty acid, polymer with alkanedioic acid dialkyl ester, alkanoic acid, oxo alkyl ester, substituted carbomonocycle, alkyl substituted alkanediol, and alkylol substituted alkane.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 10/01/2019 TO 10/31/2019

Case No.	Received date	Type of test information	Chemical substance
P–00–0281	10/16/2019	Test Protocols, CMC Testing Protocol, CMC Final Report, Information on test substance, Water Solubility Report, Certificate of Analysis, Neutralized Aristonic EAG, Manufacturing Summary, Water Solubility, SDS, Original Solubility Report, Clarification Letter, Daphnia sp., Acute Immobilization Test (OECD Test Guideline 202), Fish, Acute Toxicity Test (OECD Test Guideline 202), Surface Tension of Aqueous Solutions (OECD Test Guideline 115), Analytical Method Validation for Algae, Certificate of Analysis, Neutralized Aristonic Acid EAG, SDS, signed case submission form, Solubility Trial Report, Clarification Letter.	(G) Alkylaryl sulfonic acid, sodium salts.
P–16–0289	10/21/2019	Particle size and concentration	(G) Benzene dicarboxylic acid, polymer with alkane dioic acid and aliphatic diamine.
P–16–0462	10/21/2019	Metal Analysis Report	(G) Ash (residues), reaction products with tetraethoxydioxa-polyheteroatom-disilaalkane.
P–17–0329	10/9/2019	Permeation Test Final Report	(G) Substituted haloaromatic trihaloalkyl-aromatic alkanone.
P–17–0343	10/18/2019	Classification for Reproductive Toxicity, Oral (Gavage) Combined Repeat Dose Toxicity Study with Reproduction/Developmental Toxicity Screening Test in the Rat (OECD Test Guideline 422) with Comet Assay.	(G) Heteropolycyclic-alkanol, carbomonocycle-alkanesulfonate.
P–18–0150	10/23/2019	Developmental Toxicity Study in Rats After Inhalation, Exerpt from Chemical Safety Report (OECD Test Guideline 414), Approaches to defining the relationship of maternal and developmental toxicity, Commentary on the role of maternal toxicity on developmental toxicity.	(G) Tertiary amine, compounds with amino sulfonic acid blocked aliphatic isocyanate homopolymer.

TABLE III—TEST INFORMATION RECEIVED FROM 10/01/2019 TO 10/31/2019—Continued

Case No.	Received date	Type of test information	Chemical substance
P–18–0177	10/17/2019	Solubility in Alga Growth Medium (OECD Test Guideline 201).	(S) Waxes and waxy substances, rice bran, oxidized.
P–19–0041	10/16/2019	Acute Toxicity to Fish Mitigated by Humic Acid (OECD Test Guideline 203), Algal Growth Inhibition Test (OECD Test Guideline 201), Acute Oral Toxicity Study in the Rat—Fixed Dose Method, Determination of Physical State and Partition Coefficient (n-Octanol/Water) (OECD Test Guideline 107).	(G) Alkyl diester, polymer with (dialkylamino alkyl) amine and bis(halogenated alkyl) ether

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 16, 2020.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–03352 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0075; FRL–10005–62–OLEM]

Hazardous Waste Electronic Manifest System ("e-Manifest") Advisory Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will convene the Hazardous Waste Electronic System ("e-Manifest") Advisory Board for a three (3) day public meeting to seek the Board's consultation and recommendations regarding the e-Manifest system (Meeting Theme: "*Reengineering Electronic Signatures for Generators and Transporters to Increase Adoption of Electronic Manifests*").

DATES: The meeting will be held on April 14–16, 2020, from approximately 9:00 a.m. to 5:00 p.m. EDT.

Comments. The Agency encourages written comments be submitted on or before March 31, 2020, and requests for oral comments to be submitted on or before April 7, 2020. Written comments and requests to make oral comments may be submitted up until the date of the meeting; however, anyone submitting written comments or requests for oral comments after April 7, 2020, should contact the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see section I.C. under **SUPPLEMENTARY INFORMATION**.

Webcast. This meeting may be webcast. Please refer to the e-Manifest website at *www.epa.gov/e-manifest* for information on how to access the webcast. Please note that the webcast is a supplementary public service provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least ten (10) days prior to the meeting to give the EPA as much time as possible to process your request.

ADDRESSES: *Meeting:* The meeting will be held at the Environmental Protection Agency Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket ID number EPA–HQ–OLEM–2020–0075 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* 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: Fred Jenkins, Designated Federal Officer (DFO), U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5303P), 1200 Pennsylvania Avenue NW, Washington, DC 20460, Phone: 703–308–7049; or by email: *jenkins.fred@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of particular interest to persons who are or may be subject to the Hazardous Waste Electronic Manifest Establishment (e-Manifest) Act.

B. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this document. To ensure proper receipt of your public comments by the EPA, it is imperative that you identify docket ID number EPA–HQ–OLEM–2020–0075.

1. *Written comments.* The Agency encourages written comments be submitted electronically via *regulations.gov,* using the instructions in the **ADDRESSES** *Comments* section on or before March 31, 2020, to provide the e-Manifest Advisory Board the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after April 7, 2020, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring fifteen (15) copies for distribution to the e-Manifest Advisory Board.

2. *Oral comments.* The Agency encourages each individual or group

wishing to make brief oral comments to the e-Manifest Advisory Board to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before April 7, 2020, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting. To the extent that time permits, the Chair of the e-Manifest Advisory Board may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) that the individual represents, and any requirements for audiovisual equipment. Oral comments before the e-Manifest Advisory Board are limited to approximately five (5) minutes unless prior arrangements have been made. In addition, each speaker should bring fifteen (15) copies of his or her comments and presentation for distribution to the e-Manifest Advisory Board at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

C. Purpose of the e-Manifest Advisory Board

The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act, 42 U.S.C. 6939g, and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The e-Manifest Advisory Board is in the public interest and supports the EPA in performing its duties and responsibilities.

The e-Manifest Advisory Board will provide recommendations on matters related to the operational activities, functions, policies, and regulations of the EPA under the e-Manifest Act, including: The effectiveness of the e-Manifest IT system and associated user fees and processes; matters and policies related to the e-Manifest program; regulations and guidance as required by the e-Manifest Act; actions to encourage the use of the electronic (paperless) system; changes to the user fees as described in e-Manifest Act Section 2(c)(3)(B)(i); and issues in the e-Manifest area, including those identified in the EPA' s E-Enterprise strategy that intersect with the e-Manifest system, such as: Business-to-business communications; performance standards for mobile devices; and the EPA's Cross Media Electronic Reporting Rule (CROMERR) requirements.

The sole duty of the Advisory Board is to provide advice and recommendations to the EPA Administrator. As required by the e-Manifest Act, the e-Manifest Advisory Board is composed of nine (9) members. One (1) member is the EPA Administrator (or a designee), who serves as Chairperson of the Advisory Board. The rest of the committee is composed of:

- At least two (2) members who have expertise in information technology;
- At least three (3) members who have experience in using or represent users of the manifest system to track the transportation of hazardous waste under the e-Manifest Act;
- At least three (3) members who are state representatives responsible for processing manifests.

All members of the e-Manifest Advisory Board, except for the EPA Administrator, are appointed as Special Government Employees or representatives.

D. Public Meeting

EPA launched the e-Manifest system on June 30, 2018. e-Manifest enables those persons required to use a RCRA manifest under either federal or state law to have the option of using electronic manifests to track shipments of hazardous waste and to meet certain RCRA requirements. By enabling the transition from a paper-intensive process to an electronic system, the EPA estimates e-Manifest will ultimately save state and industry users more than $50 million annually, once electronic manifests are widely adopted.

EPA will convene its next public meeting of the e-Manifest System Advisory Board from April 14–16, 2020. The purpose of this meeting is for the Board to advise the Agency on its proposed additional methods for increasing the use of electronic manifests, which include reengineering electronic signatures for generators and transporters to reduce the administrative burdens and barriers to electronic manifesting.

Since the launch of e-Manifest, the Agency has learned through experience that it can likely increase adoption of electronic manifests by providing generators and transporters more flexibility in their methods for performing electronic signatures. This is supported by the final recommendations of the e-Manifest Advisory Board, following its June 2019 Advisory Board meeting, which was focused on increasing adoption of the e-Manifest system. In its final recommendations, delivered to the Agency on September 23, 2019, the Advisory Board identified numerous challenges with generator and transporter adoption of electronic manifests. In particular, the Advisory Board asked the Agency to reevaluate its signature requirements and stated that the Agency should consider the costs and benefits, given the diversity of roles/types of users.

The Agency is thus considering additional methods available for generator and transporter electronic signatures and will consult the Advisory Board on these methods during the April 2020 Advisory Board meeting. Specifically, EPA will present three methods for generator/transporter electronic signature, which could potentially all be available for generators and transporters to use.

A first method for generators and transporters is to require at least one person (per respective generator and transporter) to become registered in EPA's RCRAInfo system as a ''Site Manager.'' (Note: The Agency is not intending at this time to make any changes to the current registration process for Site Managers as this role allows users to manage permissions within their organization with respect to other modules in EPA's RCRAInfo system, in addition to e-Manifest.) Under this method, the Site Manager would identify/confirm/update the specific personnel (*e.g.,* employee on the loading dock, driver) on the electronic manifest who will have firsthand knowledge of the manifest shipment, and who will be responsible for electronically signing the generator certification or transporter acknowledgment of receipt by identifying/confirming/updating the name and either a phone number or email address associated with that name. The system would then send a link to that phone number/email of the individual employee, who could then simply click a link to electronically sign the electronic manifest.

A second method for generators and transporters is to require at least one person to become registered in EPA's RCRAInfo system as a ''Site Manager'' for their respective sites, and have all other personnel become registered in the same way as ''Preparers'' are registered. These personnel would receive a user name and password using the current registration process and would then request access to their site(s), as appropriate, but would not need to undergo further identity proofing. Generator and transporter personnel that are registered could then log in with their user name/password and could create and edit electronic manifests for their sites. Electronic signatures under this method for generators and transporters would consist of, after logging in to their

account, clicking a button to electronically sign.

A third method is for generators and transporters to use digitized signature pads which have been approved by the Agency under its CROMERR program. This method would require generators and transporters to possess units that allow them to capture a physical signature electronically, for example, using a stylus.

The Agency intends to provide more detail regarding these methods in its meeting materials, which will be published in the docket for the meeting.

E. e-Manifest Advisory Board Documents and Meeting Minutes

The meeting background paper, related supporting materials, charge/questions to the Advisory Board, the Advisory Board membership roster (*i.e.,* members attending this meeting), and the meeting agenda will be available by approximately mid-March 2020. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available at *http://www.regulations.gov* and the e-Manifest Advisory Board website at: *https:/www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board.*

The e-Manifest Advisory Board will prepare meeting minutes summarizing its recommendations to the Agency approximately ninety (90) days after the meeting. The meeting minutes will be posted on the e-Manifest Advisory Board website or may be obtained from the docket at *http://www.regulations.gov.*

Dated: February 6, 2020.

Kathleen Salyer,

Acting Director, Office of Resource Conservation and Recovery, Office of Land and Emergency Management.

[FR Doc. 2020–03402 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of EEOC Guidance Portal

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of availability.

SUMMARY: Pursuant to Executive Order 13891 and OMB Memorandum M–20–02, the Equal Employment Opportunity Commission (EEOC) is noticing the February 28, 2020 launch of a single, searchable, indexed database containing all EEOC guidance documents currently in effect.

DATES: Effective February 28, 2020.

ADDRESSES: *www.eeoc.gov/guidance.*

FOR FURTHER INFORMATION CONTACT: For website content issues, contact Raymond Peeler, Assistant Legal Counsel, Office of Legal Counsel, (202) 663–4537 or *raymond.peeler@eeoc.gov.*

For website access issues, contact Adam Guasch-Melendez, IT Specialist, Office of Communications & Legislative Affairs, (202) 663–4632 or *adam.guasch@eeoc.gov.*

SUPPLEMENTARY INFORMATION: Section 3 of Executive Order 13891 requires federal agencies to ''establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component.'' Executive Order 13891, 84 FR 55,235 (October 9, 2019).

Question 1 of OMB Memorandum M–20–02 further requires agencies to ''send to the **Federal Register** a notice announcing the existence of the new guidance portal and explaining that all guidance documents remaining in effect are contained on the new guidance portal.'' OMB Memorandum M–20–02 (October 31, 2019).

In compliance with the above, the EEOC is noticing the availability of a single, searchable, indexed database containing all EEOC guidance documents currently in effect, which may be accessed at *www.eeoc.gov/guidance* on or after February 28, 2020.

(Authority: E.O. 13891, 84 FR 55,235; OMB Memorandum M–20–02.)

Janet Dhillon,

Chair.

[FR Doc. 2020–03300 Filed 2–19–20; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0819; FRS 16500]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0819.

Title: Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support.

Form Numbers: FCC Form 481, FCC Form 497, FCC Form 555, FCC Form 5629, FCC Form 5630, FCC Form 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit enterprises.

Number of Respondents and Responses: 18,335,775 respondents; 20,102,235 responses.

Estimated Time per Response: .0167 hours–125 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements,

recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 8,531,854 hours.

Total Annual Cost: $937,500.

Privacy Act Impact Assessment: Yes. The Commission completed a Privacy Impact Assessment (PIA) for some of the information collection requirements contained in this collection. The PIA was published in the **Federal Register** at 82 FR 38686 on August 15, 2017. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some of the requirements contained in this information collection affect individuals or households, and thus, there are impacts under the Privacy Act. The FCC's system of records notice (SORN) associated with this collection is FCC/WCB–1, ''Lifeline Program.''

The Commission will use the information contained in FCC/WCB–1 to cover the personally identifiable information (PII) that is required as part of the Lifeline Program (''Lifeline'').

As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published FCC/WCB–1 ''Lifeline Program'' in the **Federal Register** on August 15, 2017 (82 FR 38686).

Also, respondents may request materials or information submitted to the Commission or to the Universal Service Administrative Company (USAC or Administrator) be withheld from public inspection under 47 CFR 0.459 of the FCC's rules. We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission will submit this information collection after this 60-day comment period to obtain approval from the Office of Management and Budget (OMB) of revisions to this information collection.

On October 30, 2019, the Commission adopted the Bridging the Digital Divide for Low-Income Consumers, WC Docket Nos, 17–287, 11–42, 09–197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking FCC 19–111 (2019) (2019 Lifeline Order). The Lifeline Fifth Report and Order restores the traditional state and federal roles in designating eligible telecommunications carriers (ETC) and eliminates the Lifeline Broadband Provider (LBP) category. The Order also codifies a requirement that enrollment representatives must register with USAC before interacting with USAC's systems. Finally, the 2019 Lifeline Order implements several process and procedural changes to further bolster program integrity efforts. These changes require minor modifications to the previously approved requirements. The changes made by the Lifeline Fifth Report and Order have a moderate impact on overall burden, increasing the burden hours for some requirements and decreasing the burden hours for other requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03294 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0213; FRS 16512]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0213.

Title: Section 73.3525, Agreements for Removing Application Conflicts.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 38 respondents; 40 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 39 hours.

Total Annual Cost: $91,953.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 311 of the Communications Act of 1934, as amended.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.3525 states (a) except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a

conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; Provided That this provision shall not apply to bona fide merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to § 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03404 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1174; FRS 16514]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1174.

Title: Section 73.503, Licensing requirements and service; Section

73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,200 respondents; 33,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

Total Annual Burden: 16,500 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459 of the Commission's Rules.)

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection which are approved under this collection are as follows: Audience disclosure: The information collection requirements contained in 47 CFR 73.503(e)(1) require that a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising.

The information collection requirements contained in 47 CFR 73.621(f)(1) require that a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

Retention of information on fundraising activities in local public inspection file: The information collection requirements contained in 47 CFR 73.3527(e)(14) require that each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest $10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.,* January 10 for the quarter October–December, April 10 for the quarter January–March, etc.).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03405 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0056; FRS 16509]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0056.

Title: Part 68, Connection of Terminal Equipment to the Telephone Network.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 41,403 respondents; 44,543 responses.

Estimated Time per Response: 0.25 hours–40 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 201–205 and 303(r).

Total Annual Burden: 12,870 hours.

Total Annual Cost: $508,250.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Part 68 rules do not require respondents to provide proprietary, trade secret or other confidential information to the

Commission. If the FCC requests that respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to Section 0.459 of the FCC's rules, 47 CFR 0.459.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the telephone network from certain types of harm and prevent interference to subscribers. To (1) demonstrate that terminal equipment complies with criteria for protecting the network and (2) ensure that consumers, providers of telecommunications, the Commission and others are able to trace products to the party responsible for ensuring compliance with these criteria; it is essential to require manufacturers or other responsible parties to provide the information required by Part 68. In addition, incumbent local exchange carriers must provide the information in Part 68 to warn their subscribers of impending disconnection of service when subscriber terminal equipment is causing telephone network harm, and to inform subscribers of a change in network facilities that requires modification or alteration of subscribers' terminal equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03298 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16505]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, CG Docket No. 17–59.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents and Responses: 3,666 respondents; 15,375,326 responses.

Estimated Time per Response: .004 hours (15 seconds) to 32 hours.

Frequency of Response: Monthly, one time, and on occasion reporting requirements; recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 227 and 251(e)(1) of the Telecommunications Act of 1996.

Total Annual Burden: 290,233 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On December 12, 2018, the Commission adopted rules in FCC 18–177, *Second Report and Order,* published at 84 FR 11226, March 26, 2019, which contain new information collection requirements. Specifically, the Commission concluded that the obligation to provide permanent disconnect information will apply to all reporting carriers as defined in the Commission's numbering rules, which include wireless, wireline, and interconnected Voice over internet Protocol providers that obtain numbers from the North American Numbering Plan Administrator. As part of the Commission reporting requirements, reporting carriers must provide, among other things, the most recent date each North American Numbering Plan telephone number allocated or ported to the reporting carrier was permanently disconnected. The telephone number and date of permanent disconnection will allow voluntary users of the database to determine whether a number has been permanently disconnected prior to calling that number, thereby protecting against unwanted calls to consumers and potential Telephone Consumer Protection Act liability for callers. Reporting carriers and voluntary users of the reassigned numbers database may also need to provide contact information, including names, address, and telephone number, to enable the database administrator to contact the reporting carrier in case there are any issues with their submission.

The Commission has referred to the North American Numbering Council the development of a technical requirements document for the reassigned numbers database for review by the Commission. The technical requirements document will contain a single, unified set of functional and interface requirements for: Technical interoperability and operational standards; the user interface specifications and data format for service providers to report to the Administrator; the user interfaces and other means by which callers may submit queries, including providing callers the abilities for high-volume and batch processing or to submit individual queries; appropriate safeguards to protect the privacy and security of subscribers, protect the database from unauthorized access, and ensure the security and integrity of the data; and keeping records of service providers' reporting and accounting.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03297 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1176; OMB 3060–1177; FRS 16504]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1176.

Title: MVPD Notice, Section 73.3700.

Form Number: Not applicable.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 735 respondents; 735 responses.

Estimated Hours per Response: 1–2 hours.

Frequency of Response: One time reporting requirement; Third party disclosure requirement.

Total Annual Burden: 1,397 hours.

Total Annual Cost: $43,800.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.3700 requires that full power and Class A television stations assigned a new channel in the incentive auction repacking, relinquishing their channel or moving to a new channel as a result of a winning bid in the auction, notify MVPDs of their termination of operations or change in channel.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028 Class A Television Channel Sharing Outside the Incentive Auction and Section 74.799 Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide notification to MVPDs of the fact that the station will be terminating operations on one channel to share another station's channel.

OMB Control No.: 3060–1177.

Title: 47 CFR 74.800, Channel Sharing Agreement (CSA).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 160 respondents; 160 responses.

Estimated Hours per Response: 1 hr.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 160 hours.

Total Annual Cost: $86,400.

Obligation To Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: Full power and Class A television stations that agree to share a single television channel in conjunction with the incentive auction and low power television (LPTV) and TV translator stations that channel share outside of the auction context are required to reduce their agreement (CSA) to writing and submit a copy to the Commission for review. There is no specified format for the CSA but it must contain provisions covering: a. Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; b. Allocation of bandwidth within the shared channel; c. Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of

each party's financial obligations, and any relevant notice provisions; d. Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; e. Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA and f. A provision affirming compliance with the channel sharing requirements in the rules including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

The information collection requirements contain in 47 CFR 73.3700 requires that full power and Class A television stations seeking approval to channel share in the incentive auction provide the Commission with a copy of their CSA for review.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028, Class A Television Channel Sharing Outside the Incentive Auction and Section 73.799, Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide a copy of their ''CSA'' to the Commission for review.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–03296 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0532; OMB 3060–1230; FRS 16502]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 20, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0532.

Title: Section 2.1033 and 15.121, Scanning Receiver Compliance Exhibits.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One-time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

Total Annual Burden: 25 hours.

Total Annual Cost: $1,250.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission's rules require that certain portions of scanning receiver applications for certification will remain confidential after the effective date of the grant of the application. No other assurances of confidentiality are provided to respondents.

Needs and Uses: This collection will be submitted as an extension after this 60-day comment period to Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The FCC rules under 47 CFR 2.1033 and 15.121 require manufacturers of scanning receivers to design their equipment so that it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission's rules also require manufacturers to submit information with any application for certification that describes the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following as described in section 15.121:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

The Commission uses the information required in this equipment authorization process to determine whether the equipment that is being marketed complies with the Congressional mandate in the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) and applicable Commission rules.

OMB Control Number: 3060–1230.

Title: Enterprise Service and Public Safety Interference Complaint Intake Form.

Form Number: FCC–5624.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions, Federal government, and State, Local, or Tribal government.

Number of Respondents and Responses: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 0.5 hours (30 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in contained in 47 U.S.C. 154(i)–(j), 155, and 303(r).

Total Annual Burden: 500 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of Rules.

Needs and Uses: Commercial spectrum licensees, spectrum licensees with public safety or safety of life missions, and federal agencies will have a single portal through which to submit complaints of RF interference. This online RF interference intake portal will enhance the Commission's ability to efficiently triage and assign RF interference complaints to field agents for further investigation, mitigation, and/or enforcement action, as appropriate.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–03295 Filed 2–19–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2020–02]

Filing Dates for the New York Special Election in the 27th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: New York has scheduled a special election on April 28, 2020, to fill the U.S. House of Representatives seat in the 27th Congressional District vacated by Representative Chris Collins. Committees required to file reports in connection with the Special General Election on April 28, 2020 shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the New York Special General Election shall file a 12-day Pre-General Report on April 16, 2020, and a 30-day Post-General Report on May 28, 2020. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2020 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New York Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the New York Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New York Special Election may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $19,000 during the special election reporting period. (See chart below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR NEW YORK SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in the Special General (04/28/2020) Must File:			
April Quarterly	—WAIVED—		
Pre-General	04/08/2020	04/13/2020	04/16/2020
Post-General	05/18/2020	05/28/2020	05/28/2020
July Quarterly	06/30/2020	07/15/2020	07/15/2020

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

Dated: February 13, 2020.

On behalf of the Commission,

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2020–03313 Filed 2–19–20; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2020–01]

Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold

AGENCY: Federal Election Commission.

ACTION: Notice of adjustments to expenditure limitations and lobbyist bundling disclosure threshold.

SUMMARY: As mandated by provisions of the Federal Election Campaign Act (the Act), the Federal Election Commission (the Commission) is adjusting certain expenditure limitations and the lobbyist

bundling disclosure threshold set forth in the Act, to index the amounts for inflation. Additional details appear in the supplemental information that follows.

DATES: The new limits apply beginning on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act, 52 U.S.C. 30101–45, coordinated party expenditure limits (52 U.S.C. 30116(d)(2)–(3)) and the disclosure threshold for contributions bundled by lobbyists (52 U.S.C. 30104(i)(3)(A)) are adjusted annually to reflect changes in the consumer price index. *See* 52 U.S.C. 30104(i)(3)(B), 30116(c); 11 CFR 109.32(a)(2), (b)(3), 110.17(a), (f). The Commission is publishing this notice to announce the adjusted limits and disclosure threshold for 2020.

Coordinated Party Expenditure Limits for 2020

Under 52 U.S.C. 30116(c), the Commission must adjust the expenditure limitations established by 52 U.S.C. 30116(d) (the limits on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974). 52 U.S.C. 30116(c).

1. Expenditure Limitation for House of Representatives in States With More Than One Congressional District

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives in states with more than one congressional district. *See* 52 U.S.C. 30116(d)(3)(B). This limitation also applies to the District of Columbia and territories that elect individuals to the office of Delegate or Resident Commissioner.[1] *Id.* The formula used to calculate the expenditure limitation in such states and territories multiplies the base figure of $10,000 by the difference in the price index (5.18508), rounding to the nearest $100. *See* 52 U.S.C. 30116(c)(1)(B), (d)(3)(B); 11 CFR 109.32(b), 110.17. Based upon this formula, the expenditure limitation for 2020 general elections for House candidates in these states, districts, and territories is $51,900.

2. Expenditure Limitation for Senate and for House of Representatives in States With Only One Congressional District

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate or in the House of Representatives in states with only one congressional district. *See* 52 U.S.C. 30116(d)(3)(A). The formula used to calculate this expenditure limitation considers not only the price index but also the voting age population (VAP) of the state. *Id.* The VAP figures used to calculate the expenditure limitations were certified by the U.S. Census Bureau. The VAP of each state is also published annually in the **Federal Register** by the U.S. Department of Commerce. 11 CFR 110.18. The general election expenditure limitation is the greater of: The base figure ($20,000) multiplied by the difference in the price index, 5.18508 (which totals $103,700); or $0.02 multiplied by the VAP of the state, multiplied by 5.18508. *See* 52 U.S.C. 30116(c)(1)(B), (d)(3)(A); 11 CFR 109.32(b), 110.17. Amounts are rounded to the nearest $100. 52 U.S.C. 30116(c)(1)(B)(iii); 11 CFR 109.32(b)(3), 110.17(c). The chart below provides the state-by-state breakdown of the 2020 general election expenditure limitation for Senate elections. The expenditure limitation for 2020 House elections in states with only one congressional district[2] is $103,700.

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2020 ELECTIONS[3]

State	Voting Age Population (VAP)	VAP × .02 × the price index (5.18508)	Senate expenditure limit (the greater of the amount in column 3 or $103,700)
Alabama	3,814,879	$395,600	$395,600
Alaska	551,562	57,200	103,700
Arizona	5,638,481	584,700	584,700
Arkansas	2,317,649	240,300	240,300
California	30,617,582	3,175,100	3,175,100
Colorado	4,499,217	466,600	466,600
Connecticut	2,837,847	294,300	294,300
Delaware	770,192	79,900	103,700
Florida	17,247,808	1,788,600	1,788,600
Georgia	8,113,542	841,400	841,400
Hawaii	1,116,004	115,700	115,700
Idaho	1,338,864	138,800	138,800
Illinois	9,853,946	1,021,900	1,021,900
Indiana	5,164,245	535,500	535,500
Iowa	2,428,229	251,800	251,800
Kansas	2,213,064	229,500	229,500
Kentucky	3,464,802	359,300	359,300
Louisiana	3,561,164	369,300	369,300
Maine	1,095,370	113,600	113,600
Maryland	4,710,993	488,500	488,500

[1] Currently, these are Puerto Rico, American Samoa, Guam, the United States Virgin Islands and the Northern Mariana Islands. *See http://www.house.gov/representatives.*

[2] Currently, these states are: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming. *See http://www.house.gov/representatives/.*

[3] This expenditure limit does not apply to the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and the Northern Mariana Islands because those jurisdictions do not elect Senators. *See* 52 U.S.C. 30116(d)(3)(A); 11 CFR 109.32(b)(2)(i).

SENATE GENERAL ELECTION COORDINATED EXPENDITURE LIMITS—2020 ELECTIONS [3]—Continued

State	Voting Age Population (VAP)	VAP × .02 × the price index (5.18508)	Senate expenditure limit (the greater of the amount in column 3 or $103,700)
Massachusetts	5,539,703	574,500	574,500
Michigan	7,842,924	813,300	813,300
Minnesota	4,336,475	449,700	449,700
Mississippi	2,277,566	236,200	236,200
Missouri	4,766,843	494,300	494,300
Montana	840,190	87,100	103,700
Nebraska	1,458,334	151,200	151,200
Nevada	2,387,517	247,600	247,600
New Hampshire	1,104,458	114,500	114,500
New Jersey	6,943,612	720,100	720,100
New Mexico	1,620,991	168,100	168,100
New York	15,425,262	1,599,600	1,599,600
North Carolina	8,187,369	849,000	849,000
North Dakota	581,891	60,300	103,700
Ohio	9,111,081	944,800	944,800
Oklahoma	3,004,733	311,600	311,600
Oregon	3,351,175	347,500	347,500
Pennsylvania	10,167,376	1,054,400	1,054,400
Rhode Island	854,866	88,700	103,700
South Carolina	4,037,531	418,700	418,700
South Dakota	667,558	69,200	103,700
Tennessee	5,319,123	551,600	551,600
Texas	21,596,071	2,239,500	2,239,500
Utah	2,274,774	235,900	235,900
Vermont	509,984	52,900	103,700
Virginia	6,674,671	692,200	692,200
Washington	5,951,832	617,200	617,200
West Virginia	1,432,580	148,600	148,600
Wisconsin	4,555,837	472,400	472,400
Wyoming	445,025	46,100	103,700

3. Expenditure Limitation for President

The national party committees have an expenditure limitation for their general election nominee for President. 52 U.S.C. 30116(d)(2). The formula used to calculate the Presidential expenditure limitation considers not only the price index but also the total VAP of the United States. *Id.* The VAP figure used to calculate the expenditure limitation was certified by the U.S. Census Bureau. The VAP of the United States is also published annually in the **Federal Register** by the U.S. Department of Commerce. 11 CFR 110.18. The formula used to calculate this expenditure limitation is $0.02 multiplied by the total VAP of the United States (255,200,373), multiplied by the difference in the price index, 5.18508. *See* 52 U.S.C. 30116(c)(1)(B), (d)(2); 11 CFR 109.32(a)(2), 110.17. Amounts are rounded to the nearest $100. 52 U.S.C. 30116(c)(1)(B)(iii); 11 CFR 109.32(a)(2), 110.17(c). Based upon this formula, the expenditure limitation for 2020 Presidential nominees is $26,464,700.

Limitations on Contributions by Individuals, Non-Multicandidate Committees and Certain Political Party Committees Giving to U.S. Senate Candidates for the 2019–2020 Election Cycle

For the convenience of the readers, the Commission is also republishing the contribution limitations for individuals, non-multicandidate committees and for certain political party committees giving to U.S. Senate candidates and national party committees for the 2019–2020 election cycle:

Statutory provision	Statutory amount	2019–2020 limit
52 U.S.C. 30116(a)(1)(A)	$2,000	$2,800
52 U.S.C. 30116(a)(1)(B)	25,000	35,500
52 U.S.C. 30116(h)	35,000	49,600

Lobbyist Bundling Disclosure Threshold for 2020

The Act requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant political action committees once the contributions exceed a specified threshold amount. 52 U.S.C. 30104(i)(1), (i)(3)(A). The Commission must adjust this threshold amount annually to account for inflation. 52 U.S.C. 30104(i)(3)(B). The disclosure threshold is increased by multiplying the $15,000 statutory disclosure threshold by 1.26815, the difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2006). *See* 52 U.S.C. 30104(i)(3), 30116(c)(1)(B); 11 CFR 104.22(g). The resulting amount is rounded to the nearest multiple of $100. 52 U.S.C. 30104(i)(3)(B), 30116(c)(1)(B)(iii); 11 CFR 104.22(g)(4). Based upon this formula ($15,000 × 1.26815), the lobbyist bundling disclosure threshold for calendar year 2020 is $19,000.

Dated: February 13, 2020.

On behalf of the Commission,

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2020–03262 Filed 2–19–20; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201332.

Agreement Name: Maersk/MSC/SML Cooperative Working Agreement.

Parties: Maersk A/S; Mediterranean Shipping Company S.A.; and SM Line Corporation.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes the parties to operate a vessel string in the trade between ports in China and South Korea on the one hand and ports on the Pacific Coast of the United States. It also authorizes the parties to exchange space on the jointly operated string for space on other specified strings in the Trade, and to charter space on specified services in the Trade.

Proposed Effective Date: 2/12/2020.

Location: *https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27468.*

Dated: February 14, 2020.

Rachel Dickon,

Secretary.

[FR Doc. 2020–03347 Filed 2–19–20; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 5, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Russell Alexander, Dallas, Texas; Brian Applegate, Pittsburg, Texas; Alex Castro, Carrollton, Texas; Daniel Castro, Gilmer, Texas; Edward Castro, Farmers Branch, Texas; Kent Martin, Longview, Texas; Mark Richardson, Bogata, Texas; and Paul Sewell, Pittsburg, Texas*; as members of a group acting in concert, to acquire voting shares of Daingerfield Holding Company and thereby indirectly acquire voting shares of Texas Heritage National Bank, both of Daingerfield, Texas.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Sam Blackard, Independence, Kansas*; to acquire voting shares of First Howard Bankshares, Inc., and thereby indirectly acquire voting shares of Peoples State Bank, both of Cherryvale, Kansas, and to be approved as a member acting in concert with the Blackard Family Control Group.

Board of Governors of the Federal Reserve System, February 14, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–03365 Filed 2–19–20; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Board Member Meeting

77 K Street NE, 10th Floor, Washington, DC 20002

February 24, 2020, 8:30 a.m., Telephonic

Open Session

1. Approval of the Minutes of the January 27, 2020 Board Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance
   (c) Legislative Report
3. Quarterly Reports
   (d) Metrics
4. Office of External Affairs Annual Report
5. Omni Audit Report
6. Annual FISMA Audit Results

Closed Session

Information covered under 5 U.S.C. 552b (c)(4), (c)(9)(b), and (c)(10).

Contact Person for More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: February 13, 2020.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–03269 Filed 2–19–20; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its ''Fair Credit Reporting Risk-Based Pricing Regulations'' (''Risk-Based Pricing Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the risk-based pricing provisions (subpart H) of the CFPB's Regulation V regarding other entities. The current clearance expires on July 31, 2020.

DATES: Comments must be filed by April 20, 2020.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Risk-Based Pricing Rule, PRA Comment, P145403,'' on your comment and file your comment online at *https://www.regulations.gov,* by following the instructions on the web-

based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Ave., NW, Room CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fair Credit Reporting Risk-Based Pricing Regulations, 16 CFR 640.

OMB Control Number: 3084–0145.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 7,950,000.

Estimated Annual Labor Costs: $149,062,500.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was enacted on July 21, 2010.[1] The Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the risk-based pricing provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3] After the enactment of the Dodd-Frank Act, the FTC retains rulemaking authority for its Risk-Based Pricing Rule (16 CFR 640) solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[4] The FTC shares enforcement authority with the CFPB for provisions of Regulation V subpart C (12 CFR 1022.21) that apply to entities other than motor vehicle dealers described above.

The Risk-Based Pricing Rule and the CFPB's Regulation V require that a creditor provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.[5] Additionally, these provisions require disclosure of credit scores and information relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

Under the PRA, 44 U.S.C. 3501–3521, the FTC is requesting that OMB renew the clearance (OMB Control Number 3084–0145) for the PRA burden associated with the Rule. The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Burden Statement

The Commission estimates that approximately 168,000 entities are covered by the FTC and CFPB Rules,[6] including 97,000 motor vehicle dealers that are subject to exclusive FTC jurisdiction.[7] The FTC assumes the full burden for the motor vehicle dealers subject to its exclusive jurisdiction and shares burden for the remaining entities subject to both CFPB and FTC enforcement authority. Accordingly, as an analytical framework, the FTC estimates burden pertaining to respondents over which both agencies have shared enforcement authority, divides the resulting total by one-half to reflect the FTC's shared burden, and adds to the resulting subtotal the estimated burden for motor vehicle dealers over which the FTC retains exclusive rulemaking and enforcement authority.

This yields a total of 132,500 respondents for whom the FTC accounts for burden (97,000 motor vehicle dealers plus one-half (*i.e.,* 35,500) of the remaining 71,000 entities subject to shared FTC–CFPB jurisdiction). The FTC estimates that covered entities spend approximately 60 hours per year to comply with the Rule's requirements. As a result, the FTC estimates that the total burden hours attributable to FTC requirements is 7,950,000 hours (132,500 respondents × 60 hours).

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use correspondence clerks, at a mean hourly wage of $18.75,[8] to modify and distribute notices to consumers, for a cumulative labor cost total of $149,062,500.

The FTC believes that the FTC and CFPB rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.,* offices and computers) for the information collections discussed above.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before APRIL 20, 2020.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 20, 2020. Write ''Risk-Based Pricing Rule, PRA Comment, P145403'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment, including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

[1] Pub. L. 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, § 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, § 1062.

[4] *See* Dodd-Frank Act §§ 1029 (a), (c).

[5] 16 CFR 640.3–640.4; 12 CFR 1022.72–1022.73.

[6] *See http://www.naics.com/search.htm* (categories of covered entities include retail, motor vehicle dealers, consumer lenders, and utilities. The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. See 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the Credit Union National Association for the number of non-federal credit unions. *See https://www.ncua.gov/Legal/Documents/Reports/annual-report-2015.pdf.*

[7] This total is based on estimates that there are 54,753 franchise/new car and independent/used car dealers in the U.S., as well as 3,876 recreational vehicle dealers, 11,034 boat dealers, and 27,336 ATV/Other Motor Vehicle Dealers. These figures are based on estimates by the National Automobile Dealers Association and the National Independent Automobile Dealers Association, *see NADA Data 2018: Annual Report; NIADA.com,* as well as data from the NAICS Association, *see https://www.naics.com/six-digit-naics/?code=4445.*

[8] *See* Bureau of Labor Statistics, Occupational Employment and Wages News Release, May 2018, Table 1, ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018,'' at: *https://www.bls.gov/news.release/ocwage.htm.*

If you file your comment on paper, write ''Risk-Based Pricing Rule, PRA Comment, P145403'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 20, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2020–03371 Filed 2–19–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–19BPL]

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 Aerosols from cyanobacterial blooms: Exposures and health effects in a highly exposed population, 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 19, 2019 to obtain comments from the public and affected agencies. CDC received 162 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

Aerosols from cyanobacterial blooms: Exposures and health effects in a highly exposed population—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Algal toxins from cyanobacterial harmful algal blooms (CyanoHABs) include some of the most potent natural chemicals. People and animals are at risk for exposure to toxins produced by CyanoHABs in recreational waters, drinking water sources, or in improperly treated water used for medical purposes such as renal dialysis. Additional potential exposure sources include contaminated dietary supplements or fish harvested from lakes with ongoing CyanoHABs.

Although outbreaks of human illness associated with CyanoHABs were sporadically recorded for decades, information about clinical signs and symptoms from cyanobacterial toxin poisonings is primarily from animal poisonings and laboratory studies. The primary effects include acute hepatotoxicity, acute neurotoxicity, gastrointestinal symptoms, and respiratory, dermatologic, and allergic reactions.

A significant source of cyanobacterial toxin exposure is recreational use of contaminated fresh water bodies because large populations are likely to be exposed and toxins may occur in high concentrations. In the United States, the U.S. Environmental

Protection Agency (EPA) provided guidance, but not regulations, on acceptable levels of the cyanobacterial toxins, microcystins and cylindrospermopsin, in drinking and recreational waters. Data from epidemiologic studies designed to evaluate the associations among environmental cyanobacteria toxin concentrations, human biomarkers of cyanobacteria toxin exposure, and health symptoms are needed to develop more specific exposure guidelines.

In addition to cyanobacterial toxins, other chemicals produced by cyanobacteria, such as geosmin and methylisoborneal (MIB), may be present in aerosols generated during a CyanoHAB. Geosmin and MIB produce a musty odor and taste in water that is noticeable at very low concentrations. CyanoHABs may present additional health risks as they die off and release hydrogen sulfide and methane into the air.

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), requests a three-year Paperwork Reduction Act (PRA) clearance for a new information collection request titled ''Aerosols from cyanobacterial blooms: exposures and health effects.'' NCEH is authorized to conduct research under the Public Health Service Act, Section 301, ''Research and investigation,'' (42 U.S.C. 241). We will conduct a cohort study of 200 people highly exposed to CyanoHABs in Florida. We define ''highly exposed'' as those exposed because of their occupation (*e.g.,* lock gate keepers, fishing guides) and those exposed because they live on a canal or river and spend at least two hours outside on most days.

Bloom composition and concentrations of toxins can vary over time during a bloom and CDC is interested in not only exposure, but also how exposure varies as the blooms develop, mature, and die off. We cannot predict when or where a bloom may occur. Thus, we will work closely with the Florida Department of Environmental Protection to identify when a bloom develops. Once a bloom is verified, we will initiate the study (*i.e.,* recruit and enroll participants) in the area affected by the bloom. We will collect data on five study days for each participant during the bloom season (approximately March–November). The estimated annual burden requested is 1,273 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Interested community members	Screening/Baseline Survey	84	1	15/60
Eligible study respondents	Symptom Survey	67	10	15/60
Eligible study respondents	Record of Time Spent Outdoors	67	5	10/60
Eligible respondents	Provide Blood Specimen	67	3	15/60
Eligible respondents	Provide Specimens (urine, nasal swabs, lung function test).	67	10	1
Eligible respondents	Be Outfitted with Personal Air sampler	67	5	45/60
Eligible respondents	Provide Fish (if respondent went fishing and caught fish).	67	5	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–03343 Filed 2–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0997]

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 Standardized National Hypothesis Generating Questionnaire 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 October 18, 2019 to obtain comments from the public and affected agencies. CDC received one non-substantive public 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

Standard National Hypothesis Generating Questionnaire (OMB Control No. 0920–0997, Exp. 02/29/2020)—Revision—National Center for Emerging and Zoonotic Infectious Diseases

(NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is estimated that each year roughly one in six Americans get sick, 128,000 are hospitalized, and 3,000 die of foodborne diseases, CDC and partners ensure rapid and coordinated surveillance, detection, and response to multistate outbreaks, to limit the number of illnesses, and to learn how to prevent similar outbreaks from happening in the future.

Conducting interviews during the initial hypothesis-generating phase of multistate foodborne disease outbreaks presents numerous challenges. In the U.S. there is not a standard, national form or data collection system for illnesses caused by many enteric pathogens. Data elements for hypothesis generation must be developed and agreed upon for each investigation. This process can take several days to weeks and may cause interviews to occur long after a person becomes ill.

CDC requests a revision to this project to collect standardized information, called the Standardized National Hypothesis-Generating Questionnaire, from individuals who have become ill during a multistate foodborne disease event. Since the questionnaire is designed to be administered by public health officials as part of multistate hypothesis-generating interview activities, this questionnaire is not expected to entail significant burden to respondents.

The Standardized National Hypothesis-Generating Core Elements Project was established with the goal to define a core set of data elements to be used for hypothesis generation during multistate foodborne investigations. These elements represent the minimum set of information that should be available for all outbreak-associated cases identified during hypothesis generation. The core elements would ensure that similar exposures would be ascertained across many jurisdictions, allowing for rapid pooling of data to improve the timeliness of hypothesis-generating analyses and shorten the time to pinpoint how and where contamination events occur.

The Standardized National Hypothesis Generating Questionnaire was designed as a data collection tool for the core elements, to be used when a multistate cluster of enteric disease infections is identified. The questionnaire is designed to be administered over the phone by public health officials to collect core element data from case-patients or their proxies. Both the content of the questionnaire (the core elements) and the format were developed through a series of working groups comprised of local, state, and federal public health partners.

Since the last revision of the SNHGQ in 2016, ORPB has investigated over 700 multistate foodborne and enteric clusters of infection involving over 26,000 ill people. Of which, an outbreak vehicle has been identified in 200 of these investigations. These outbreaks have led to over 50 recalls and countless regulatory actions that have removed millions of pounds of contaminated vehicles out of commerce. In almost all instances, the SNHGQ or iterations of the SNHGQ have been instrumental in the successful investigation of these outbreaks. The questionnaire has allowed investigators to more efficiently and effectively interview ill persons as they are identified. Because these exposures are captured in a common, standard format, we have been able to share and analyze data rapidly across jurisdictional lines. Faster interview response and analysis times have allowed for more rapid epidemiologic investigation and quicker regulatory action, thus helping to prevent thousands of additional illnesses from occurring and spurring industry to adopt and implement new food safety measures in an effort to prevent future outbreaks.

The total estimated annualized burden for the Standardized National Generating Questionnaire is 3,000 hours (approximately 4,000 individuals identified during the hypothesis-generating phase of outbreak investigations with 45 minutes/response). 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)
Ill individuals identified as part of an outbreak investigation.	Standardized National Hypothesis Generating Questionnaire	4,000	1	3,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–03342 Filed 2–19–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Child Support Enforcement Direct Funding Request: 45 CFR 309-Plan (OMB #0970–0218)

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS.

ACTION: Request for Public Comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting a 3-year extension of the 45 CFR 309-Plan (OMB #0970–0218, expiration 3/21/2020). There are no changes requested to this form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn:

Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that, in order to receive funding for a Tribal IV–D program a Tribe or Tribal organization must submit a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity; establishing, modifying, and enforcing support orders; and locating noncustodial parents. The plan is required for all Tribes requesting funding; however, once a Tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a Tribe makes changes to its title IV–D program. If a Tribe or Tribal organization intends to make any substantial or material changes, a Tribal IV–D plan amendment must be submitted for approval. Tribes and Tribal organizations must have an approved plan and submit any required plan amendments in order to receive funding to operate a Tribal IV–D program. This paperwork collection activity is set to expire in March 2020.

Respondents: Tribes and Tribal Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
45 CFR 309-Plan	60	1	120	7,200
45 CFR 309-New Plan	2	1	480	960

Estimated Total Annual Burden Hours: 8,160

Authority: 45 CFR 309.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–03354 Filed 2–19–20; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0626]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pulmonary-Allergy Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on April 21, 2020, from 8 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Avenue, Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–0626. The docket will close on April 20, 2020. Submit either electronic or written comments on this public meeting by April 20, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 20, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 20, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before April 7, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–0626 for ''Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss supplemental new drug application (sNDA) 209482/S–008, for TRELEGY ELLIPTA, a fixed dose combination (fluticasone furoate, umeclidinium, and vilanterol inhalation powder (FF/UMEC/VI)) oral inhalation, submitted by GlaxoSmithKline, for the following proposed labeling claim: Reduction in all-cause mortality in patients with chronic obstructive pulmonary disease (COPD). The focus of the discussion will be on the efficacy data submitted to support the proposed labeling claim, including the results from the Informing the Pathway of COPD Treatment (IMPACT) trial and the influence of inhaled corticosteroids (ICS) withdrawal on the results.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 7, 2020, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 30, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 31, 2020.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03410 Filed 2–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0493]

Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Medical Imaging Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on April 23, 2020, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2020–N–0493. The docket will close on April 22, 2020. Submit either electronic or written comments on this public meeting by April 22, 2020. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 22, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 22, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before April 9, 2020, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate. You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal*: *https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–0493 for ''Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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: Yinghua Wang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *MIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute

modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application 212123, flortaucipir F18 intravenous injection, a radioactive diagnostic agent, submitted by Avid Radiopharmaceuticals, a wholly owned subsidiary of Eli Lilly and Company, for positron emission tomography imaging of the brain to estimate the density and distribution of aggregated tau neurofibrillary tangles of Alzheimer's disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 9, 2020, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 1, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 2, 2020.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Yinghua Wang (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03424 Filed 2–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4533]

Compounding Animal Drugs From Bulk Drug Substances; Draft Guidance for Industry; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice of availability that published in the **Federal Register** on November 20, 2019. In that notice, FDA requested comments on the draft guidance for industry (GFI) #256 entitled ''Compounding Animal Drugs from Bulk Drug Substances.'' FDA is reopening the comment period to update comments and to receive any new information.

DATES: FDA is reopening the comment period on the document published November 20, 2019 (84 FR 64085). Submit either electronic or written comments on the draft guidance by June 17, 2020, to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–4533 for ''Compounding Animal Drugs From Bulk Drug Substances.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eric Nelson, Division of Compliance (HFV–230), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7001, *cvmcompliance@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 2019, FDA published a notice announcing the availability of draft GFI #256 entitled ''Compounding Animal Drugs From Bulk Drug Substances'' with a 90-day comment period. We requested comments on the draft guidance with respect to animal drug compounding from bulk drug substances under certain circumstances when no other medically appropriate treatment option exists.

Interested persons were originally given until February 18, 2020, to comment on the draft guidance.

The Agency has received several requests to allow interested persons additional time to comment. The requests conveyed concern that the current 90-day comment period does not allow sufficient time to develop a comprehensive response.

FDA has considered the requests and is reopening the comment period for the notice of availability for 120 days, until June 17, 2020. The Agency believes that a 120-day reopening allows adequate time for interested persons to submit comments.

Dated: February 13, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03312 Filed 2–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5607]

Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled ''Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics.'' This guidance expands upon, consolidates, and supplements the recommendations on nonclinical immune system assessments provided across multiple guidance documents, most notably the International Conference on Harmonization (ICH) guidance for industry ''S8 Immunotoxicity Studies for Human Pharmaceuticals.'' The topics covered include various aspects of immune suppression, modulation, and stimulation. This guidance replaces the withdrawn guidance entitled ''Immunotoxicology Evaluation of Investigational New Drugs.''

DATES: Submit either electronic or written comments on the draft guidance by April 20, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5607 for ''Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: David McMillan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6387, Silver Spring, MD 20993, 240–402–1009; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics.'' This guidance provides consistent recommendations for the nonclinical assessments of immune endpoints and supplements the recommendations provided in other guidances, most notably the ICH guidance for industry ''S8 Immunotoxicity Studies for Human Pharmaceuticals.'' This guidance replaces the withdrawn guidance entitled ''Immunotoxicology Evaluation of Investigational New Drugs'' issued November 1, 2002 (67 FR 66647). The topics addressed include multiple aspects of immune suppression, modulation, and stimulation, including carcinogenicity assessment, dermal sensitization, adjuvanted vaccine development, and developmental and juvenile animal studies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. 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 information collection has been approved under OMB control numbers 0910–0001 and 0910–0014.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics,* or *https://www.regulations.gov.*

Dated: February 11, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–03426 Filed 2–19–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Notice of Committee Establishment, Notice of Intent To Convene, and Call for Nominations for the NIH Human Fetal Tissue Research Ethics Advisory Board for Fiscal Year 2020

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the establishment of, and intent to convene, the National Institutes of Health (NIH) Human Fetal Tissue Research Ethics Advisory Board—FY 2020 (Ethics Board or Board), as authorized by section 492A of the Public Health Service (PHS) Act, as amended. HHS is soliciting nominations of individuals for appointment to the Ethics Board for fiscal year 2020. Nominations for qualified individuals for appointment to the Ethics Board are currently being accepted.

DATES: Nominations must be received no later than 5:00 p.m. ET 30 days after the publication of this **Federal Register** notice.

ADDRESSES: Nomination packages must be submitted to the Executive Secretary, NIH Human Fetal Tissue Research Ethics Advisory Board—FY 2020, Office of Science Policy, NIH, 6705 Rockledge Drive, Suite 750 Bethesda, MD 20892. Federal Express, Airborne, UPS, etc., mail delivery should be addressed to Executive Secretary, NIH Human Fetal Tissue Research Ethics Advisory Board—FY 2020, Office of Science Policy, NIH, at the above address, or sent via email to: *SciencePolicy@od.nih.gov*

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Cari Young, Office of Science Policy, 6705 Rockledge Drive, Suite 750 Bethesda, MD 20892, Telephone: 301–496–9838, or *SciencePolicy@od.nih.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 492A of the Public Health Service (PHS) Act, 42 U.S.C. 289a–1, as amended, and in accordance with the policy announced on June 5, 2019, the Secretary announces (1) his

determination that an advisory board should be convened to recommend whether, with respect to research involving human fetal tissue (HFT) proposed in NIH grant and cooperative agreement applications and R&D contract proposals, described in the NIH Guide Notice NOT–OD–19–128, the Secretary should withhold funds or not withhold funds because of ethical considerations; (2) his intent to convene such an advisory board; and (3) the establishment of the NIH Human Fetal Tissue Ethics Advisory Board—FY 2020. NIH Human Fetal Tissue Ethics Advisory Board—FY 2020 is governed by the Federal Advisory Committee Act (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The number of meetings to be held by the Board will depend on the number of relevant NIH grant and cooperative agreement applications and R&D contract proposals pending the Board's consideration. Meetings will be open to the public except as determined otherwise by the Secretary in accordance with subsection (c) of section 552b of Title 5 U.S.C. Notice of all meetings will be given to the public.

In accordance with section 492A(5)(B)(ii) of the PHS Act, no later than 180 days after the date on which this notice is published in the **Federal Register**, the Board will submit to the Secretary, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor and Pensions of the Senate, a report describing the findings of the Board regarding the project(s) of research involved and recommendations regarding whether the Secretary should or should not withhold funds for the project(s). As required by section 492A(b)(5)(K) of the PHS Act, the Ethics Board will terminate 30 days after the date on which the required report is submitted to the Secretary, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor and Pensions of the Senate.

Notice of Establishment: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the Secretary of Health and Human Services (HHS), announces the establishment of the NIH Human Fetal Tissue Research Ethics Advisory Board—FY 2020, as authorized by section 492A of the Public Health Service (PHS) Act, 42 U.S.C. 289a–1, as amended.

The Ethics Board will advise, consult with, and make recommendations to, the Secretary of Health and Human Services (Secretary) regarding the ethics of research involving human fetal tissue (HFT) proposed in NIH grant and cooperative agreement applications and R&D contract proposals, described in the NIH Guide Notice NOT–OD–19–128. Recommendations will address whether the Secretary should withhold funds or not withhold funds from a proposed project because of ethical considerations. In providing advice and recommendations on these matters, the Ethics Board will consider, among other things, the use of alternative models, and review and verify the core ethical principles and procedures used in the process to obtain written voluntary informed consent for the donation of the tissue. The ethical considerations the Ethics Board should consider are those related to whether the nature of the research involved is such that it is unethical to conduct or support the research.

Notice of Intent To Convene: Consistent with section 492A of the PHS Act, this announcement outlines the intention of the HHS Secretary to convene the Ethics Board and solicits nominations for the individuals who should be considered for appointment to the Board. The Secretary will consider such recommendations in making appointments to the Board.

Call for Nominations: The Board will be composed of 15 individuals who are not federal employees. Section 492A(b)(5)(C) of the PHS Act establishes certain requirements for the composition of the Board. The appointed members of the Board will include no fewer than one attorney; no fewer than one ethicist; no fewer than one practicing physician; and no fewer than one theologian. No fewer than one-third, and no more than one-half of the appointed members will be scientists with substantial accomplishments in biomedical or behavioral research.

Interested individuals may self-nominate or be nominated by another individual or organization. The following information may be included in the package of materials submitted for each individual being nominated for consideration: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* the specific attributes, perspectives, and/or skills the individual possesses that would benefit the workings of the Ethics Board), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee; (3) the name, address, daytime telephone number, and email address at which the nominator can be contacted; (4) a current copy of the nominee's curriculum vitae; and (5) the category of Board member the nominee would fill (*i.e.,* attorney, ethicist, practicing physician, theologian, or scientist with substantial accomplishments in biomedical or behavioral research). Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

Dated: February 12, 2020.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–03302 Filed 2–19–20; 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; ZAI1–EC–D–M1, NIAID Research Education Program (R25) Mar 31, 2020.

Date: March 31, 2020.

Time: 10:00 a.m. to 2:00 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: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institute of Health, 5601 Fishers Lane, Room 3G62A, Bethesda, MD 20892, (240) 669–5081, *ecohen@niaid.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: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03334 Filed 2–19–20; 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 Clinical Trail Planning Grant (R34 Clinical Trail Not Allowed) and Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: March 11, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31B, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, 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, Room 3G31B, Rockville, MD 20892, (240) 669–5060, *james.snyder@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: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03335 Filed 2–19–20; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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; ZAI1 EC–A–C1, NIH/NIAID 059 (Diagnostics to Enable Malaria and Neglected Tropical Diseases (NTDs) Elimination), Mar 19, 2020.

Date: March 19, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institute of Health, 5601 Fishers Lane, Room 3G62A, Bethesda, MD 20892, (240) 669–5081, *ecohen@niaid.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: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03336 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–DA–20–026: Targeting Inflammasomes in Substance Abuse and HIV.

Date: March 12, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: March 17–18, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics, and Assay Development.

Date: March 18–19, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–8254, *john.laity@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BRAIN Initiative: Targeted BRAIN Circuits Projects.

Date: March 18–19, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW, Washington, DC 20005.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.
Date: March 18, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–19–008: NIH Director's Early Independence Award Review.
Date: March 18–19, 2020.
Time: 8:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott at Metro Center, 775 12th Street NW, Washington, DC 20005.
Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering, Surgery, Anesthesiology, and Trauma.
Date: March 18, 2020.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Donald Scott Wright, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–8363, *wrightds@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Small Business Review.
Date: March 18–19, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Blood-Brain Barrier, Neurovascular System and CNS Therapeutics.
Date: March 18, 2020.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–030: HIV-associated Non-Communicable Diseases Research at Low- and Middle-Income Country Institutions.
Date: March 18, 2020.
Time: 11:00 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Shinako Takada, Ph.D., MS, BS Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9448, *shinako.takada@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neural Trauma and Cerebrovascular Disorders.
Date: March 18, 2020.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict Applications in Child Psychopathology and Developmental Disabilities.
Date: March 18, 2020.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Oscillatory Patterns of Gene Expression in Aging and Alzheimer's Disease.
Date: March 18, 2020.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition and Perception.
Date: March 18, 2020.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, *moraschkc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Interpersonal Processes in ADRD.
Date: March 18, 2020.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Tasmeen Weik, DRPH, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, 301–827–6480, *weikts@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genes, Genomes, and Genetics.
Date: March 18, 2020.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03288 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Review.
Date: February 24, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.
Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *mirahamed.hossain@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.
Date: February 27–28, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Los Angeles Airport Marriott, 5855 West Century Blvd., Los Angeles, CA 90045.
Contact Person: Joel A. Saydoff, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A.
Date: March 2–3, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bourbon Orleans Hotel, 717 Orleans Street, New Orleans, LA 70116.
Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 402–0288, *natalia.strunnikova@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Diversity K01 and K22 Application Review.
Date: March 2, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NSD–B Conflict SEP.
Date: March 3, 2020.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *joel.saydoff@nih.gov.*

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.
Date: March 5–6, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Seattle Hotel, 515 Madison Street, Seattle, WA 98104.
Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NSC Building, Bethesda, MD 20892, 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.
Date: March 5–6, 2020.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301 451–2854, *li.jia@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.
Date: March 10, 2020.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, Neuroscience Center Building (NSC), 6001 Executive Blvd., Rockville, MD 20852 (Virtual Meeting).
Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/NEUROSCIENCE CENTER, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Circuit Programs Review.
Date: March 11–13, 2020.
Time: 5:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesdan Hotel Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute of Neurological Disorders and Stroke, 6001 Executive Blvd., Suite 3208, Rockville, Md 20852, 301–496–3755, *natalia.strunnikova@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Centers Without Walls for Collaborative Research in the Epilepsies.
Date: March 13, 2020.
Time: 8:00 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *Ana.Olariu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Cell Repository review.
Date: March 16, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Blvd., Rockville, MD 20852.
Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special

Emphasis Panel; Translational Neural, Brain, and Pain Relief Devices.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Diana M. Cummings, Bs, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, NIH NSC, 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, *cummingsdi@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NIH Blueprint for Neuroscience R25 Program on Translational Devices.

Date: March 20, 2020.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Ave., North Bethesda, MD 20852.

Contact Person: Diana M. Cummings, Bs, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, NIH NSC, 6001 Executive Blvd., Suite 3208, Bethesda, MD 20892, *cummingsdi@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03331 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, Cellular, Molecular and Integrative Reproduction Study Section, February 20, 2020, 10:00 a.m. to February 20, 2020, 12:00 p.m., Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314 which was published in the **Federal Register** on January 27, 2020, 85 FR 4672.

Meeting is being cancelled.

Dated: February 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03286 Filed 2–19–20; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: February 27–28, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Amir E. Zeituni, Ph.D., Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, RM 3G51, Rockville, MD 20852–9823, 301–496–2550, *amir.zeituni@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03330 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Development of Clinical Outcome Assessments for Clinical Trials in Substance Use Disorders as FDA-qualified Drug Development Tools (U01 Clinical Trial Optional).

Date: March 6, 2020.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center (NSC), Building 6001 Executive Boulevard, Room 4235, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4235, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Workshops on the Use of Adolescent Brain Cognitive Development (ABCD) Data (R25 Clinical Trial Not Allowed).

Date: March 16, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center (NSC) Building, 6001 Executive Boulevard, Room 4229, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 4245, Rockville, MD 20852, 301–435–1426, *mcguireso@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Research Networks for the Study of Recovery Support Services for Persons Treated with Medications for Opioid Use Disorder (R24 Clinical Trial Optional).

Date: March 17, 2020.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center (NSC) Building, 6001 Executive Boulevard, Room 4235, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room

4235, MSC 9550, Bethesda, MD 20892–9550, 301–827–5819, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03333 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Microbial Vaccine Development.

Date: March 12, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Topics Non-HIH Microbial Vaccine Development.

Date: March 12, 2020.

Time: 5:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 17–190: Maximizing Investigators' Research Award for Early Stage Investigators (R35).

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Inna Gorshkova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1784, *gorshkoi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Health Informatics.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-Infective Therapeutics.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bidyottam Mittra, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20894, 301–435–0000, *bidyottam.mittra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, 301–435–1743, *margaret.chandler@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, HIV Immunopathogenesis and Vaccine Development Study Section.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Fogarty Global Brain Disorders.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavillion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exploration of Antimicrobial Therapeutics and Resistance.

Date: March 19–20, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: March 19, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Yunshang Piao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6184, Bethesda, MD 20892, 301.402.8402, *piaoy3@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electronic Nicotine Delivery Systems: Basic Mechanisms of Health Effects—PAR Panel.

Date: March 19–20, 2020.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Clinical Care Management and Informatic Approaches for Health Care Delivery.
Date: March 19, 2020.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Secondary Analyses of Existing Datasets of Tobacco Use and Health.
Date: March 19, 2020.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03285 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Retinal Degeneration, Ocular Infections and Other Eye Diseases.
Date: March 11, 2020.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5205, MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.
Date: March 16, 2020.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: AIDS and AIDS-Related Applications.
Date: March 17, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03293 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, NIH Research Enhancement Award (AREA and REAP) (R15), which was published in the **Federal Register** on February 11, 2020, 85 FR 7773.

The meeting start date is being changed to 4/23/2020 start time 12:00 p.m. and ending 4/24/2020 5:00 p.m. The location remains the same. The meeting is closed to the public.

Dated: February 14, 2020.

Natasha M. Copeland,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03341 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapy and Biology SBIR/STTR.
Date: March 10–11, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small

Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Aurea D De Sousa, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, 301–827–6829, *aurea.desousa@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immuno-Oncology Research.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory, Vision and Low Vision Technologies.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry and Chemical Biology.

Date: March 12–13, 2020.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–203: Inter-Organelle Communication in Cancer R01.

Date: March 12, 2020.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Pathophysiology of Neurological and Neurodegenerative Disorders.

Date: March 12, 2020.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflict: Topics on Metabolism.

Date: March 13, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Liliana N Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, 301–827–7609, *liliana.berti-mattera@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: *February 13, 2020.*

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03332 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review B SEP.

Date: March 10–12, 2020.

Time: 7:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn by Marriott Boston Harbor on Tudor, 34–44 Charles River Ave., Boston, MA 02129.

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: February 13, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03290 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Radiation Therapy and Biology SBIR/STTR.
Date: March 10–11, 2020.
Time: 8:00 a.m. to 5:00 p.m..
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m..
Agenda: To review and evaluate grant applications.
Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.
Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, 301–827–6829, *aurea.desousa@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: Immunology.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m..
Agenda: To review and evaluate grant applications.
Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.
Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.
Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immuno-Oncology Research.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory, Vision and Low Vision Technologies.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry and Chemical Biology.
Date: March 12–13, 2020.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David R. Jollie, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301)–435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–203: Inter-Organelle Communication in Cancer R01.
Date: March 12, 2020.
Time: 1:00 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Pathophysiology of Neurological and Neurodegenerative Disorders.
Date: March 12, 2020.
Time: 1:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics on Metabolism.
Date: March 13, 2020.
Time: 11:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Liliana N. Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, 301–827–7609, *liliana.berti-mattera@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 13, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–03289 Filed 2–19–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the

international land border in San Diego County, California, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas.

DATES: This determination takes effect on February 20, 2020.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, section 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, section 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors are areas of high illegal entry. In fiscal year 2019, the United States Border Patrol (''Border Patrol'') apprehended over 58,000 illegal aliens attempting to enter the United States between border crossings in the San Diego Sector. There were also over 300 drug-related events between border crossings in the San Diego Sector, through which Border Patrol seized over 3,300 pounds of marijuana, over 1,280 pounds of cocaine, over 293 pounds of heroin, over 3,985 pounds of methamphetamine, and over 107 pounds of fentanyl. In fiscal year 2019, Border Patrol apprehended over 35,000 illegal aliens attempting to enter the United States between border crossings in the El Centro Sector. There were also approximately 180 drug-related events between border crossings in the El Centro Sector, through which Border Patrol seized over 100 pounds of marijuana, over 60 pounds of cocaine, over 100 pounds of heroin, and over 2,600 pounds of methamphetamine. In fiscal year 2019, the Border Patrol apprehended over 68,000 illegal aliens attempting to enter the United States between border crossings in the Yuma Sector. There were also over 800 drug-related events between border crossings in the Yuma Sector, through which Border Patrol seized over 3,000 pounds of marijuana, over 33 pounds of heroin, over 1,186 pounds of methamphetamine, and over 50 pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 63,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. There were also over 1,200 drug-related events between border crossings in the Tucson Sector, through which Border Patrol seized over 59,000 pounds of marijuana, over 150 pounds of cocaine, over 155 pounds of heroin, over 2,700 pounds of methamphetamine, and over 12 pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 182,000 illegal aliens attempting to enter the United States between border crossings in the El Paso Sector. There were also over 400 drug-related events between border crossings in the El Paso Sector, through which the Border Patrol seized over 11,000 pounds of marijuana, over 137 pounds of cocaine, over 35 pounds of heroin, over 340 pounds of methamphetamine, and over two pounds of fentanyl. In fiscal year 2019, the Border Patrol apprehended over 57,000 illegal aliens attempting to enter the United States between border crossings in the Del Rio Sector. There were also over 146 drug-related events between border crossings in the Del Rio Sector, through which Border Patrol seized over 40 pounds of marijuana, over 15 pounds of cocaine, over 24 pounds of heroin, and over 195 pounds of methamphetamine. Additionally, San Diego County, California, Imperial County, California, Yuma County, Arizona, Pima County, Arizona, Santa Cruz County, Arizona, Cochise County, Arizona, Luna County, New Mexico, Doña Ana County, New Mexico, El Paso County, Texas, Val Verde County, Texas, and Maverick County, Texas, which are located in the Border Patrol Sectors identified above, have been identified as High Intensity Drug Trafficking Areas by the Office of National Drug Control Policy.

Due to the high levels of illegal entry of people and drugs within the Border Patrol Sectors identified above, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in such Sectors. Therefore, DHS will take immediate action to construct new pedestrian and secondary fencing and replace existing vehicle barriers and primary pedestrian and secondary fencing in the Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sectors. The segments within which such construction will occur are referred to herein as the ''project areas'' and are more specifically described in Section 2 below.

To support DHS's action under section 102 of IIRIRA, I requested that the Secretary of Defense, pursuant to 10 U.S.C. 284(b)(7), assist by constructing fence, roads, and lighting within the Border Patrol Sectors identified above in order to block drug smuggling corridors

across the international boundary between the United States and Mexico. The Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. 284(b)(7) and that the Department of Defense will provide such support in the project areas described in Section 2 below.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the Border Patrol's San Diego, El Centro, Yuma, Tucson, El Paso, and Del Rio Sector are areas of high illegal entry (the ''project areas'')—

Within the San Diego Sector:

- Starting approximately one and one-half (1.5) miles east of Border Monument 243 and extending east to the San Diego-Imperial County line;

Within the El Centro Sector:

- Starting at the San Diego-Imperial County line and extending east approximately 11 miles;

Within the Yuma Sector:

- Starting approximately three-quarters (.75) of a mile west of the Andrade Port of Entry and extending east to the Colorado River;
- Starting approximately five and one-half miles (5.5) miles south of the Morelos Dam and extending south and generally following the Colorado River for approximately seven and one-half (7.5) miles;
- Starting at the point where the Colorado River crosses the international border between the United States and Mexico and extending east to approximately Border Monument 201;

Within the Tucson Sector:

- Starting two (2) miles north and west of Border Monument 140 and extending south and east to approximately one and one-half (1.5) miles east of Border Monument 124;
- Starting approximately one (1) mile west of Border Monument 116 and extending east to approximately one mile (1) east of Border Monument 100;
- Starting at approximately Border Monument 98 and extending east for approximately 10 miles;
- Starting approximately one-half (0.5) of a mile west of the Naco Port of Entry and extending east to approximately Border Monument 92;
- Starting approximately one-half (0.5) of a mile west of Border Monument 91 and extending east for approximately 16 miles;
- Starting approximately one-half (0.5) of a mile east of Border Monument 83 and extending west for two (2) miles;
- Starting approximately one-half (0.5) of a mile west of Border Monument 74 and extending east to the Arizona-New Mexico state line;

Within the El Paso Sector:

- Starting at approximately Border Monument 33 and extending east for approximately three (3) miles;
- Starting at approximately Border Monument 24 and extending east to approximately Border Monument 20;
- Starting approximately two and one-half (2.5) miles west of Border Monument 4 and extending east to approximately one-half (0.5) of a mile east of Border Monument 3;
- Starting approximately one and one-quarter (1.25) miles east of Border Monument 3 and extending east to approximately Border Monument 2;
- Starting at approximately the New Mexico-Texas state line and generally following the International Boundary and Water Commission levee south and east for approximately two (2) miles;
- Starting approximately one-half (0.5) of a mile north and west of the Paso Del Norte Port of Entry and generally following the International Boundary and Water Commission levee east to approximately one-half (0.5) of a mile south and east of the Bridge of the Americas Port of Entry;
- Starting approximately one and one-half (1.5) miles south and east of the Bridge of the Americas Port of Entry and generally following the International Boundary and Water Commission levee south and east to approximately nine (9) miles south and east of the Tornillo Port of Entry;

Within the Del Rio Sector:

- Starting approximately two and one-half (2.5) miles north and west of the Del Rio Port of Entry and extending south and east for approximately three and one-half (3.5) miles; and
- Starting approximately one-half (0.5) mile south of the Eagle Pass II Port of Entry and extending north for approximately three (3) miles.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to all contracting actions associated with the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes and regulations, including any legal requirements of, deriving from, or related to the subject of, the following statutes and regulations: 10 U.S.C. 2304; 10 U.S.C. 2304c; 10 U.S.C. 2306a; 10 U.S.C. 2305(a)–(c), (e)–(f); Section 813 of Public Law 114–328, as amended by Section 822 of Public Law 115–91; 15 U.S.C. 657q; 48 CFR 17.205; 48 CFR 17.207; 10 U.S.C. 2305a(b)–(e); 48 CFR 22.404–5; and 48 CFR 28.102–1(c).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Dated: February 14, 2020.

Chad F. Wolf,

Acting Secretary of Homeland Security.

[FR Doc. 2020–03452 Filed 2–18–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N016; FXES11140400000–201–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by March 23, 2020.

ADDRESSES:

Reviewing Documents: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Submit a request for a copy of such documents to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).
- *Email: permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone), *karen_marlowe@fws.gov* (email), or 404–679–7081 (fax). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activities. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Application No.	Applicant	Species/numbers	Location	Activity	Type of take	Permit action
TE 56515D–0	Leslie Meade, Olympia, WA.	Virginia big-eared bat (*Corynorhinus townsendii virginianus*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), and Indiana bat (*Myotis sodalis*).	Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, North Carolina, Ohio, South Carolina, and Tennessee.	Presence/absence surveys	Capture with mist nets, handle, identify, band, radio-tag, and release.	New.
TE 56588D–0	Martin Melville, Marietta, GA.	*FISH:* Laurel dace (*Chrosomus saylori*), blue shiner (*Cyprinella* (=*Notropis*) *caerulea*), bluemask darter (*Etheostoma akatulo*), Etowah darter (*Etheostoma etowahae*), Okaloosa darter (*Etheostoma okaloosae*), duskytail darter (*Etheostoma percnurum*), Cherokee darter (*Etheostoma scotti*), Cumberland darter (*Etheostoma susanae*), trispot darter (*Etheostoma trisella*), boulder darter (*Etheostoma wapiti*), smoky madtom (*Noturus baileyi*), chucky madtom (*Noturus crypticus*), pygmy madtom (*Noturus stanauli*), amber darter (*Percina antesella*), goldline darter (*Percina aurolineata*), Conasauga logperch (*Percina jenkinsi*), snail darter (*Percina tanasi*), blackside dace (*Phoxinus cumberlandensis*) *MUSSELS:* Cumberland elktoe (*Alasmidonta atropurpurea*), Appalachian elktoe (*Alasmidonta raveneliana*), fat threeridge (*Amblema neisleri*), spectaclecase (*Cumberlandia monodonta*), fanshell (*Cyprogenia stegaria*), dromedary pearlymussel (*Dromus dromas*), Chipola slabshell (*Elliptio chipolaensis*), Altamaha spinymussel (*Elliptio spinosa*), purple bankclimber (*Elliptoideus sloatianus*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), yellow blossom (*Epioblasma florentina florentina*), tan riffleshell (*Epioblasma florentina walkeri*), upland combshell (*Epioblasma metastriata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma penita*), green blossom (*Epioblasma torulosa gubernaculum*), tubercled blossom (*Epioblasma torulosa torulosa*), snuffbox mussel (*Epioblasma triquetra*),turgid blossom (*Epioblasma turgidula*), tapered pigtoe (*Fusconaia burkei*), shiny pigtoe (*Fusconaia cor*), finerayed pigtoe (*Fusconaia cuneolus*), narrow pigtoe (*Fusconaia escambia*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), cracking pearlymussel (*Hemistena lata*), pink mucket (*Lampsilis abrupta*), finelined pocketbook (*Lampsilis altilis*), orangenacre (*Lampsilis perovalis*), shinyrayed pocketbook (*Lampsilis subangulata*), Alabama lampmussel (*Lampsilis virescens*), Carolina heelsplitter (*Lasmigona decorata*), birdwing pearlymussel (*Lemiox rimosus*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), Suwannee moccasinshell (*Medionidus walkeri*), ring pink (*Obovaria retusa*), littlewing pearlymussel (*Pegias fabula*), white wartyback (*Plethobasus cicatricosus*), orangefoot pimpleback (*Plethobasus cooperianus*), sheepnose mussel (*Plethobasus cyphyus*), clubshell (*Pleurobema clava*), southern clubshell (*Pleurobema decisum*), southern pigtoe (*Pleurobema georgianum*), Cumberland pigtoe (*Pleurobema gibberum*), Georgia pigtoe (*Pleurobema hanleyianum*), ovate clubshell (*Pleurobema perovatum*), rough pigtoe (*Pleurobema plenum*), oval pigtoe (*Pleurobema pyriforme*), fuzzy pigtoe (*Pleurobema strodeanum*), slabside pearlymussel (*Pleuronaia dolabelloides*), fat pocketbook (*Potamilus capax*), triangular kidneyshell (*Ptychobranchus greenii*), fluted kidneyshell (*Ptychobranchus subtentum*), rabbitsfoot (*Quadrula cylindrica cylindrica*), rough rabbitsfoot (*Quadrula cylindrica strigillata*), winged mapleleaf (*Quadrula fragosa*), Cumberland monkeyface (*Quadrula intermedia*), Appalachian monkeyface (*Quadrula sparsa*), pale lilliput (*Toxolasma cylindrellus*), Choctaw bean (*Villosa choctawensis*), rayed bean (*Villosa fabalis*),purple bean (*Villosa perpurpurea*), Cumberland bean (*Villosa trabalis*), and *CRAYFISH:* Nashville crayfish (*Orconectes shoupi*).	Florida, Georgia, North Carolina, South Carolina, and Tennessee.	Presence/absence surveys	Capture, handle, identify, and release.	New.
TE 61239D–0	Smithsonian National Zoo, Washington, DC.	Red wolf (*Canis rufus*)	Washington, D.C	Genome banking	Sperm collection and cryopreservation.	New.
TE 62026D–0	Catherine Haase, Austin Peay State University, Clarksville, TN.	Gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), and Indiana bat (*Myotis sodalis*).	Fort Campbell Army Base, Kentucky and Tennessee.	Assessment of bat community structure and habitat use.	Capture with mist nets, band, radio-tag, and release.	New.

TE 064740–2	Fort Stewart Fish and Wildlife Branch, Fort Stewart, GA.	Red-cockaded woodpecker (*Picoides borealis*), eastern indigo snake (*Drymarchon corais couperi*), frosted flatwoods salamander (*Ambystoma cingulatum*), and smooth coneflower (*Echinacea laevigata*).	Georgia	Population monitoring and management; surveys; and captive rearing trials.	Red-cockaded woodpecker: capture, band, construct and monitor artificial nest cavities and restrictors, and translocate; eastern indigo snake: capture, measure, weigh, and PIT-tag; frosted flatwoods salamander: capture with dip-nets and minnow traps, drift fences and buckets and collect larvae for captive rearing trials; smooth coneflower: remove and reduce to possession (collect) seeds for sowing on-site.	Renewal and amendment.
TE 66005D–0	Joseph T. Johnson, Todd, NC.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii ingens*), and Virginia big-eared bat (*Corynorhinus* (=*Plecotus*) *townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/absence surveys, habitat assessments, habitat use studies, population monitoring, and studies to evaluate the effectiveness of acoustic identification methods.	Enter hibernacula or maternity roost caves, capture with mist-nets or harp traps, handle, collect hair, fungal lift tape, swab, wing-punch, band, radio-tag, light-tag, PIT-tag, and salvage.	New.
TE 56746B–4	Joseph Johnson, Ohio University, Athens, OH.	Indiana bat (*Myotis sodalis*) and northern long-eared bat (*M. septentrionalis*).	Ohio	Migration study	Capture with harp-traps, band, and radio-tag.	Amendment.
TE 59318D–0	Marie Selby Botanical Gardens, Sarasota, FL.	*Harrisia* (=*Cereus*) *aboriginum* (=*gracilis*) (aboriginal prickly-apple)	J.N. ''Ding'' Darling National Wildlife Refuge, Sanibel, FL.	Genetic research and artificial propagation.	Remove and reduce to possession (collect) spines, areoles, and seeds.	New.
TE 65875D–0	William Pruitt, Roswell, GA.	*FISH:* blue shiner (*Cyprinella* (=*Notropis*) *caerulea*), bluemask darter (*Etheostoma akatulo*), relict darter (*Etheostoma chienense*), vermilion darter (*Etheostoma chermocki*), Etowah darter (*Etheostoma etowahae*), yellowcheek darter (*Etheostoma moorei*), watercress darter (*Etheostoma nuchale*), duskytail darter (*Etheostoma percnurum*), rush darter (*Etheostoma phytophilum*), Cherokee darter (*Etheostoma scotti*), Cumberland darter (*Etheostoma susanae*), trispot darter (*Etheostoma trisella*), boulder darter (*Etheostoma wapiti*), Cahaba shiner (*Notropis cahabae*), Cape Fear shiner (*Notropis mekistocholas*), smoky madtom (*Noturus baileyi*), pygmy madtom (*Noturus stanauli*), goldline darter (*Percina aurolineata*), Conasauga logperch (*Percina jenkinsi*), Roanoke logperch (*Percina rex*), snail darter (*Percina tanasi*), and blackside dace (*Phoxinus cumberlandensis*). *MUSSELS:* fat threeridge (*Amblema neislerii*), purple bankclimber (*Elliptoideus sloatianus*), shiny-rayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), and oval pigtoe (*Pleurobema pyriforme*).	Alabama, Georgia, Mississippi, North Carolina, Tennessee, and Virginia.	Presence/absence surveys	Capture, handle, identify, and release.	New.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Matthew Dekar,

Acting Assistant Regional Director, Ecological Services, South Atlantic, Gulf & Mississippi Basin Regions.

[FR Doc. 2020–03429 Filed 2–19–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120A2100DD/AABB003600/ A0T902020.999900.253G]

Comanche Nation; Amendment to Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the amendment to the Comanche Indian Tribe Liquor Control Ordinance. The liquor control ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol on Comanche trust lands in conformity with the laws of the State of Oklahoma where applicable and necessary. Although the amendment was adopted on August 3, 2019, it does not become effective until published in the **Federal Register**.

DATES: This ordinance shall be applicable on March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Lovin, Tribal Government Officer, Southern Plains Regional Office, Bureau of Indian Affairs, Post Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247–1534 or (405) 247–6673, Fax: (405) 247–1534; or Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On April 7, 2001, the Comanche Business Committee duly adopted the Comanche Indian Tribe Liquor Control Ordinance. The Comanche Tribe Liquor Control Ordinance was published in the **Federal Register** on October 25, 2001 at 66 FR 54022. On May 17, 2018, the Comanche Business Committee duly adopted an amendment to the Comanche Indian Tribe Liquor Control Ordinance which became effective July 19, 2019. The Amendment to the Comanche Tribe Liquor Control Ordinance was published in the **Federal Register** on June 19, 2019 at 84 FR 28580.

This notice is published in accordance with the delegated authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Comanche Nation Business Committee duly adopted the amendment to the Comanche Tribe Liquor Control Ordinance by Resolution 113–19 on August 3, 2019.

Dated: February 4, 2020.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

The Comanche Indian Tribe's Amended Liquor Control Ordinance shall read as follows:

The Comanche Indian Tribe Liquor Control Ordinance, Article VI. Licensing and Application, Section (2), as amended, shall read as follows:

(2) Application. Any person, eighteen (18) years of age and older, whether an enrolled member of the Comanche Tribe or another federally-recognized tribe or whether a non-member, may apply to the Liquor Control Board for a license to serve liquor. Any person, twenty-one (21) years of age and older, whether an enrolled member of the Comanche Tribe or another federally-recognized tribe or whether a non-member, may apply to the Liquor Control Board for a license to sell liquor.

Any person or entity applying for a license to sell or serve liquor within Comanche Indian Country must fill in the application provided for this purpose by the Comanche Indian Tribe and pay such application fee as may be set from time to time by the Business Committee. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor. No provision of this section shall be construed to permit any person under twenty-one (21) years of age to obtain a license to sell liquor.

[FR Doc. 2020–03430 Filed 2–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X 1109AF LLUT930000 L16100000.DR0000.LXSSJ0650000]

Notice of Availability of the Records of Decision and Approved Monument Management Plans for the Bears Ears National Monument Indian Creek and Shash Jáa Units, Utah

AGENCY: Bureau of Land Management, Interior; and Forest Service, USDA.

ACTION: ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) Canyon Country District Office and United States Forest Service (USFS) Manti-La Sal National Forest announce the availability of the Records of Decision (RODs) for the Approved Monument Management Plans (MMPs) for the Bears Ears National Monument (BENM) Indian Creek and Shash Jáa Units.

DATES: The Acting BLM State Director signed the ROD on February 6, 2020, which constitutes the final decision of the BLM and made the Approved MMPs take effect immediately. The Forest Supervisor for the USFS Manti-La Sal National Forest also signed the ROD for an amendment to the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan) on February 6, 2020. The Manti-La Sal's Forest Plan amendment for the Monument Management Plan for the Bears Ears National Monument, Shash Jáa Unit takes effect on March 23, 2020.

ADDRESSES: The RODs are available on the BLM ePlanning project website at *https://go.usa.gov/xVjXQ.* Click the ''Documents and Report'' link on the left side of the screen to find the electronic versions of these materials. Hard copies of the BLM ROD are available for public inspection at the Canyon Country District Office, 82 East Dogwood, Moab, Utah 84532, and Monticello Field Office, 365 North Main, Monticello, Utah 84535. Hard copies of the USFS ROD are available for public inspection at the Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501 and Monticello Ranger District, 496 East Central, P.O. Box 820, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: BLM: Jake Palma, Monument Manager, BLM Monticello Field Office, 365 North Main, P.O. Box 7, Monticello, Utah 84535; by telephone, (435) 587–1500; or

by email, *jepalma@blm.gov.* USFS: Kyle Beagley, Forest Planner, Supervisors Office, 599 West Price River Drive, Price, Utah 84501; by telephone, (435) 636–3504; or by email, *kyle.beagley@usda.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM's and USFS's Approved MMPs for the BENM Indian Creek (BLM) and Shash Jáa Units (BLM and USFS) identify goals, objectives, and management actions necessary for the proper care and management of the Monument objects and values on BLM- and USFS-administered lands identified in Proclamation 9558, as modified by Proclamation 9681. The BLM manages all 71,896 acres in the Indian Creek Unit, and 97,393 acres in the Shash Jáa Unit. The BLM's ROD/Approved MMPs amend the existing BLM Monticello Resource Management Plan (RMP) to remove the BENM from the Monticello RMP Decision Area and would replace the management from the Monticello RMP for the BLM-administered lands within the Monument. The USFS manages 32,587 acres in the Shash Jáa Unit and has issued a ROD amending the Forest Plan for the purpose of ensuring proper care and management of the ''object[s] of antiquity'' and ''objects of historic or scientific interest'' of the National Forest System lands in the Shash Jáa unit per the Approved MMPs.

The BLM, as the lead agency, and USFS, as a cooperating agency, developed the Approved MMPs in coordination with cooperating agencies, and using input from the public, stakeholder groups, State and local government entities, American Indian Tribes, and the BENM Advisory Committee. These plans provide for the proper care and management of the Monument's objects and values while allowing for multiple uses, including recreational uses. The BLM and USFS will continue to manage lands within the Monument pursuant to applicable legal authorities.

The BLM and USFS prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act to analyze the direct, indirect, and cumulative environmental impacts associated with the proposed action and the alternatives. Additionally, the agencies consulted with the United States Fish and Wildlife Service (USFWS) to meet the requirements in Section 7 of the Endangered Species Act (ESA). A Biological Opinion issued by the USFWS on September 23, 2019, determined that the Approved MMPs are not likely to jeopardize the continued existence of the species consulted on and are not likely to destroy or adversely modify designated critical habitat. The agencies also consulted with the Utah State Historic Preservation Office (SHPO) and consulting parties as part of the Section 106 review process under the National Historic Preservation Act (NHPA), which resulted in a finding of no adverse effect to historic properties. The SHPO concurred with this finding, and the Advisory Council on Historic Preservation subsequently determined that the BLM's no adverse effect finding was reasonable and adequately supported.

The formal public scoping process for the MMPs and EIS began on January 16, 2018, with the publication of a Notice of Intent in the **Federal Register** (83 FR 2181). On April 10, 2018, the USFS published a notice in the **Federal Register** (83 FR 15354) to identify potentially applicable planning rule provisions for the Forest Plan amendment and inform the public of the USFS's intent to adopt the BLM's EIS. The Notice of Availability (NOA) for the Draft MMPs/EIS was published on August 17, 2018 (83 FR 41111), which initiated a 90-day public comment period.

On July 26, 2019, the BLM published the NOA for the Proposed MMPs/Final EIS (84 FR 36118), initiating a 30-day protest period and a concurrent 60-day Governor's Consistency Review. In accordance with 36 CFR 219.59, the USFS waived its objections procedures and adopted the BLM's protest procedures. During the protest period for the Proposed MMPs, the BLM received 35,934 protest letters. All protests were resolved prior to the issuance of the RODs. For a full description of the issues raised during the protest period and how they were addressed, please refer to the BLM Protest Resolution Report, which is available online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.* The Governor of Utah reviewed the Proposed MMPs/Final EIS to identify any inconsistencies with State or local plans, policies, or programs; the BLM and USFS addressed the Governor's input in the RODs/Approved MMPs. Finally, in compliance with the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, the NOA for the Proposed MMPs/Final EIS announced a 60-day public comment period regarding the proposed closure of recreational target shooting at campgrounds, developed recreation sites, rock writing, and structural cultural sites within the BENM. After the protest period, target shooting comment period, government-to-government consultation, Section 106 (NHPA) and Section 7 (ESA) consultation, and Governor's consistency review, the BLM and USFS made minor modifications to the management actions in the Approved MMPs to clarify management actions. All of the changes are described in the Modifications and Clarifications (Section 3.1.2) of the ROD.

(Authority: 36 CFR 219.13, 36 CFR 219.16, 36 CFR 219.17, 40 CFR 1506.6 40 CFR 1506.10 and 43 CFR 1610.2)

Anita Bilbao,
Acting BLM State Director.
Ryan Nehl,
Forest Supervisor.

[FR Doc. 2020–03375 Filed 2–19–20; 8:45 am]
BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO310/L13400000/LXSIGEOT0000/20X/; OMB Control Number 1004–0132]

Agency Information Collection Activities; Geothermal Resource Leasing and Permitting, and Geothermal Resources Unit Agreements; Control Number 1004–0132

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 with revisions.

DATES: Interested persons are invited to submit comments on or before March 23, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the BLM at U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW, Room 2134LM, Washington,

DC 20240, Attention: Faith Bremner; or by email to *fbremner@blm.gov.* Please reference OMB Control Number 1004–0132 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rebecca Good by email at *rgood@blm.gov,* or by telephone at 307–251–3487.

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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 18, 2019 (84 FR 63673). No comments were received.

We are again soliciting comments on the 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. This ICR seeks authorization for the use of Form 3200–9 (Notice of Intent to Conduct Geothermal Resource Exploration Operations) by both the BLM and the U.S. Department of Agriculture, Forest Service (USFS).

Comments that you submit in response to this notice are a matter of public record. 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: The BLM uses the required information to collect information from those who wish to participate in the exploration, development, production, and utilization of geothermal resources. The BLM has authority to issue geothermal leases in BLM-managed lands, and in national forests and other lands administered by the USFS. In this ICR, the BLM is proposing to revise Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations. A respondent submits this form either to the BLM or to the USFS, depending upon which agency has surface-management jurisdiction. Upon receiving such a form, the relevant agency determines whether to grant a permit to conduct geophysical exploration activities for geothermal resources. Approval by the authorizing agency is required before any ground-disturbing activities beyond casual use may commence. At present, Form 3200–9 refers directly only to the BLM. The proposed revisions of the form would simplify its use by both agencies. The BLM is proposing that the remaining forms in this ICR be renewed without revision.

Title of Collection: Geothermal Resource Leasing and Permitting, and Geothermal Resources Unit Agreements.

OMB Control Number: 1004–0132.

Forms: 3200–9, 3203–1, 3260–2, 3260–3, 3260–4, and 3260–5.

Type of Review: Revision of a currently approved collection.

Description of Respondents: Businesses that wish to participate in the exploration, development, production, and utilization of geothermal resources on BLM-managed public lands, and lands managed by other Federal surface-management agencies.

Total Estimated Number of Annual Responses: 913.

Estimated Completion Time per Response: Varies from 1 to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,409.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, except for Form 3260–5, Monthly Report of Geothermal Operations, which is filed once a month.

Total Estimated Annual Nonhour Burden Cost: $84,985.

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.*)

Faith Bremner,

Bureau of Land Management, Senior Regulatory Analyst.

[FR Doc. 2020–03378 Filed 2–19–20; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X 1109AF LLUTP00000 L16100000.DR0000.LXSSJ0640000]

Notice of Availability of the Records of Decision and Approved Resource Management Plans for the Grand Staircase-Escalante National Monument and Kanab-Escalante Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) Paria River District Office announces the availability of the Records of Decision (RODs) for the Approved Resource Management Plans (RMPs) for the Grand Staircase, Kaiparowits, and Escalante Canyons units of the Grand Staircase-Escalante National Monument (GSENM) and the Federal lands excluded from the GSENM by Proclamation 9682, now identified as the Kanab-Escalante Planning Area (KEPA). The Department of the Interior (DOI) Acting Assistant Secretary, Land and Minerals Management, Casey Hammond, signed the RODs on January 31, 2020, which constituted the final decision of the DOI and made the Approved RMPs and two implementation-level route designations in GSENM effective immediately. The GSENM RMPs replace the GSENM Monument Management Plan (MMP) from 2000 for public lands within the GSENM boundary. The KEPA RMP replaces the 2000 GSENM MMP for public lands excluded from the monument boundary by Proclamation 9682.

ADDRESSES: The RODs are available on the BLM ePlanning project website at *https://go.usa.gov/xVCGJ.* Click the ''Documents & Reports'' link on the left side of the screen to find the electronic versions of these materials. Hard copies of the RODs are available for public inspection at the Kanab Visitor Center, 74 East Highway 89, Kanab, Utah 84741.

FOR FURTHER INFORMATION CONTACT: Harry Barber, Paria River District Manager, 669 S Hwy. 89A, Kanab, Utah 84741, phone (435) 644–1200 or email

BLM_UT_PRD@blm.gov. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: In conjunction with cooperating agencies, and using input provided by the public, stakeholder groups, State and local government entities, American Indian Tribes, and the Utah Resource Advisory Council, the BLM developed the Approved RMPs for the GSENM and the KEPA.

The GSENM includes three units: The 209,993-acre Grand Staircase Unit, the 551,034-acre Kaiparowits Unit, and the 242,836-acre Escalante Canyons Unit. The BLM's Approved RMPs for the Grand Staircase, Kaiparowits, and Escalante Canyons units of the GSENM identify goals, objectives, and management actions necessary for the proper care and management of the objects and values identified in Proclamation 6920, as modified by Proclamation 9682, while allowing for other appropriate uses, such as the ongoing management of recreation, grazing, and scientific research.

The KEPA encompasses 861,974 acres of public lands. The Approved RMP for the KEPA manages those lands for multiple use and sustained yield, including resource protection, consistent with the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), as amended. This plan allows for the future consideration of mineral leasing and development, balances off-highway vehicle travel with other resource uses, and makes public lands available for grazing while protecting natural and heritage resources.

The BLM, along with cooperating agencies, prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act for the GSENM and KEPA RMPs to analyze the direct, indirect, and cumulative environmental impacts associated with the proposed action and the alternatives.

In the future, the National Park Service (NPS), who cooperated with the BLM on preparation of the NEPA analysis, may adopt the EIS and prepare a separate decision related to livestock grazing for lands within the Glen Canyon National Recreation Area that are administered by the NPS. The RODs and Approved RMPs do not change management for the Glen Canyon National Recreation Area.

The BLM consulted with the U.S. Fish and Wildlife Service (USFWS) to meet the requirements of Section 7 of the Endangered Species Act (ESA). The USFWS issued a Biological Opinion on November 1, 2019 that determined that the Approved RMPs are not likely to jeopardize the continued existence of the species consulted on and are not likely to destroy or adversely modify designated critical habitat.

The BLM also consulted with the Utah State Historic Preservation Office (SHPO) to meet the requirements of Section 106 consultation under the National Historic Preservation Act (NHPA). The SHPO concurred with BLM's finding of no adverse effect to cultural resources, as outlined in a letter dated September 6, 2019.

The formal public scoping process for the RMPs and EIS began on January 16, 2018, with the publication of a Notice of Intent in the **Federal Register** (83 FR 2181). The Notice of Availability (NOA) for the Draft RMPs/EIS was published on August 17, 2018, and initiated a 90-day public comment period. A revised document was released and a Notice of Error was published in the **Federal Register** on August 31, 2018. The public comment period was extended for an additional 15 days and ended on November 30, 2018.

On August 23, 2019, the BLM published a NOA for the Proposed RMPs/Final EIS, initiating a 30-day protest period, a 60-day Governor's consistency review, and 60-day public comment period for certain recreational shooting closures under the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019. During the initial protest period for the Proposed RMPs, the BLM became aware of a portion of public comments submitted on the Draft EIS that were not incorporated into the Proposed RMPs/Final EIS. The BLM updated the Proposed RMPs/EIS and issued a notice of error in the **Federal Register** on October 18, 2019, which re-opened public protest period for an additional 30 days. In total, the BLM received 431 protest submissions. All protests were resolved prior to the issuance of the RODs. For a full description of the issues raised during the protest period and how they were addressed, please refer to the BLM Protest Resolution Report, which is available online at *https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports.* The Governor of Utah reviewed the Proposed RMPs/Final EIS to identify inconsistencies with State or local plans, policies, or programs; the BLM addressed the Governor's input in the RODs/Approved RMPs. As a result of internal review, the protest period, target shooting comment period, government-to-government consultation, Section 106 (NHPA) and Section 7 (ESA) consultation, and Governor's consistency review, the BLM made minor modifications to the Approved RMPs to clarify management actions. All changes are described in the Modifications and Clarifications (Sections 3.1.2) of the GSENM and KEPA RODs, respectively.

Authority: 40 CFR 1506.6 40 CFR 1506.10 and 43 CFR 1610.2.

Casey Hammond,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2020–03395 Filed 2–19–20; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1139]

Certain Electronic Nicotine Delivery Systems and Components Thereof; Commission Determination to Review the Final Initial Determination in Part and To Affirm the Finding of a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') in part. On review, the Commission affirms the ID's finding of a violation of section 337 in the above-captioned investigation. The Commission requests written submissions from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding concerning respondent Eonsmoke, LLC (''Eonsmoke'') and defaulting respondent XFire, Inc. (''XFire''). The Commission has also determined to extend the target date for completion of the above-captioned investigation to Monday, April 20, 2020.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential

documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On December 13, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed on behalf of Juul Labs, Inc. (''JLI'') of San Francisco, California. 83 FR 64156 (Dec. 13, 2018). The complaint, as amended and supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos.: 10,070,669 (''the '669 patent''); 10,076,139 (''the '139 patent''); 10,045,568 (''the '568 patent''); 10,058,130 (''the '130 patent''); and 10,104,915 (''the '915 patent'') (collectively, ''the Asserted Patents''). *Id.* The Commission's notice of investigation named twenty-one respondents, including Eonsmoke of Clifton, New Jersey and XFire of Stafford, Texas. *Id.* at 64157. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On February 25, 2019, the ALJ granted JLI's motion to amend the complaint and notice of investigation to change the name of respondent Bo Vaping of Garden City, New York to ECVD/MMS Wholesale LLC of Garden City, New York and the name of respondent MMS Distribution LLC of Rock Hill, New York to MMS/ECVD LLC of Garden City, New York. *See* Order No. 8 (Feb. 25, 2019), *not rev'd* by Comm'n Notice (Mar. 25, 2019).

On February 28, 2019, the ALJ granted a motion to amend the complaint and notice of investigation to change the name of respondent Limitless Mod Co. of Simi Valley, California to Limitless MOD, LLC of Simi Valley, California. *See* Order No. 10 (Feb. 28, 2019), *not rev'd* by Comm'n Notice (Mar. 27, 2019).

Before the evidentiary hearing, JLI settled with the following eight respondents: J Well France S.A.S. of Paris, France; ECVD/MMS Wholesale LLC; MMS/ECVD LLC; The Electric Tobacconist, LLC of Boulder, Colorado; ALD Group Limited of Guangdong Province, China; Flair Vapor LLC of South Plainfield, New Jersey; Shenzhen Joecig Techonology Co., Ltd. of Guangdong Province, China; and Myle Vape Inc. of Jamaica, New York. *See* Order No. 31 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 16 (Mar. 21, 2019), *not rev'd* by Comm'n Notice (Apr. 4, 2019); Order No. 33 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 13 (Mar. 12, 2019), *not rev'd* by Comm'n Notice (Apr. 5, 2019); Order No. 34 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 32 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019).

In addition, the investigation terminated as to the following six respondents based on a consent order stipulation and the issuance of a consent order: Vapor Hub International, Inc. of Simi Valley, California; Limitless MOD, LLC; Asher Dynamics, Inc. of Chino, California; Ply Rock of Chino, California; Infinite-N Technology Limited of Guangdong Province, China; and King Distribution LLC of Elmwood Park, New Jersey. *See* Order No. 9 (Feb. 27, 2019), *not rev'd* by Comm'n Notice (Mar. 27, 2019); Order No. 11 (Feb. 28, 2019), *not rev'd* by Comm'n Notice (Mar. 26, 2019); Order No. 18 (Mar. 28, 2019), *not rev'd* by Comm'n Notice (Apr. 11, 2019); Order No. 20 (Apr. 2, 2019), *not rev'd* by Comm'n Notice (Apr. 15, 2019).

On April 23, 2019, the ALJ found respondent XFire in default pursuant to Commission Rule 210.16(b), 19 CFR 210.16(b). *See* Order No. 22 (Apr. 23, 2019), *not rev'd* by Comm'n Notice (May 16, 2019).

Also, prior to the evidentiary hearing, the ALJ granted JLI's motion for partial termination of the investigation with respect to allegations of infringement as to all asserted claims of the '139 patent and certain asserted claims of the other asserted patents. *See* Order No. 36 (Aug. 8, 2019), *not rev'd* by Comm'n Notice (Sep. 5, 2019). As a result, the following claims remain at issue in the investigation: Claims 1, 2, and 13 of the '669 patent; claims 12, 17, and 20 of the '568 patent; claims 1, 2, and 4 of the '130 patent; and claims 1, 6, and 21 of the '915 patent (collectively, ''the Asserted Claims'').

JLI and the Commission were unable to serve respondent Keep Vapor Electronic Tech. Co., Ltd. of Shenzhen, China despite multiple attempts at service. The final ID states that JLI does not request any relief against this respondent. *See* ID at 2 n.1.

On May 21, 2019, the ALJ granted a motion to amend the complaint and notice of investigation to change the name of respondent Ziip Lab Co., Ltd. of Guangdong Province, China to SS Group Holdings of Guangdong Province, China. *See* Order No. 26 (May 21, 2019), *not rev'd* by Comm'n Notice (June 14, 2019).

Only five respondents participated in the evidentiary hearing: SS Group Holdings; ZLab S.A. of Punta del Este—Maldonado, Uruguay; Shenzhen Yibo Technology Co. Ltd. of Guangdong Province, China (collectively, ''the Ziip Respondents''); Vapor 4 Life Holdings, Inc. of Northbrook, Illinois (''V4L''); and Eonsmoke.

On August 5, 2019, one day before the prehearing conference, the ALJ issued an ID (Order No. 35), granting JLI's motion for summary determination of importation, infringement, and domestic industry. The ALJ found that JLI was entitled to summary determination of importation with respect to the Ziip Respondents and their accused products; Eonsmoke and its accused products; and V4L and certain V4L accused products. *See* Order No. 35 at 4–11 (Aug. 5, 2019). Citing to a stipulation between JLI and the Ziip Respondents, the ALJ stated in his infringement analysis with respect to the Ziip Respondents' accused products that ''the question of whether Ziip accused products contain or perform each limitation of asserted claims is moot.'' *Id.* at 11. The ALJ did not specifically state whether summary determination of infringement as to the Ziip Respondents was denied or granted nor the reasoning supporting grant or denial of the motion as to this issue. *Id.*

An evidentiary hearing was held from August 6–7, 2019.

On September 4, 2019 the Commission reviewed Order No. 35 in part. Specifically, the Commission reviewed the ALJ's analysis as to infringement and a statement regarding mootness on page 11 of the ID. The Commission remanded to the ALJ for clarification on this issue and as to whether the ID grants or denies summary determination that the Ziip Respondents infringe the Asserted Patents. *See* Comm'n Notice (Sep. 4, 2019).

In response to the Commission's September 4, 2019 Notice, the ALJ clarified that Order No. 35 denied

summary determination of infringement as to the Ziip Respondents because that issue was moot in light of the stipulation between JLI and the Ziip Respondents. *See* Remand of Order No. 35 (Oct. 10, 2019).

On November 19, 2019, the ALJ granted motions to terminate the investigation as to the Ziip Respondents and V4L based on settlement agreements. *See* Order Nos. 38 and 39 (Nov. 19, 2019), *not rev'd* by Comm'n Notice (Dec. 16, 2019). Accordingly, only respondent Eonsmoke remains active in this investigation.

On December 12, 2019, the ALJ granted JLI's motion to strike portions of the Ziip Respondents' and Eonsmoke's posthearing briefs. *See* Order No. 40 (Dec. 12, 2019). Specifically, these portions relate to the issue of invalidity of asserted claim 4 of the '915 patent, which was not addressed by Respondents' expert or in their prehearing briefings. *Id.* at 3–5.

On December 13, 2019, the ALJ issued a combined final ID and recommended determination (''RD''), finding a violation of section 337 by respondent Eonsmoke. Specifically, the final ID finds, *inter alia,* that JLI satisfied the importation requirement as to Eonsmoke's accused products; that JLI has shown Eonsmoke's accused products infringe the Asserted Claims; that JLI has satisfied the domestic industry requirement with respect to the Asserted Patents; and that the Asserted Claims have not been shown to be invalid. In addition, in the event the Commission finds a violation of section 337, the RD recommends that the Commission issue a limited exclusion order (''LEO'') and cease and desist orders (''CDO'') directed at Eonsmoke and defaulting respondent XFire, and impose a 100 percent bond during the period of Presidential review.

No petitions for review were filed, which means each party has abandoned all issues decided adversely to that party. *See* 19 CFR 210.43(b)(4).

Having reviewed the record of this investigation, including the final ID, the Commission has determined to *sua sponte* review the final ID in part. 19 CFR 210.44. Specifically, the Commission has determined to review and, on review, decline to adopt the discussion of the validity of element [c] of claim 12 of the '669 patent on pages 50 and 55 of the final ID. The Commission has also determined to review the discussion of Warranty and Customer Support and Regulatory Compliance on pages 265–266 of the final ID and the discussion of the quantitative significance of JLI's contract manufacturers' investments in the last paragraph on page 272 of the final ID. The Commission has determined not to review the remainder of the final ID, including the other portions of the ID's domestic industry analysis, which are sufficient to support the ID's finding that JLI has satisfied the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the Asserted Patents. Accordingly, the Commission finds a violation of section 337 by reason of Eonsmoke's importation of electronic nicotine delivery systems and components thereof that infringe one or more of claims 1, 2, and 13 of the '669 patent; claims 12, 17, and 20 of the '568 patent; claims 1, 2, and 4 of the '130 patent; and claims 1, 6, and 21 of the '915 patent. The Commission also finds that JLI is entitled to relief against defaulting respondent XFire pursuant to 19 U.S.C. 1337(g)(1).

The Commission has determined to extend the target date for completion of the investigation to Monday, April 20, 2020.

In connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist order(s) that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such

initial submissions should include views on the recommended determination by the ALJ on remedy and bonding.

Complainant and the Commission Investigative Attorney are also requested to identify the form of remedy sought and to submit proposed remedial orders for the Commission's consideration in their initial written submissions. Complainant is further requested to state the dates that the Asserted Patents expire, the HTSUS numbers under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on February 27, 2020. Reply submissions must be filed no later than the close of business on March 5, 2020. No further submissions on 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 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the investigation number (Inv. No. 337–TA–1139) 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. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential 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.

By order of the Commission.

Issued: February 13, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–03346 Filed 2–19–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 10, 2020, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Maine in the lawsuits entitled *United States of America* v. *Grimmel Industries, Inc., et al.,* Civil Action No. 2:16–cv–190 (LEW), and *United States of America* v. *Kennebec Scrap Iron, Inc.,* Civil Action No. 1:16–191 (LEW).

The United States filed the complaints in these Clean Water Act cases against the Defendants on April 1, 2016. The United States District Court for the District of Maine consolidated these actions on May 7, 2019. The complaints alleged that the Defendants, Grimmel Industries, Inc., Grimmel Industries LLC, Gary Grimmel, and Kennebec Scrap Iron, Inc., violated the stormwater Multi-Sector General Permits (''MSGPs'') issued by the Maine Department of Environmental Protection under Section 402(b) of the Clean Water Act, 42 U.S.C. 1342(b). The complaints sought civil penalties and injunctive relief for alleged violations of the permits at scrap metal facilities operated by Defendants located at 80 Pejepscot Village, Topsham, Maine, 50 River Road, Lewiston, Maine, and 48 Broomhandle Road, Oakland, Maine (the ''Facilities''). The alleged violations included inadequate stormwater pollution prevention plans; failure to effectively maintain stormwater best management practices; failure to perform good housekeeping procedures; failure to conduct or properly conduct benchmark monitoring and quarterly visual monitoring; failure to properly perform monitoring as ordered by the Maine Department of Environmental Protection; failure to conduct quarterly site evaluations; and failure to properly train employees. The *Grimmel Industries* complaint also alleged failures to comply with Spill Prevention Control and Countermeasure (''SPCC'') requirements under 40 CFR part 112.

Under the Proposed Consent Decree, the United States will dismiss Defendant Gary Grimmel without prejudice. The remaining Defendants must revise their stormwater management plans and revise sampling procedures at the Facilities in accordance with the current stormwater permit issued by the Maine Department of Environmental Protection. The remaining Defendants must pay $250,000 in civil penalties, $25,000 of which will be allocated to the Oil Spill Liability Trust Fund in satisfaction of the alleged violations of the SPCC regulations. Under the proposed consent decree, the United States covenants not to sue the Defendants under Sections 309(b), 309(g), or 311(b)(6)–(7)(C) of the Clean Water Act, 33 U.S.C. 1319(b), 1319(g) and 1321(b)(6)–(7)(C), for civil violations at the Facilities through the date of lodging of the consent decree related to the MSGPs, or of the SPCC regulations promulgated at 40 CFR part 112.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States* v. *Grimmel Industries, Inc., et al.,* D.J. Ref. No. 90–5–1–1–11209. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://*

www.justice.gov/enrd/consent-decrees. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–03292 Filed 2–19–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and Request for Comments on Draft Restoration Plans and Environmental Assessments

On February 11, 2020, the Department of Justice lodged a proposed Consent Decree and two draft Restoration Plan and Environmental Assessments (''RP/EAs'') with the United States District Court for the Eastern District of Missouri in the lawsuit entitled *United States and State of Missouri* v. *The Doe Run Resources Corporation, et al.,* Civil Action No. 4:20–cv–00234.

The United States and State of Missouri asserted claims in this case under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607, and Section 644.096, Rev. Stat. Mo., of the Missouri Clean Water Law, seeking to recover natural resource damages (NRD) in response to releases of hazardous substances resulting from historic lead mining, milling, and smelting operations at eleven facilities located in the Viburnum Trend, a portion of the Southeast Missouri Lead Mining District, and at the Herculaneum Lead Smelter in Jefferson County, Missouri. The proposed Consent Decree resolves these claims against The Doe Run Resources Corporation (''Doe Run'') (in its own capacity and on behalf of The Doe Run Company, a former Missouri general partnership, St. Joe Minerals Company, and St. Joseph Lead Company), the Buick Resource Recycling Facility, LLC, and Homestake Lead Company of Missouri (''Homestake'') (in its own capacity and on behalf of The Doe Run Company, a former Missouri general partnership).

Under CERCLA, federal and state natural resource trustees have authority to seek compensation for natural resources harmed by hazardous substances released to the environment from historic lead mining, milling, and smelting operations in the Viburnum Trend and at the Herculaneum Lead Smelter. The natural resource trustees here include the U.S. Department of the Interior, acting through the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture, acting through the U.S. Forest Service, and the State of Missouri, Department of Natural Resources (the ''Trustees'').

Under the Proposed Consent Decree, Doe Run will perform natural resource restoration work in accordance with the RP/EAs on approximately 2,080 acres of land and 10 miles of streams, and will donate approximately 1,100 acres of ecologically significant property, in addition to reimbursing certain future restoration and implementation costs of the Trustees. Homestake will pay a total of $1.9 million to the Trustees for past assessment costs and future restoration and implementation costs and will provide funding and financial assurance for a portion of Doe Run's restoration measures. The United States will grant a covenant not to sue or to take administrative action against the Settling Defendants for NRD pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and Section 311 of the Clean Water Act, 33 U.S.C. 1321.

The RP/EAs present the restoration projects proposed by the Trustees to restore natural resources injured by hazardous substances released in and around the Viburnum Trend and the Herculaneum Lead Smelter. Consistent with the natural resource damages assessment and restoration (''NRDAR'') regulations, 43 CFR part 11, and the National Environmental Policy Act of 1969 (''NEPA''), as amended, 42 U.S.C. 4321–4347 *et seq.,* and its implementing regulations at 40 CFR parts 1500–1508, the Trustees evaluated a suite of alternatives in each RP/EA for conducting the type and scale of restoration sufficient to compensate the public for natural resource injuries and service losses. Based on selection factors including location, technical feasibility, cost effectiveness, provision of natural resource services similar to those lost due to contamination, and net environmental consequences, the Trustees identified a preferred alternative in each RP/EA.

The preferred alternative for the Viburnum Trend includes restoration of injured stream reaches, enhanced closure of areas impacted by tailings impoundments, restoration and revegetation of injured soils, and the transfer and protection of ecologically significant property to the Trustees or their designees. The preferred alternative for the Herculaneum Lead Smelter calls for the transfer and protection of ecologically significant property to the Trustees or their designees.

The publication of this notice opens a period for public comment on the Consent Decree and the RP/EAs.

Comments on the Consent Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Missouri* v. *The Doe Run Resources Corporation, et al.,* D.J. Ref. No. 90–11–3–10845/1. All comments must be submitted no later than forty-five (45) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $47.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Consent Decree without the exhibits and signature pages, the cost is $12.00. For a paper copy of the RP/EAs only, the cost is $17.00.

Comments on the RP/EA should be addressed to Dave Mosby, and reference ''Viburnum Trend and Herculaneum RP/EAs'' in the subject line. All comments on the RP/EAs must be submitted no later than forty-five (45) days after the publication date of this notice.

Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*Dave_Mosby@fws.gov.*
By mail	Dave Mosby, U.S. Fish and Wildlife Service, 101 Park DeVille Dr., Suite A, Columbia, MO 65203.

During the public comment period, the RP/EAs may be examined and downloaded at this U.S. Fish and Wildlife Service Midwest Region Natural Resource Damage Assessment website: *https://www.fws.gov/midwest/es/ec/nrda/SEMONRDA/index.html.* As described above, a paper copy of the RP/EAs may obtained from the Department of Justice as part of, or separately from, the Consent Decree upon written request and payment of reproduction costs.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–03287 Filed 2–19–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Approval of a New Collection; Public Benefit Conveyance Program Guidance and Application

AGENCY: Bureau of Justice Assistance, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Bureau of Justice Assistance, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 20, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michelle Martin, Director of Communications, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC 20531 (phone: 202–514–9354).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Assistance, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of this information collection:

1. *Type of Information Collection:* Approval of a new collection.

2. *The Title of the Form/Collection:* Public Benefit Conveyance Program Guidance and Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: The following entities are eligible to apply: The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands or political subdivisions or instrumentalities of states that propose to use the subject property for law enforcement and/or correctional facility purposes.

Abstract: The General Services Administration (GSA) promotes the effective use of federal real property assets, as well as the disposal of real property that is no longer mission critical to federal agencies. Through the Public Benefit Conveyance Program, surplus federal land and buildings are conveyed to public entities at no cost, pursuant to 40 U.S.C. 541, *et seq.,* and applicable regulations. Eligible applicants must propose to use the subject property for law enforcement and/or correctional facility purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that no more than 5 applications are received annually. Each application takes approximately 120 minutes to complete and is submitted once.

6. *An estimate of the total public burden associated with the collection:* The total burden to complete the application is approximately 120 minutes.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 13, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–03307 Filed 2–19–20; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1775]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global.* This meeting will provide an update on existing projects as well as a look forward into potential activities for the FY20 Fiscal Year.

DATES: The meeting will take place on Wednesday April 1, 2020, from 9:00 a.m. ET to 4:30 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs offices (in the Main Conference Room), 810 7th Street, Washington, DC 20531; Phone: (202) 514–2000 [note: this is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: Tracey Trautman, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 305–1491 [note: this is not

a toll-free number]; Email: *tracey.trautman@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Ms. Tracey Trautman at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Ms. Trautman at least seven (7) days in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Director of the Bureau of Justice Assistance; the Principal Deputy Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFO.

Tracey Trautman,

Global DFO, Acting Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2020–03422 Filed 2–19–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number TBD]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection; Comments Requested: Complaint Regarding United States Marshals Service (USMS) Personnel or Programs

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 20, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of this information collection:

1 *Type of Information Collection* (check justification or form 83): New collection.

2 *The Title of the Form/Collection:* USMS Promotional Vendor Registration website.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): [None].

Component: U.S. Marshals Service, U.S. Department of Justice.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals/households.

Other (if applicable): [None].

Abstract: This form will allow members of the public to submit information regarding potential misconduct involving USMS personnel or programs.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1000 respondents will utilize the form, and it will take each respondent approximately 5 minutes to complete the form.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 84 hours, which is equal to (1000 (total # of annual responses) * 5 minutes/60.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 13, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–03308 Filed 2–19–20; 8:45 am]

BILLING CODE 4410–04–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extensions of currently approved collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before April 20, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Mackie Malaka, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Mackie Malaka at the address above or telephone 703–548–2704.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0092.

Title: Loans to Members and Lines of Credit to Members, 12 CFR 701.21 and Appendix B to 741.

Type of Review: Extension of a currently approved collection.

Abstract: Section 107(5) of the Federal Credit Union Act authorizes Federal Credit Unions (FCU) to make loans to members and issue lines of credit (including credit cards) to members. Section 701.21 governs the requirements related to loans to members and lines of credit to members for FCUs. Additionally, Part 741 established requirements for all federally insured credit unions (both Federal and state charters) related to loans to members and lines of credit union members. NCUA reviews the information collections to ensure compliance with applicable regulations and laws, and to assess the safety and soundness of the credit union's lending program.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondent: 5,236.

Estimated No. of Responses per Respondent: 4.11.

Estimated Total Annual Responses: 21,534.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 21,534.

Reason for Change: Adjustment have been made to the number of respondents to reflect the current number of credit unions reporting. The time per response has been corrected to reflect only that burden required to retain/maintain the records under the PRA.

OMB Number: 3133–0101.

Title: Member Business Loans; Commercial Lending, 12 CFR 723.

Type of Review: Extension of a currently approved collection.

Abstract: As part of NCUA's Regulatory Modernization Initiative, the NCUA Board amended Part 723 to provide federally insured credit unions with greater flexibility and individual autonomy in safely and soundly providing commercial and business loans to serve their members. The rule modernizes the regulatory requirements that govern credit union commercial lending activities by replacing the current rule's prescriptive requirement and limitations with a broad principles-based regulatory approach.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 1,828.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 1.828.

Estimated Burden Hours per Response: 2.

Estimated Total Annual Burden Hours: 3,656.

Reason for Change: Adjustment have been made to the number of respondents to reflect the current number of credit unions reporting. The time per response has been corrected to reflect only information collection requirements associated with retaining and maintaining the written policies and procedures prescribed by 723. Additional recordkeeping requirements not previously reported have been captured.

OMB Number: 3133–0152.

Title: Management Official Interlocks, 12 CFR 711.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA requires this information collection to ensure federally insured credit unions comply with NCUA's Management Official Interlocks regulation at 12 CFR part 711, implementing the Depository Institution Management Interlocks Act (''Interlocks Act'') (12 U.S.C. 3201–3208). The Interlocks Act generally prohibits financial institutions management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. For credit unions, the Interlocks Act restricts interlocks only between credit unions and other financial institutions, such as banks and their holding companies. The information collection requirements of this part covers interlock relationships permitted by statute.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 2.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 2.

Estimated Burden Hours per Response: 3.

Estimated Total Annual Burden Hours: 6.

OMB Number: 3133–0140.

Title: Secondary Capital for Low-Income Designated Credit Unions, 12 CFR 701.34(b).

Type of Review: Extension of a currently approved collection.

Abstract: Section 701.34 (b) of NCUA's regulations provide that designated low-income credit unions (LICU) may accept secondary capital under certain conditions. For those LICUs wishing to exercise their option to access secondary capital, NCUA requires that credit unions accepting secondary capital must develop and submit a plan for its acquisition, use, and repayment. The information is used by NCUA to determine if the secondary capital will be managed by the credit union without risk to its financial condition, the U.S. government, or the National Credit Union Share Insurance Fund. This collection of information is necessary to obtain the information needed to ensure compliance with requirements related to acceptance and management of secondary capital.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 30.

Estimated No. of Responses per Respondent: 2.

Estimated Total Annual Responses: 60.

Estimated Burden Hours per Response: 18.38.

Estimated Total Annual Burden Hours: 1,103.

Reason for Change: Adjustment has been made to reflect a recordkeeping requirement not previously reported.

OMB Number: 3133–0196.

Title: Contractor's Diversity Profile.

Type of Review: Extension of a currently approved collection.

Abstract: On January 2011, NCUA created the Office of Minority and Women Inclusion (OMWI), as mandated by sec. 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act'') (Pub. L. 111–203). As prescribed by sec. 342(c) of the Act, OMWIs shall develop and implement standards and procedures to ensure the fair inclusions and utilization of minorities, women, and minority-owned and women-owned business in all

business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts. As a result, NCUA developed the Contractor Profile form to be completed by a contractor to ensure the fair inclusion and utilization of minorities and women in the workforce of the contractor and, as applicable, subcontractor. The Contractor Profile form includes a series of questions covering a contractor's, and, as applicable, a subcontractor's diversity strategies, policies, recruitment, succession planning, and outreach. The information provided is used by NCUA to determine if good faith efforts are met and to fulfill statutory requirements of the Act. Determinations are valid for a two-year period.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 40.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 40.

Estimated Burden Hours per Response: 0.75.

Estimated Total Annual Burden Hours: 30.

Reason for Change: Adjustments are attributed to current updated data since the last previous submission.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on February 14, 2020.

Dated: February 14, 2020.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2020–03360 Filed 2–19–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Open to the Public Meetings of the Networking and Information Technology Research and Development (NITRD) Program

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of public meetings.

SUMMARY: The NITRD Program holds meetings that are open to the public to attend. The Joint Engineering Team (JET) and Middleware And Grid Interagency Coordination (MAGIC) Team provide an opportunity for the public to engage and participate in information sharing with Federal agencies. The JET and MAGIC Team report to the NITRD Large Scale Networking (LSN) Interagency Working Group (IWG).

DATES: March 2020–March 2021.

FOR FURTHER INFORMATION, CONTACT: Ms. Joyce Lee at *joyce.lee@nitrd.gov* or (202) 459–9674. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Joint Engineering Team (JET) established in 1997, provides a forum for participants with interests in high performance research networking and networking to support science applications.

The Middleware And Grid Interagency Coordination (MAGIC) Team, established in 2002, provides a forum for participants with interests and responsibility for middleware, cloud and grid computing services, standards, and implementation; best practices for resource architecture, access, and management; and security and privacy.

The JET and MAGIC Team meetings are hosted by the NITRD NCO with WebEx and/or teleconference participation available for each meeting.

Public Meetings website: The JET and MAGIC Team meetings are scheduled 30 days in advance of the meeting date. Please reference the NITRD Public Meetings web page (*https://www.nitrd.gov/meetings/public/*) for each Team's upcoming meeting dates and times, in addition to the agendas, minutes, and other information.

Public Meetings Mailing Lists: Members of the public may be added to the mailing lists by sending their full name and email address to *jet-signup@nitrd.gov* for the JET and *magic-signup@nitrd.gov* for the MAGIC Team, with the subject line: "*Add to JET*" or "*Add to MAGIC,*" respectively. Meeting notifications and information are shared via the mailing lists.

Public Comments: The government seeks individual input; participants may provide individual advice only. Members of the public are welcome to submit their comments for the JET to *jet-comments@nitrd.gov* and for the MAGIC Team to *magic-comments@nitrd.gov*. Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and may be made available to the public via the JET and MAGIC web pages.

Reference website: NITRD website at: *http://www.nitrd.gov/.*

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on February 14, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–03409 Filed 2–19–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by April 20, 2020 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program.

OMB Number: 3145–0233.

Expiration Date of Approval: June 30, 2020.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project: The Emerging Frontiers in Research and Innovation (EFRI) program recommends, prioritizes, and funds interdisciplinary initiatives at the emerging frontier of engineering research and education. These investments represent transformative opportunities, potentially leading to: new research areas for NSF, ENG, and other agencies; new industries or capabilities that result in a leadership position for the country; and/or significant progress on a recognized national need or grand challenge.

Established in 2007, EFRI supports cutting-edge research that is difficult to fund through other NSF programs, such as single-investigator grants or large research centers. EFRI seeks high-risk opportunities with the potential for a large payoff where researchers are encouraged to stretch beyond their ongoing activities. Based on input from workshops, advisory committees, technical meetings, professional societies, research proposals, and suggestions from the research community, the EFRI program identifies those emerging opportunities and manages a formal process for funding their research. The emerging ideas tackled by EFRI are ''frontier'' because they not only push the understood limits of engineering but actually overlap multiple fields. The EFRI funding process inspires investigators with different expertise to work together on one emerging concept.

EFRI awards require multi-disciplinary teams of at least one Principal Investigator and two Co-Principal Investigators. The anticipated duration of all awards is 4-years. With respect to the anticipated funding level, each project team may receive support of up to a total of $2,000,000 spread over four years, pending the availability of funds. In this respect, EFRI awards are above the average single-investigator award amounts.

EFRI-funded projects could include research opportunities and mentoring for educators, scholars, and university students, as well as outreach programs that help stir the imagination of K–12 students, often with a focus on groups underrepresented in science and engineering.

We are seeking to collect additional information from the grantees about the outcomes of their research that goes above and beyond the standard reporting requirements used by the NSF and spans over a period of 5 years after the award. This data collection effort will enable program officers to longitudinally monitor outputs and outcomes given the unique goals and purpose of the program. This is very important to enable appropriate and accurate evidence-based management of the program and to determine whether or not the specific goals of the program are being met.

Grantees will be requested to submit this information on an annual basis to support performance review and the management of EFRI grants by EFRI officers. EFRI grantees will be requested to submit these indicators to NSF via a data collection website that will be embedded in NSF's IT infrastructure. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; sources of complementary funding and in-kind support to the EFRI project; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; descriptions of significant advances and other outcomes of the EFRI effort.

Each submission will address the following major categories of activities: (1) Knowledge transfer across disciplines, (2) innovation of ideas in areas of great opportunity, (3) potential for translational research, (4) project results that advance the frontier/creation of new fields of study, (5) introduction to the classroom of innovative research methods or discoveries, (6) fostering participation of underrepresented groups in science, and (7) impacting student career trajectory. For each of the categories, the report will enumerate specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, and performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued EFRI program maintenance and growth.

Estimate of Burden: Approximately 7 hours per grant for approximately 100 grants per year for a total of 700 hours per year.

Respondents: Principal Investigators who lead the EFRI grants, and co-Principal Investigators and students involved in EFRI-funded research.

Estimated Number of Responses per Report: One report collected for each of the approximately 100 grantees every year, including sub-reports from co-PIs and student researchers.

Dated: February 14, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–03356 Filed 2–19–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board (NSB), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives a correction to the scheduling of a previously noticed meeting for the transaction of NSB business as described below.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The meeting was originally noticed in the **Federal Register** on January 30, 2020 at 85 FR 5486.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:

Original Committee on Oversight (CO) Agenda

Wednesday, February 5, 2020

Open session: 2:30–3:00 p.m.

- Committee Chair's Remarks
- Approval of Prior Open Minutes
- Merit Review Digest and Update on Modernization
  - Discussion and vote on NSB Preface to Merit Review Digest
- OIG Semiannual Report and Management Response
- Inspector General's Update
- Chief Financial Officer's Update

CHANGES IN THE MEETING:

Corrected Committee on Oversight (CO) Agenda

Wednesday, February 5, 2020

Open session: 2:30–3:00 p.m.

- Committee Chair's Remarks
- Approval of Prior Open Minutes
- Merit Review Digest and Update on Modernization

- Discussion and vote on NSB Preface to Merit Review Digest
- Inspector General's Update
- Chief Financial Officer's Update

CONTACT PERSON FOR MORE INFORMATION: The NSB Office contact is Brad Gutierrez, *bgutierr@nsf.gov,* 703/292–7000.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–02793 Filed 2–18–20; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2020–0038]

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to Vistra Operations Company LLC (the licensee), for operation of the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2. The proposed amendments would revise Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to align with the Standard Technical Specifications (STS) for Westinghouse Plants and incorporate the changes made by Technical Specifications Task Force (TSTF) Traveler TSTF–513, Revision 3, ''Revise PWR [Pressurized-Water Reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.''

DATES: Submit comments by March 23, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. Requests for a hearing or petition for leave to intervene must be filed by April 20, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0038. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dennis J. Galvin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6256, email: *Dennis.Galvin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0038 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–2020–0038.
- *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–2020–0038 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments, as described in Vistra Operations Company LLC's (Vistra OpCo, the licensee) license amendment request dated November 7, 2019 (ADAMS Accession No. ML19325C593), to Facility Operating License Nos. NPF–87 and NPF–89, issued to Vistra OpCo, for operation of the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, located in Somervell County, Texas.

The proposed amendments would revise TS 3.4.15, ''RCS Leakage Detection Instrumentation'' to align with the STS for Westinghouse Plants and incorporate the changes made by TSTF–513, Revision 3.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC edits in [brackets].

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change [revises and] clarifies the Operability requirements for the Reactor Coolant System (RCS) leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change [revises and] clarifies the Operability requirements for the Reactor Coolant System (RCS) leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change [revises and] clarifies the Operability requirements for the Reactor Coolant System (RCS) leakage detection instrumentation and reduces the time allowed for the plant to operate when the only Operable RCS leakage instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time, the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor Operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, with the addition of NRC staff edits, and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day notice period if the Commission concludes the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the

final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendments. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendments unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the

reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the licensee's application dated November 7, 2019 (ADAMS Accession No. ML19325C593).

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Dated at Rockville, Maryland, this 13th day of February, 2020.

For the Nuclear Regulatory Commission.

Dennis J. Galvin,

Project Manager, Project Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–03340 Filed 2–19–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2017–258]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 24, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2017–258; *Filing Title:* Notice of the United States Postal Service of Filing Modification Seven to a Global Plus 3 Negotiated Service Agreement; *Filing Acceptance Date:* February 13, 2020; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 24, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–03425 Filed 2–19–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88210; File No. SR–NASDAQ–2019–049]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director

February 13, 2020.

I. Introduction

On May 29, 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 the definition of a family member for purposes of determining the independence of directors under Nasdaq Rule 5605(a)(2). The proposed rule change was published for comment in the **Federal Register** on June 18, 2019.[3]

On August 1, 2019, the Commission extended the time period within which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86095 (June 12, 2019), 84 FR 28379 (''Notice'').

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 September 16, 2019.[4] On September 13, 2019, the Commission instituted an order instituting proceedings under Section 19(b)(2)(B) of the Act (''OIP'') to determine whether to approve or disapprove the proposed rule change.[5] The Commission received one comment letter, from Nasdaq, in response to the OIP.[6] On December 12, 2019, the Commission designated a longer period for Commission action on the proposed rule change.[7] On January 30, 2020, Nasdaq filed Amendment No. 1 to the proposed rule change, which the Exchange subsequently withdrew. On January 31, 2020, Nasdaq filed Amendment No. 2 to the proposed rule change, which the Exchange subsequently withdrew.[8] On February 11, 2020, Nasdaq filed Amendment No. 3 to the proposed rule change. The Commission is publishing notice of the filing of Amendment No. 3 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 3

Nasdaq has proposed to amend its definition of ''Family Member'' for purposes of determining whether a director is independent under Nasdaq Rule 5605(a)(2) to mean a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. As stated by Nasdaq, the purpose of the proposed rule change is to exclude domestic employees who share the director's home, and stepchildren who do not share the director's home, from the types of relationships that always preclude a finding that a director is independent.[9]

Nasdaq rules require companies listing on the Exchange to meet certain standards, including that a majority of the board of the directors of the company (the ''Board'') be Independent Directors, and that the company's audit, compensation and nominating committees [10] be comprised solely of Independent Directors.[11] ''Independent Director'' is defined in Nasdaq Rule 5605(a)(2) to mean a person other than an executive officer or employee of the company or any other individual having a relationship which, in the opinion of the company's Board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Rule 5605(a)(2) also precludes a Board finding of independence in specified situations where a director or a director's Family Member, as defined in the rule, has (or has had), certain relationships with the listed company. This list of relationships, commonly referred to as ''bright-line tests'', includes the following:

- A director who accepted or who has a Family Member who accepted any compensation from the company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence (with certain exceptions, including a Family Member who is an employee other than an executive officer); [12]
- A director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company as an executive officer;
- A director who is, or has a Family Member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more (with certain exceptions);
- A director of the company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the company serve on the compensation committee of such other entity; and
- A director who is, or has a Family Member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.[13]

Nasdaq Rule 5605(a)(2) currently defines Family Member as ''a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.'' As noted by Nasdaq in its proposal, this definition includes stepchildren, as they are ''children by . . . marriage.'' It also includes domestic employees who reside in a person's home.

Nasdaq has proposed to re-define a Family Member to mean ''a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.'' According to Nasdaq, this definition would make its definition of Family Member identical to the definition of ''immediate family member'' in the corresponding corporate governance rules of the New York Stock Exchange (''NYSE'').[14] Nasdaq has proposed further to interpret the term ''children'' to exclude stepchildren.[15] As noted by Nasdaq,

[4] *See* Securities Exchange Act Release No. 86545 (August 1, 2019), 84 FR 38704 (August 7, 2019).

[5] *See* Securities Exchange Act Release No. 86969 (September 13, 2019), 84 FR 49353 (September 19, 2019).

[6] *See* letter from Jeffrey S. Davis, Senior Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa A. Countryman, Secretary, Commission, dated November 12, 2019.

[7] *See* Securities Exchange Act Release No. 87721 (December 12, 2019), 84 FR 69401 (December 18, 2019).

[8] In Amendment No. 3, Nasdaq provided additional clarification and justification in support of the proposed rule change, including a statement that it was proposing to interpret the term ''children'' to exclude stepchildren; deleted and revised certain language in the original proposal; and clarified that the proposed rule change to Nasdaq Rule 5605(a)(2) will not affect the additional independence criteria for audit committee members set forth in Nasdaq Rule 5605(c)(2), which incorporate the independence requirements of Rule 10A–3 under the Act, 17 CFR 240.10A–3. Amendment No. 3 replaces and supersedes the original proposal in its entirety and is available at: *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2019/SR-NASDAQ-2019-049_Amendment_3.pdf.*

[9] *See* Amendment No. 3, *supra* note 8, at 5.

[10] If the company does not have a nominating committee, under Nasdaq Rule 5605(e)(1) nominees for directors must be selected or recommended by Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate.

[11] *See* Nasdaq Rule 5605(b)–(e).

[12] Nasdaq's rules state that this criterion is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. *See* Nasdaq Rule IM–5605.

[13] Nasdaq Rule 5605(a)(2)(A) also prohibits a director who is, or at any time during the past three years was, employed by the company. Additional criteria of independence apply with respect to Board members and members of the audit and compensation committees. *See* Nasdaq Rule 5605.

[14] *See* Section 303A.02 of the NYSE Listed Company Manual, which states in this regard: ''An 'immediate family member' includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.'' *See also* Amendment No. 3, at 8, in which Nasdaq stated, among other things, that it had heard from its listed companies and their legal counsel that the current situation, where each market has a different definition, complicates the preparation by listed companies of director and officer questionnaires that the companies need in order to analyze director independence.

[15] *See* Amendment No. 3, *supra* note 8, at 7.

however, the relationship of a stepchild who shares the same home with a director would continue to be considered a Family Member relationship under the bright-line tests, because the definition of a Family Member will include anyone (other than domestic employees) who shares the director's home.[16] Nasdaq has also proposed to exclude domestic employees who reside in a director's home from the definition of Family Member.

Concerning the aspect of the proposed rule change relating to stepchildren, Nasdaq noted in its proposal that, over time, it had concluded that inclusion of stepchildren in the definition of Family Member for the purposes of the bright-line tests makes the definition over-inclusive. The Exchange further stated that it believes that a director's relationship with his or her stepchildren may or may not interfere with the director's exercise of independent judgment, depending on the facts and circumstances of the situation.[17]

The Exchange acknowledged in its proposal that if a stepchild has been a dependent of a director or was part of the director's household since being a minor, the director's relationship with that stepchild is likely to be similar to a relationship with a biological child. However, the Exchange maintained, if the director married a person who has an adult child, the director never acted in any capacity as a parent of this stepchild, and the stepchild never shared the director's household, then the director and stepchild are likely to have an attenuated relationship that is unlike the relationship of a parent and a child.[18]

Nasdaq has concluded, therefore, that a stepchild relationship should not preclude a director from being considered independent in all circumstances. The Exchange believes, rather, that a company's Board is in the best position to determine whether a given relationship between a director and stepchild is likely to interfere with the director's exercise of independent judgment in carrying out his or her responsibilities based on the facts and circumstances.[19] The Exchange noted in its proposal that, under Nasdaq Rule 5605(a)(2) and IM–5605, the Board must affirmatively determine that no relationship exists that would interfere with such independent judgment.[20]

Nasdaq added that the proposed rule change to the definition of Family Member for purposes of the bright-line tests of independence in Nasdaq Rule 5605(a)(2) would not affect the additional independence criteria for audit committee members set forth in Nasdaq Rule 5605(c)(2), which incorporate the independence requirements of the Rule 10A–3 under the Act.[21]

Concerning the aspect of the proposed rule change that relates to domestic employees who share a director's home, Nasdaq stated that the term Family Member was not intended to capture commercial relationships. Here, too, the Exchange expressed the belief that it is appropriate for the Board to review a relationship between a director and a domestic employee under a facts and circumstances test.[22]

III. Summary of Comment Letter

As previously noted, the Commission received one comment letter, from Nasdaq, in response to the OIP. In its letter, Nasdaq stated, among other things, that it and NYSE appear to agree that stepchildren should be excluded from the definition of Family Member (in Nasdaq's rules) and immediate family member (in NYSE's rules). Nasdaq believes that ''NYSE interprets the term 'children' to exclude stepchildren, particularly in situation where the stepchild relationship is attenuated, namely where a person has become a stepchild of a director as an adult.'' Nasdaq stated that it based this understanding on information that it said was provided by practitioners that represent companies listed on both Nasdaq and NYSE and from companies previously listed on NYSE. Nasdaq further noted that the Commission has previously approved the proposed definition as consistent with Section 6(b)(5) of the Act and added that it believes that Commission disapproval of its proposed rule change would promote unfair competition.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] 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 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.

As discussed above, Nasdaq has proposed to define a Family Member, for purposes of the bright-line tests of whether a director qualifies as an Independent Director, to mirror the definition of ''immediate family member'' under NYSE's rules. The Commission notes that other exchanges, too, use the same or similar language in their corporate governance rules, all of which have been approved by the Commission as consistent with the Act.[25] The Commission notes, in addition, that it has received no comments, other than the aforementioned letter from the Exchange, in support of its proposal in response to the OIP.

As to Nasdaq's proposal to interpret the term ''children'' to exclude stepchildren from the definition of Family Member, Nasdaq explained in support of its proposal that in some cases a stepchild has been a dependent or was part of the director's household since being a minor and the director/stepchild relationship is likely then to be similar to a relationship with a biological child, who is covered by the bright-line tests, while in other cases the director and stepchild relationship is attenuated, as in a situation where the director is married to a person who has an adult child who never shared the

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.,* at 7–8.

[20] *See id.,* at 10.

[21] Nasdaq Rule 5605(c)(2) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A–3(b)(1) under the Act, in addition to the requirements of Nasdaq Rule 5605(a)(2). *See also* Nasdaq Rule IM–5605–4 (Audit Committee Composition).

[22] *See* Amendment No. 3, *supra* note 8, at 10.

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] *See, e.g.,* Securities Exchange Act Release Nos. 48863 (Dec. 1, 2003), 68 FR 68432 (Dec. 8, 2003) (order approving File No. SR–Amex–2003–65, now incorporated in NYSE American LLC Company Guide at Section 803, Commentary .01); 49810 (June 4, 2004), 69 FR 32647 (June 10, 2004) (order approving SR–PCX–2003–35, now incorporated in the rules of NYSE Arca, Inc., at Rule 5.3–E(k)(5)(H)); and 49911 (June 24, 2004), 69 FR 39989 (July 1, 2004) (order approving File No. SR–CHX–2003–19, now incorporated in the rules of NYSE Chicago, Inc., at Article 22, Rule 19(o)). In addition to approving Nasdaq's proposed new rule text defining Family Member for purposes of the bright-line tests, which mirrors the rule language of these other exchanges, the Commission is also approving Nasdaq's interpretation of ''children'' as excluding stepchildren, an interpretation that the Commission has not approved previously for other exchanges.

director's household, and the director never acted in any capacity as a parent to the stepchild. As a result of these different fact patterns, Nasdaq believes it is appropriate to leave to the Board the determination as to whether such a relationship is likely to interfere with the director's exercise of independent judgement in carrying out the director's responsibilities, based on the Board's analysis of the facts and circumstances of the director/stepchild relationship. Nasdaq has further noted that a stepchild who shares a home with the director would continue to be covered by the bright-line tests through the definition of Family Member, which still includes anyone, other than a domestic employee, who shares the director's home. Additionally, the Commission notes that, as Nasdaq points out, the Exchange's rules place a responsibility on the Board of a listed company to make an affirmative determination, beyond applying the bright-line tests, that any individual serving as an independent director has no relationship that would impair his or her independence.[26]

In addition, the Commission notes that, in the proposal as modified by Amendment No. 3, the Exchange stated that, to comply with the Exchange's rules, it will expect the Boards of its listed companies to continue to elicit through director questionnaires the information necessary to make independence determinations, which, it states, will need to include questions about stepchild relationships. The Commission believes that this should help to ensure that listed companies inquire about stepchild relationships so that such companies can discern the essential facts and circumstances to be able to make the affirmative findings necessary under Nasdaq rules to determine a director is independent. This is important given that Nasdaq will no longer be including stepchildren within the blanket exclusions of the Family Member relationships identified in the bright-line tests that automatically disqualify a director from being independent. The Commission notes that the proposal, in the narrow context of excluding stepchildren who do not share the director's home from the definition of Family Member for purposes of the bright-line tests, should provide additional flexibility to Boards by permitting them to consider the independence of a director based on the particular facts and circumstances of a director and stepchild relationship, while at the same time continuing to require Boards to have the responsibility to ensure that such a relationship would not interfere with or impair a Board member's independence.[27]

The Commission also notes that the Exchange's proposal would permit a finding of independence if there is a company relationship with the minor stepchild of a director who is not sharing the director's home, while Rule 10A–3 and Exchange Rule 5605(c)(2), which incorporates the independence requirements of Rule 10A–3, could preclude a finding of independence in such case for a director serving as a member of an audit committee. Exchange Rule 5605(c)(2) also incorporates the independence requirements of Rule 5605(a)(2) for a director serving on the audit committee. In the proposal as modified by Amendment No. 3, to avoid any confusion, Nasdaq has made clear that the change it is proposing to the interpretation of Family Member concerning stepchildren in Nasdaq Rule 5605(a)(2), for purposes of the bright-line tests in that provision, will not affect the additional independence criteria for audit committee members in Nasdaq Rule 5605(c)(2), incorporating the provisions of Rule 10A–3.[28]

Finally, the Commission believes that it is reasonable for Nasdaq to exclude domestic employees who share a director's home from the definition of Family Member, as do other exchanges. The Commission notes that Nasdaq stated in its proposal that it believes that it is appropriate for a company's Board to review a relationship between a director and a domestic employee who shares the director's home under a facts and circumstances test, as in the case of a stepchild relationship.[29] The Commission also notes that this proposed provision is consistent with the rules of other exchanges.[30] As noted above with respect to other relationships, the Board would continue to need to make an affirmative determination that such a domestic employee relationship with the director does not interfere with the director's independence, pursuant to the requirements in Exchange Rule 5605(a)(2) and IM 5605.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. Amendment No. 3 provided clarifications and additional information regarding the justification of the proposal and also made clear that the proposed rule change would not impact the applicability of the Exchange's additional independence criteria for audit committee members set forth in Nasdaq Rule 5605(c)(2), which incorporate the independence requirements of Rule 10A–3. In Amendment No. 3, Nasdaq also stated that Boards of its listed companies will be expected to elicit the information necessary for Boards to make independence determinations and specifically ask about stepchild relationships. The Commission also notes that the proposed rule language being adopted herein was noticed for comment in the **Federal Register** and no comments were received in response to that notice. The clarifications and additional justification in Amendment No. 3 have assisted the Commission in evaluating the proposal under the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[31] to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 to 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–2019–049 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–2019–049. This

[26] *See supra,* text accompanying note 20.

[27] *See* Nasdaq Rule 5605(a)(2) and IM–5605.

[28] The Commission would expect the Exchange to make clear to its listed companies that the proposed broader exclusion from the definition of Family Member, as it applies to minor stepchildren not sharing the director's home, may not be applied for purposes of determining the independence of audit committee members, where the stricter standards of Rule 10A–3, as well as Exchange Rule 5605(c)(2), still apply.

[29] *See* Amendment No. 3, *supra* note 8, at 10.

[30] *See supra,* note 25.

[31] 15 U.S.C. 78s(b)(2).

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–NASDAQ–2019–049, and should be submitted on or before March 12, 2020.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASDAQ–2019–049), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03320 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88194; File No. SR–NYSEArca–2020–12]

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

February 13, 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 February 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to introduce an alternative requirement to qualify for the Tape B Tier 1 pricing tier. The Exchange proposes to implement the fee changes effective February 3, 2020. 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] 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 an alternative requirement to qualify for the Tape B Tier 1 pricing tier.

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 [3] to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective February 3, 2020.

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.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant

[3] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[6] *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.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equity.

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. 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 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 to introduce an alternative requirement to qualify for the current Tape B Tier 1 rebate for orders that provide liquidity to the Exchange in Tape B securities.

Currently, a Tape B Tier 1 credit of $0.0030 [9] per share applies to ETP Holders that, on a daily basis, measured monthly, directly execute providing volume in Tape B securities that is equal to at least 1.50% of US Tape B CADV for the billing month. With this proposed rule change, the Exchange proposes to introduce an alternative method for ETP Holders to qualify for the Tape B Tier 1 credit. As proposed, ETP Holders could alternatively qualify for the Tape B Tier 1 credit if an ETP Holder who is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in all issues on NYSE Arca Options (excluding mini options) of at least 0.55% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (''OCC'') and the ETP Holder directly executes providing volume in Tape B securities during the billing month that is equal to

- at least 1.00% of US Tape B CADV for the billing month of February 2020.
- at least 1.15% of US Tape B CADV for the billing month of March 2020.
- at least 1.25% of US Tape B CADV for the billing month of April 2020 and each billing month thereafter.

For example, assume an ETP Holder has providing ADV of at least 15 million shares in a billing month where US Tape B CADV is 1.2 billion shares, or 1.25% of US Tape B CADV. Currently, that ETP Holder would not qualify under the current volume requirement which requires ETP Holders to add at least 1.5% of US Tape B for the billing month. However, if that same ETP Holder was affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in all issues on NYSE Arca Options of at least 110,000 contracts in a billing month where total Customer equity and ETF option volume was 20 million contracts, or 0.55% of total Customer equity and ETF option volume, then the ETP Holder would qualify under the proposed alternative requirement and would receive a credit of $0.0030 per share for orders that provide liquidity in Tape B Securities.

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 ETP Holders to promote price discovery and market quality for the benefit of all market participants. The Exchange believes that providing credits to ETP Holders that are affiliated with an OTP Holder or OTP Firm that add liquidity in Tape B securities to the Exchange could lead to increased trading on the Exchange's equities and options markets.[10] As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the tier requires an ETP Holder increase the volume of its trades against orders that add liquidity in Tape B securities at increasing levels in February 2020, March 2020, April 2020 and thereafter at the April 2020 level, coupled with the required minimum of options volume, the Exchange believes the proposed credit would provide an incentive for ETP Holders to route additional liquidity to the Exchange in order to qualify for it.

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,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed 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.'' [13]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [14] Indeed, equity trading is currently dispersed across 13 exchanges,[15] 31 alternative trading systems,[16] and numerous broker-dealer

[9] Under the Basic Rate, ETP Holders receive a credit of $0.0020 per share for Tape B orders that provide liquidity to the Book.

[10] There are currently 55 firms that are both ETP Holders and OTP Holders.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final rule).

[15] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/*.

[16] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData*. A list of alternative trading systems registered with the Commission is

Continued

internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. In particular, the Exchange believes the proposed amendment to Tape B Tier 1 is reasonable because it provides ETP Holders affiliated with an OTP Holder or OTP Firm with an additional way to qualify for the Tape B Tier 1 rebate through equity and options orders. The Exchange believes that the proposed alternative to qualify for the tier utilizing a lower equity volume requirement coupled with a minimum options volume requirement is reasonable because the proposal provides firms with greater flexibility to reach volume tiers across asset classes, thereby creating an added incentive for ETP Holders to bring additional order flow to a public exchange, thereby encouraging greater participation and liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are available to all ETP Holders on an equal basis. They also provide additional benefits or discounts that are reasonably related to the value of the Exchange's market quality and associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is one of several venues and off-exchange venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based on members achieving certain volume thresholds.

Moreover, the Exchange believes the proposed amendment to Tape B Tier 1 is a reasonable means to encourage ETP Holders to increase their liquidity on the Exchange and their participation on NYSE Arca Options. The Exchange believes amending the current pricing tier by adopting an alternative requirement may encourage those ETP Holders who could not previously achieve the pricing tier to increase their order flow on the Exchange and on NYSE Arca Options. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change to adopt an alternative way to qualify for the Tape B Tier 1 credit equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities and options volume. Additionally, a number of ETP Holders have a reasonable opportunity to satisfy the tier's criteria.[17]

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The proposed alternative method to qualify for the Tape B Tier 1 credit would be available to all ETP Holders that are also [sic] OTP Holders or OTP Firms. There are currently 3 ETP Holders that qualify for the Tape B Tier 1 credit. And as noted above, there are 55 firms that are both ETP Holders and OTP Holders and a number of such firms could qualify for Tape B Tier 1 credits under the proposed alternative method. Without having a view of an ETP Holder's 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 Holder affiliated with an OTP Holder or OTP Firm to increase participation in the Exchange's equities and options markets to qualify for the existing and proposed new credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity. The Exchange believes the proposed amended tier could provide an incentive for other ETP Holders to submit additional liquidity on the Exchange and on NYSE Arca Options to qualify for the rebate. To the extent an ETP Holder participates on the Exchange but not on NYSE Arca Options, the Exchange believes that the proposal is still reasonable, equitable and not unfairly discriminatory with respect to such ETP Holder based on the overall benefit to the Exchange resulting from the success of NYSE Arca Options. In particular, such success would allow the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on NYSE Arca Options or not.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, should an ETP Holder not meet the proposed criteria, the ETP Holder can still qualify for the same credit by meeting the current criteria which does not require it to have any affiliation with an OTP Holder or OTP Firm and conduct options trading on NYSE Arca Options. ETP Holders also have several other tiers to aim to achieve to receive rebates.

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 an alternative way to qualify for per share credits, as the proposed credit would be provided on an equal basis to all ETP Holders that are affiliated with an OTP Holder or OTP Firm that add liquidity by meeting the proposed alternative requirement of Tape B Tier 1. Further, the Exchange believes the proposed alternative requirement would incentivize ETP Holders that are affiliated with an OTP Holder or OTP Firm to send their options orders to the Exchange to qualify for the pricing tier. 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.

The proposal to amend the volume requirement to qualify for the Tape B Tier 1 credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the amended threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

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

available at https://www.sec.gov/foia/docs/atslist.htm.

[17] *See supra,* note 11.

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,[18] 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.'' [19]

Intramarket Competition. The proposed change is designed to attract additional equities and options order flow to the Exchange. The Exchange believes that the proposed amendment to the volume requirement under Tape B Tier 1 would continue to incentivize market participants to direct providing displayed order flow to the Exchange and greater participation on NYSE Arca Options. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed volume requirement would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange 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) is less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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) [20] of the Act and subparagraph (f)(2) of Rule 19b–4 [21] 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) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–12, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03314 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88206; File No. SR–BOX–2019–37]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change in Connection With the Proposed Commencement of Operations of Boston Security Token Exchange LLC as a Facility of the Exchange

February 13, 2020.

On December 18, 2019, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change in connection with the proposed commencement of operations of Boston Security Token Exchange LLC (''BSTX'') as a facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3] The Commission has received one comment letter on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 17, 2020.

The Commission hereby is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates April 2, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BOX–2019–37).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03315 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87868 (December 30, 2019), 85 FR 345.

[4] *See* Letter from Ellen Greene, Managing Director, SIFMA, to Vanessa Countryman, Secretary, Commission, dated January 13, 2020. All comments on the proposed rule change are available on the Commission's website at *https://www.sec.gov/comments/sr-box-2019-37/srbox201937.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88200; File No. SR–CboeBZX–2020–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Logic That Would Be Used To Cancel MOC Orders Entered for Participation in the Cboe Market Close in the Event the Exchange Becomes Impaired

February 13, 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 February 4, 2020, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, 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. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the logic that would be used to cancel MOC orders entered for participation in the Cboe Market Close in the event the Exchange becomes impaired. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the logic that would be used by the Exchange to cancel Market-On-Close (''MOC'') orders entered for participation in the Cboe Market Close in the event the Exchange becomes impaired. The Exchange believes that the proposed rule would provide greater transparency to members and investors with regard to how their orders would be handled if the Exchange experiences a systems or other issue that impacts the ability of the Exchange to complete the Cboe Market Close in one or more securities.

The Cboe Market Close is an innovative closing match process for non-BZX Listed Securities that is designed to match buy and sell MOC orders at the official closing price for such security published by the primary listing market.[3] Currently, Interpretations and Policies .02 to Rule 11.28 provides that the Exchange will cancel all MOC orders designated to participate in Cboe Market Close in the event the Exchange becomes impaired prior to the MOC Cut-Off Time and is unable to recover within 5 minutes from the MOC Cut-Off Time.[4] When originally proposed, the Exchange stated that the purpose of this rule was to provide an opportunity for members to

[3] The Commission approved the Cboe Market Close on January 21, 2020. *See* Securities Exchange Act Release No. 88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR–BatsBZX–2017–34).

[4] The MOC Cut-Off Time is 3:35 p.m. ET, and represents the time up until which members may enter, cancel, or replace MOC orders designated for participation in the Cboe Market Close. *See* BZX Rule 11.28(a).

re-enter their MOC orders on the primary listing market in the event that the Exchange became impaired and was unable to conduct the Cboe Market Close.

The Exchange believes, however, that the current wording of the rule is ambiguous. Specifically, the present language does not specify whether MOC orders should be cancelled five minutes after the MOC Cut-Off Time (*i.e.,* at 3:40 p.m. ET), or five minutes before the MOC Cut-Off Time (*i.e.,* at 3:30 p.m. ET). In addition, the Exchange believes that the length of the impairment is a relevant factor that should be considered in determining if MOC orders entered into the Cboe Market Close should be cancelled, as impairments of a longer duration may indicate more significant issues with the closing match process. The Exchange therefore proposes to amend Interpretations and Policies .02 to Rule 11.28 to increase the clarity of the rule and generally improve the process for handling such impairments.

As proposed, the Exchange would cancel all MOC orders designated to participate in the Cboe Market Close if the Exchange becomes impaired prior to the MOC Cut-Off Time, and is unable to recover before the MOC Cut-Off Time, or becomes impaired after the MOC Cut-Off Time but before completing the closing match process in a security. Thus, the MOC Cut-Off Time would, as intended, establish an upper bound for conducting the Cboe Market Close. The Exchange believes that this would continue to ensure that members would have an opportunity to re-enter their MOC orders on the primary listing market in the event that the Exchange became impaired and is unable to conduct the Cboe Market Close due to an impairment that cannot be resolved prior to the time that the closing match process would ordinarily be conducted.

If the Exchange is able to recover prior to the MOC Cut-Off Time, however, the Exchange's handling would be dependent on the length of the impairment. Specifically, if the impairment lasts less than five minutes, the Exchange would cancel only those MOC orders designated to be cancelled by the member. For impairments lasting five minutes or more, the Exchange would cancel all MOC orders, thereby giving members the opportunity to enter such orders for trading in the closing auction to be conducted by the primary listing market. For example, the Exchange would cancel all MOC orders if an impairment starts at 3:05 p.m. ET and continues past 3:10 p.m. ET. If instead the impairment was resolved at 3:08 p.m. ET then members' order persistence settings would govern which MOC orders are subject to cancellation. A member's election for cancelling orders in the event of a matching engine disconnect would be applied for purposes of determining whether to cancel such MOC orders.[5] As a result, members would have the flexibility to determine how they would like their MOC orders handled in the event of a short impairment but would have all MOC orders cancelled in the event of a longer impairment that could indicate a more significant issue.

In addition, the current rule provides that if the Exchange were to become impaired after the MOC Cut-Off Time, it would retain all matched MOC orders and execute those orders at the official closing price once it is operational. The Exchange continues to believe that it is important to ensure that paired MOC orders ultimately receive an execution at the official closing price. As such, the amended Interpretations and Policies .02 to Rule 11.28 would continue to include similar language that states that if the Exchange becomes impaired after completing the closing match process in a security, it would retain all matched MOC orders and execute those orders at the official closing price once the impairment is resolved. The proposed language differs from the current language in two respects, which are merely designed to increase clarity around these rules. First, the proposed rules would reference the Exchange becoming impaired after ''completing the closing match process in a security'' rather than after the MOC Cut-Off Time. While the Exchange would perform the closing match process at the MOC Cut-Off Time, this language would ensure that it is clear that matched MOC orders would be retained only if the closing match process (*i.e.,* the process for matching MOC orders) is completed in the security. As discussed earlier in this proposed rule change, all MOC orders designated to participate in the Cboe Market Close would be cancelled if the Exchange becomes impaired after the MOC Cut-Off Time but before completing the closing match process in a security. Second, the proposed language would reference executing those matched MOC orders ''once the impairment is resolved'' rather than ''once it is operational.'' Since the language in the proposed rule discusses the process for handling a systems impairment, the Exchange believes that the language in this portion of the rule should similarly reference the resolution of this impairment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to 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. Specifically, the Exchange believes that the proposed rule change would protect investors and the public interest because the amended rule would continue to ensure that members have an opportunity to re-enter their orders on the primary listing market if the Exchange experiences an impairment that would impact the ability of the Exchange to successfully conduct the Cboe Market Close in one or more securities, and would provide greater transparency to members and investors with regard to how their orders would be handled if the Exchange experiences such an issue. While the Exchange believes that such events are likely to be rare, providing greater certainty about how orders are handled in such rare situations is consistent with the maintenance of a fair and orderly market.

The Exchange believes that it would be beneficial to allow members to choose how their orders are handled by using the member's order persistence settings, where appropriate, to determine whether their orders should be cancelled in the event that a systems impairment may impact the ability of the Exchange to execute the Cboe Market Close. As such, the Exchange has proposed to allow members to specify whether their MOC orders should be cancelled in the event of a short impairment that is resolved within five minutes, and would apply member's chosen order persistence settings to do so. Using this setting would ensure that members' continue to have the flexibility to determine how their orders are handled in the event of a systems impairment, and would ensure that MOC orders are handled similarly to other orders in such circumstances. At the same time, for longer impairments with a duration exceeding five minutes, the Exchange

[5] The cancel on matching engine disconnect setting is similarly used to handle impairments today, including situations where there the primary matching engine fails over to a secondary matching engine due, for example, to a software error, network problem, etc.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

believes that all members should have their orders cancelled so that they have an opportunity to send those orders to the primary listing market to participate in the closing auction and receive an execution at the official closing price.

Further, since all MOC orders would be cancelled if the Exchange is unable to recover prior to the MOC Cut-Off Time of 3:35 p.m. ET, members would be provided with more than sufficient time to enter their orders for participation in the closing auction on the primary listing market. For example, if the Exchange experienced an impairment that is not resolved at of 3:35 p.m. ET, all MOC orders would be cancelled, and members would have fifteen minutes until the 3:55 p.m. ET cutoff time for entering MOC orders on The Nasdaq Stock Market LLC (''Nasdaq''),[8] ten minutes until the 3:50 p.m. ET cutoff time for entering MOC orders on New York Stock Exchange LLC (''NYSE''),[9] and nineteen minutes until the start of the 3:59 p.m. ET closing auction imbalance freeze on NYSE Arca, Inc. (''Arca'').[10] Of course, an impairment that begins earlier in the trading day would result in orders being subject to cancellation earlier, thus providing additional time for members to redirect their MOC orders to the primary listing market. The Exchange therefore believes that the amended rule would continue to provide an adequate opportunity for members to re-enter their MOC orders on the primary listing market in the event that the Exchange became impaired and is unable to conduct the Cboe Market Close.

Finally, similar to language in the current rule, the amended rule would explain that matched MOC orders would be retained and executed at the official closing price once an impairment is resolved. The amended rule contains minor language changes that are designed to increase clarity around this process, including referencing that matched MOC orders would be retained on completion of the closing match process in a security rather than simply referencing the MOC Cut-Off Time, and referencing that orders would be executed when the impairment is resolved rather than more general language about the Exchange becoming operational. While these changes do not significantly alter the operation of the rule, the Exchange believes that the amendments enhance the clarity of the proposed rules for handling these situations. For example, while the closing match process would be performed at the MOC Cut-Off Time it is possible that an impairment could occur after the Exchange has begun performing the closing match process but before that process has completed in one or more securities. The proposed amendments make clear that in such an event MOC orders would be retained only in those securities where the closing match process has been completed. The Exchange would not retain matched MOC orders if the closing match process in a security had started but is interrupted by a systems impairment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Cboe Market Close is designed to increase competition in the U.S. equities market by offering an alternative to the primary listing markets' closing auction processes. The proposed amendments do not address any competitive issue, but would instead implement operational changes to the Exchange's process for dealing with situations involving a systems impairment that would impact the Exchange's ability to conduct a timely closing match process. These changes are designed to both provide transparency to members and investors about how the Exchange intends to handle such situations, and to ensure that market participants have an opportunity to have their orders executed as desired in the event of an impairment. As such, the Exchange believes that the proposed rule change would not burden competition, and indeed would further the competitive benefits sought by the introduction of the Cboe Market Close.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2020–015 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–2020–015. 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

[8] *See* Nasdaq Rule 4702(b)(11)(A).

[9] *See* NYSE Rule 123C(2)(a)(i).

[10] *See* Arca Rule 7.35–E(d)(2).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

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–2020–015, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03327 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88218; File No. SR–CboeBZX–2020–014]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

February 14, 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 February 4, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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 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

BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no comment letters on the Initial Proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Initial Suspension Order'').[4] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5] On October 1, 2019, the Exchange re-filed its proposed rule change with additional information about the basis for the proposed fee change (''Second Proposal''). The Second Proposal was published in the **Federal Register** on October 15, 2019,[6] and the Commission received no comment letters on the Second Proposal. The Program again remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'').[7] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposal.[8] On November 27, 2019, the Exchange re-filed its proposed rule change a third time with one revision to the requirements for participating in the Program and additional information about the basis for the proposed fee change (''Third Proposal''). The Third Proposal was published in the **Federal Register** on December 16, 2019.[9] Today, the Exchange is withdrawing the Third Proposal, and replacing it with this proposed fee change as part of its ongoing efforts to continue to facilitate retail investor access to reasonably priced market data.

Current Fees

The Cboe One Summary Feed is a top of book data feed that provides real-time U.S. equity quote and trade information to investors based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data

[3] *See* Securities Exchange Act Release No. 86667 (August 14, 2019), 84 FR 43233 (August 20, 2019) (SR–CboeBZX–2019–069).

[4] *See* Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208 (October 4, 2019) (SR–CboeBZX–2019–069).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 87312 (October 15, 2019), 84 FR 56235 (October 21, 2019) (SR–CboeBZX–2019–086).

[7] *See* Securities Exchange Act Release No. 87629 (November 26, 2019), 84 FR 66245 (December 3, 2019) (SR–CboeBZX–2019–086).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 87712 (December 10, 2019), 84 FR 68508 (December 16, 2019) (SR–CboeBZX–2019–101).

Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[10]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide Cboe One Summary Feed Data to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing Cboe One Summary Feed Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) At least 90% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving Cboe One Summary Feed Data; and (3) Distributor distributes Cboe One Summary Feed Data to no more than 5,000 Users.[11]

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide Cboe One Summary Feed Data to a limited number of subscribers. As explained later in this filing, distributors that provide Cboe One Summary Feed Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Cboe One Summary Feed with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Cboe One Summary Feed, which is a top of book offering, as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[12] The distribution fee charged for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month for distributors that meet the requirements of the Program. In addition, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[13]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[14] The Cboe One Summary Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[15]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

[10] The Exchange also offers an Enterprise license for the Cboe One Summary Feed at a cost of $50,000 per month. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers.

[11] The Initial Proposal, Second Proposal, and Third Proposal would have allowed small retail brokers to participate in the Program if they distribute Cboe One Summary Feed Data to no more than 5,000 Non-Professional Users. The current proposal instead reflects a threshold of 5,000 Users—*i.e.,* including both Non-Professional and Professional Users.

[12] New external distributors of the Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[13] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[14] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[15] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, as was the Second Proposal, the Exchange believes that its experience in offering the Program while it has been in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange reduced the fees charged to small retail brokers pursuant to the Initial Proposal, Second Proposal, and Third Proposal, while each of those were in effect, it successfully onboarded three new customers due to the attractive pricing.[16] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[17] in general, and furthers the objectives of Section 6(b)(4),[18] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[19] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[20] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to the Cboe One Summary Feed. The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data disseminated by other national securities exchanges.[22] It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[23] The Cboe One Summary Feed is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the Cboe One Summary Feed benefits a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary

[16] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78k–1.

[20] *See* 17 CFR 242.603.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See e.g.,* supra note 13 (discussing Nasdaq Basic).

[23] *Id.*

Feed is within 1% of the national best bid and offer approximately 98% of the time,[24] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded three new Distributors that have decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BZX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [25]

Today, the Cboe One Summary Feed is among the most competitively priced top of book offerings in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up a significant majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having significantly more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors.

This understanding is confirmed by an analysis conducted by the Exchange on the user population of its retail broker clients that purchase market data from the Exchange and its affiliated exchanges. To perform its analysis, the Exchange reviewed user populations for each broker dealer that it identified as primarily engaged in serving retail investors (*i.e.,* retail brokers), and for which the Exchange has reported usage broken down into Professional and Non-Professional Users.[26] This analysis showed that each retail broker identified currently provides market data from the Exchange or its affiliates to at least 90% Non-Professional Users, with the Professional/Non-Professional breakdown ranging from 90.9% Non-Professional Users on the low end to 100% Non-Professional Users on the high end. As a result of this analysis, the Exchange believes that a requirement that at least 90% of a broker-dealer's user population qualify as Non-Professional Users is appropriate to ensure that the benefits provided by the Program inure to the benefit of broker-dealers that primarily serve retail investors. Indeed, this belief is further supported by the Exchange's experience with the customers that currently participate in the Program, each of which are focused on providing trading services to ordinary investors.

As such, the Program would be broadly available to a wide range of retail brokers that either purchase the Cboe One Summary Feed today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are currently participating in the Program, a number of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and

[24] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

[25] *See* Regulation NMS Adopting Release, supra note 21, at 37503.

[26] Broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. As a result, the Exchange has excluded those firms from this portion of its analysis. That said, the Exchange believes those firms may have a similar Professional/Non-Professional breakdown to other retail brokers.

consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[27] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. The Program is designed to ensure that small retail brokers have access to Exchange data at a modest cost, and therefore contains an eligibility cutoff based on the number of Users that would receive Cboe One Summary Feed Data. The retail broker clients identified by the Exchange provide data from the Exchange or its affiliates to an average of more than 160,000 Non-Professional Users, with a small handful of large retail brokers operating pursuant to an Enterprise license accounting for about 95% of those Non-Professional Users.[28] Many retail broker clients, however, have significantly smaller Non-Professional User populations, with retail brokers that are not operating pursuant to an Enterprise license providing data from the Exchange or its affiliates to an average of 8,845 Non-Professional Users. The 5,000 User threshold would therefore ensure that the benefits of the Program flow to small retail brokers, as intended, and not larger firms that already benefit from the current fee structure.

Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide Cboe One Summary Feed Data to more than 5,000 Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for firms with more than 1,200 Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Users.[29] After 5,000 Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels, cheaper than the current Cboe One Summary fee.

[27] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.*

[28] As explained, broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. *See* supra note 26. To perform this analysis, the Exchange therefore assumed that retail brokers qualifying for the enterprise cap had a similar breakdown of Professional/Non-Professional Users as retail brokers that reported this information.

[29] For purposes of illustration, the examples included in the table assume that the small retail broker provides Cboe One Summary Data solely to Non-Professional Users, which pursuant to the requirements of the Program must make up at least 90% of the Distributor's total subscriber population, and may, in practice, make up an even larger proportion of the user population.

Small Retail Broker Distribution Program					
	1,200			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$ 3,850.00	$3,850	0.00
BZX Top	1,200	$ 2,500.00	$ 2,500.00	$3,850	1350.00
	3,350			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$ 3,850.00	$6,000	2150.00
BZX Top	3,350	$ 2,500.00	$ 2,500.00	$6,000	3500.00
	7,500			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$ 3,850.00	$10,150	4150.00
BZX Top	7,500	$ 2,500.00	$ 2,500.00	$10,150	7650.00

The Exchange also notes that the proposed fees for the Cboe One Summary Feed are designed in a manner that would allow a market data vendor to offer a similar competing product that includes data from the Exchange and its affiliated equities exchanges. Specifically, the Distribution fees proposed for the Cboe One Summary Feed are equivalent to the fees that would be charged to a small retail broker for access to the top of book feeds offered by the individual exchanges. In addition, Distributors of the Cboe One Summary Feed are liable for a Data Consolidation Fee that is designed to reflect the value of the consolidation of the data. Thus, the pricing for the Cboe One Summary Feed would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no pricing disadvantage relative to the exchanges. The examples below illustrate the fees that would be associated with the Cboe One Summary Feed compared with the fees that would be charged for a competing product that incorporates top of book information taken from the Exchange and its affiliated equities exchanges.[30]

Example 1: *Vendor Distributes Cboe One Summary Feed to Two Small Retail Brokers*

A vendor that distributes the Cboe One Summary Feed to one or more clients for further internal or external distribution would be liable for an External Distribution Fee of $5,000 per month and a Data Consolidation Fee of $1,000 per month.[31] In addition, each small retail broker that receives data from the vendor would be liable for its own Distribution Fees, which would be reduced to $3,500 per month pursuant to the Program, and Data Consolidation Fees, which would be reduced to $350 per month. These amounts would be paid directly by each small retail broker to the Exchange pursuant to a license agreement despite the fact that such clients are utilizing the services of a vendor to facilitate their access to the data.

Example 2: *Vendor Distributes Competing Product to Two Small Retail Brokers*

Similar to Example 1, a vendor that consolidates and distributes top of book data taken from the Exchange and its affiliated equities exchanges would be liable for External Distribution Fees of $5,000 per month—*i.e.,* $2,500 for BZX Top, $1,000 per month for BYX Top, and $1,500 for EDGX Top, and $0 per month for EDGA Top. Unlike Example 1, however, the vendor would be performing its own consolidation of the data incorporated from the four top of book feeds, and would not be liable for the Data Consolidation Fee. Similarly, each of the small retail brokers would pay their own Distribution Fees to the Exchange, which would be reduced to $3,500 under the Program—*i.e.,* $2,500 per month for BZX Top, $250 per month for BYX Top, $750 per month for EDGX Top, and $0 per month for EDGA Top. Similar to the vendor, the small retail brokers would not pay any Data Consolidation Fee. As a result, a vendor could offer its own competing product at a price that is competitive with the Exchange's pricing.[32]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market,

[30] All Distributors that receive an uncontrolled data feed, including small retail brokers that qualify for the Program, would have to license directly with the Exchange, and would be responsible for paying any applicable fees, but would be able to access such market data through the services of a vendor.

[31] Typically, a vendor's business involves distributing market data to a wide range of customers, which would likely include a number of firms that do not qualify for the Program (*e.g.,* other vendors, larger broker-dealers, etc.). In both examples, the fees charged to the vendor would permit it to distribute to each of those downstream customers without paying additional fees for each customer.

[32] The discounted Data Consolidation Fee should continue to allow a vendor that takes top of book feeds from the Exchange and its affiliated equities exchanges to offer a competing product at a similar cost. In this regard, the Exchange notes that Nasdaq similarly charges a $350 data consolidation fee for Nasdaq Last Sale Plus. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 139(e)(1).

the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with the Act.

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) of the Act [33] and paragraph (f) of Rule 19b–4 [34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–014 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–2020–014. 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–2020–014 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03416 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88198; File No. SR–NYSEArca–2019–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt NYSE Arca Rule 8.602–E To Permit the Listing and Trading of Actively Managed Solution Shares and To List and Trade Two Series of Actively Managed Solution Shares Issued by the American Century ETF Trust Under Proposed NYSE Arca Rule 8.602–E

February 13, 2020.

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) adopt proposed NYSE Arca Rule 8.602–E to permit the Exchange to list and trade Actively Managed Solution Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules; and (2) list and trade the following Actively Managed Solution Shares under proposed NYSE Arca Rule 8.602–E: American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF. The proposed rule change was published for comment in the **Federal Register** on January 3,

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 17, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on 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,[5] designates April 2, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2019–96).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03321 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 87867 (December 30, 2019), 85 FR 394.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88208; File No. SR–CboeBZX–2019–097]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; 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 BZX Rule 14.11(l) To Permit the Listing and Trading of Exchange-Traded Fund Shares That Are Permitted To Operate in Reliance on Rule 6c–11 Under the Investment Company Act of 1940

February 13, 2020.

On November 15, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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, among other things, adopt BZX Rule 14.11(l) to permit the listing and trading of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940. The proposed rule change was published for comment in the **Federal Register** on November 22, 2019.[3]

On December 17, 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] On February 12, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[6] The Commission has received no comment letters on the proposed rule change.

The Commission is publishing this notice and order to 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 Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87560 (Nov. 18, 2019), 84 FR 64607.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87777, 84 FR 70598 (Dec. 23, 2019). The Commission designated February 20, 2019 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] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2019-097/srcboebzx2019097-6804772-208449.pdf.*

I. The Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes a rule change to adopt BZX Rule 14.11(l) to permit the listing and trading of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940. The Exchange is also proposing to discontinue the quarterly reports required with respect to Managed Fund Shares listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i).

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

This Amendment No. 1 to SR–CboeBZX–2019–097 amends and replaces in its entirety the proposal as originally submitted on November 15, 2019. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to add new Rule 14.11(l)[8] for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Exchange-Traded

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Exchange notes that it is proposing new Rule 14.11(l) because it has also proposed a new Rule 14.11(k) as part of another proposal. *See* Securities Exchange Act Release No. 87062 (September 23, 2019), 84 FR 51193 (September 27, 2019) (SR–CboeBZX–2019–047).

Fund Shares[9] that are permitted to operate in reliance on Rule 6c–11 (''Rule 6c–11'') under the Investment Company Act of 1940 (the ''1940 Act'').[10] The Exchange is also proposing to make conforming changes to the Exchange's corporate governance requirements under Rule 14.10(e) in order to accommodate the proposed listing of Exchange-Traded Fund Shares. Finally, the Exchange is proposing to discontinue the quarterly reports required with respect to Managed Fund Shares listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i).

The Commission recently adopted Rule 6c–11 to permit exchange-traded funds (''ETFs'') that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[11] Since the first ETF was approved by the Commission in 1992, the Commission has routinely granted exemptive orders permitting ETFs to operate under the 1940 Act because there was no ETF specific rule in place and they have characteristics that distinguish them from the types of structures contemplated and included in the 1940 Act. After such an extended period operating without a specific rule set and only under exemptive relief, Rule 6c–11 is designed to provide a consistent, transparent, and efficient regulatory framework for ETFs.[12] Exchange listing standards applicable to ETFs have been similarly adopted and tweaked over the years and the Exchange believes that, just as the Commission has undertaken a review of the 1940 Act as it is applicable to ETFs, it is appropriate to perform a similar holistic review and overhaul of Exchange listing rules. With this in mind, the Exchange submits this proposal to add new Rule 14.11(l) and certain corresponding rule changes because it believes that this proposal similarly promotes consistency, transparency, and efficiency surrounding the exchange listing process for ETF Shares in a manner that is consistent with the Act, as further described below. Except as otherwise provided, the Exchange would continue to enforce all governance, disclosure, and trading rules for this ETF Shares, as defined below, listed on the Exchange.

Consistent with Index Fund Shares and Managed Fund Shares listed under the generic listing standards in Rules 14.11(c) and 14.11(i), respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.[13]

Proposed Listing Rules

Proposed Rule 14.11(l)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Exchange-Traded Funds (''ETF Shares'') that meet the criteria of this Rule 14.11(l).

Proposed Rule 14.11(l)(2) provides that the proposed rule would be applicable only to ETF Shares. Except to the extent inconsistent with this Rule 14.11(l), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. ETF Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(l)(2) further provides that: (A) Transactions in ETF Shares will occur throughout the Exchange's trading hours; (B) the minimum price variation for quoting and entry of orders in ETF Shares is $0.01; and (C) the Exchange will implement and maintain written surveillance procedures for ETF Shares.

Proposed Rule 14.11(l)(3)(A) provides that the term ''ETF Share'' shall mean a share of stock issued by an Exchange-Traded Fund.

Proposed Rule 14.11(l)(3)(B) provides that the term ''Exchange-Traded Fund'' has the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11 under the Investment Company Act of 1940.

Proposed Rule 14.11(l)(3)(C) provides that the term ''Reporting Authority'' in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(l)(4) provides that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.11(l) on an initial and continued listing basis.

Proposed Rule 14.11(l)(4)(A) provides that the requirements of Rule 6c–11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis. Further, proposed Rule 14.11(l)(4)(A) provides that: (i) For each series, the Exchange

[9] As provided below, proposed Rule 14.11(l)(3)(A) provides that the term ''ETF Shares'' shall mean the shares issued by a registered open-end management investment company that: (i) Is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (ii) issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount (if any); and (iii) issues shares that it intends to list or are listed on a national securities exchange and traded at market-determined prices.

[10] 15 U.S.C. 80a–1.

[11] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

[12] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204.

[13] Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 14.11(l), the Exchange proposes new Rule 14.11(l) to establish generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c–11. An ETF listed under proposed Rule 14.11(l) would therefore not need a separate proposed rule change pursuant to Rule 19b–4 before it can be listed and traded on the Exchange.

will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.11(l)(4)(B) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the Proposed Rule 14.11(l)(4)(B)(i) and (ii). Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(l)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(l)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(l)(6) provides that the provisions of this subparagraph apply only to series of ETF Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of ETF Shares by means of an information circular prior to commencement of trading in such series. The Exchange requires that members provide to all purchasers of a series of ETF Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of ETF Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of ETF Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of ETF Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of ETF Shares).'' A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of ETF Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule. Upon request of a customer, a member shall also provide a prospectus for the particular series of ETF Shares.

Proposed Rule 14.11(l)(7) provides that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 14.11(c) or Rule 14.11(i), or pursuant to the approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 14.11(l) if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. At the time of listing of such security under this Rule 14.11(l), the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (b) of this Rule 14.11(l). Any requirements for listing as specified in Rule 14.11(c) or Rule 14.11(i), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 14.11(l) will no longer be applicable to such security.

The Exchange is also proposing to make two corresponding amendments to include ETF Shares in other Exchange rules. Specifically, the Exchange is also proposing: (i) To amend Rule 14.10(e)(1)(E) and Interpretation and Policy .13 to Rule 14.10 in order to add ETF Shares to a list of product types listed on the Exchange, including Index Fund Shares, Managed Fund Shares, and Managed Portfolio Shares, that are exempted from the Audit Committee requirements set forth in Rule

14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3; and (ii) to amend Rule 14.11(c)(3)(A)(i)(a) in order to include ETF Shares in the definition of Derivative Securities Products.

Discussion

Proposed Rule 14.11(l) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c–11 is effective. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. As such, the Exchange believes that using Rules 14.11(c) and (i) (collectively, the ''Current ETF Standards'') as the basis for proposed Rule 14.11(l) is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.11(l) and the Current ETF Standards that are not otherwise required under Rule 6c–11 are as follows: (i) Proposed Rule 14.11(l) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; and (ii) proposed Rule 14.11(l) does not include any requirements related to the dissemination of a fund's Intraday Indicative Value.[14] These differences are discussed below.

Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(l) does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),[15] the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(l)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(l)(4)(B)(i). The Exchange will also halt trading in ETFs under the conditions specified in Rule 11.18, ''Trading Halts Due to Extraordinary Market Volatility.'' The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional Disclosure Obligations.[16] The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.[17] The Exchange will monitor for compliance with the 1940 Act generally as well as Rule 6c–11 specifically in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of ETF Shares in order to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of ETF Shares listed on the Exchange in order to ensure that certain investment requirements and limitations under the 1940 Act are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) and proposed Rule 14.11(l)(4)(A)(ii) would require an issuer of ETF Shares to notify the Exchange of any failure to comply with Rule 6c–11 or the 1940 Act.

The Exchange may suspend trading in and commence delisting proceedings for a series of ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.[18]

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing

[14] For purposes of this filing, the term ''Intraday Indicative Value'' or ''IIV'' shall mean an intraday estimate of the value of a share of each series of either Index Fund Shares or Managed Fund Shares.

[15] The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the ''Holdings Standards'') as well as related to the minimum number of beneficial holders of a fund (the ''Distribution Standards''). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

[16] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Rule 6c–11 Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[17] The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

[18] Specifically, proposed Rule 14.11(l)(4)(B) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the Proposed Rule 14.11(l)(4)(B)(i) and (ii). Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(l)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's (''MSRB'') Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of ETF Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 14.10(e)(1)(E) and Interpretation and Policy .13 to Rule 14.10.

Intraday Indicative Value

As described above, proposed Rule 14.11(l) does not include any requirements related to the dissemination of an Intraday Indicative Value. Both Rule 14.11(c) and Rule 14.11(i) include the requirement that a series of Index Fund Shares and Managed Fund Shares, respectively, disseminate and update an Intraday Indicative Value at least every 15 seconds.[19] Historically (and theoretically), the IIV could provide valuable information about an ETF that would not otherwise be available or easily calculable. However, as consistently highlighted in the Rule 6c–11 Release, that is not reflective of the current marketplace and the Commission has expressed concerns regarding the accuracy of IIV estimates for certain ETFs. Specifically, the Commission noted that an IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently as such IIV can be stale or inaccurate.[20] Additionally, the Commission indicated that even in circumstances when an IIV may be reliable, retail investors do not have easy access to free, publicly available IIV information.[21] Further, in instances when IIV may be free and publicly available, it can be delayed by up to 45 minutes.[22]

Aside from the fact that the disseminated IIV may provide investors with stale or misleading data, the Commission also stated that market makers and authorized participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information.[23] Such information allows those market participants to support the arbitrage mechanism for ETFs. Therefore, as market participants who engage in arbitrage typically calculate their own intraday value of an ETF's portfolio based on the ETF's daily portfolio disclosure and pricing information and use an IIV only as a secondary check to their own calculation,[24] the Commission noted that IIV was not necessary to support the arbitrage mechanism.[25] Given this, combined with potential shortcomings of the IIV noted above, the Commission concluded that ETFs will not be required to disseminate an IIV under Rule 6c–11.[26]

The Exchange generally agrees with the limitations and shortcomings of IIV described in the Rule 6c–11 Release. The Exchange further agrees with the conclusion of the Adopting Release that the ''IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure.'' The transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares. The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there are certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange is simply not proposing to require the dissemination of such information.

As such, the Exchange believes that it is appropriate and consistent with the Act to not include a requirement for the dissemination of an IIV for a series of ETF Shares to be listed on the Exchange.

Discontinuing Quarterly Reporting for Managed Fund Shares

Finally, the Exchange is proposing to eliminate certain quarterly reporting obligations related to the listing and trading of Managed Fund Shares on the Exchange. In the order approving the Exchange's proposal to adopt generic listing standards for Managed Fund Shares,[27] the Commission noted that the Exchange had represented that ''on a quarterly basis, the Exchange will provide a report to the Commission staff that contains, for each ETF whose shares are generically listed and traded under BATS Rule 14.11(i): (a) Symbol and date of listing; (b) the number of active authorized participants (''APs'') and a description of any failure by either a fund or an AP to deliver promised baskets of shares, cash, or cash and instruments in connection with creation or redemption orders; and (c) a description of any failure by an ETF to comply with BATS Rule 14.11(i).'' [28] This reporting requirement is not specifically enumerated in Rule 14.11(i).

The Exchange has provided such information to the Commission on a quarterly basis since the MFS Approval Order was issued in 2016. The type of information provided in the reports was created to provide a window into the creation and redemption process for Managed Fund Shares in order to ensure that the arbitrage mechanism would work as expected for products that were listed pursuant to the newly approved generic listing standards. The approval of the Rule 6c–11 collapses the distinction between index funds and active funds, which the Exchange believes represents that the Commission is generally comfortable with actively managed funds, rendering the reports unnecessary. Further, because the same general types of information provided in those reports will be made available under Rule 6c–11 directly from the issuers of such securities the Exchange also believes that it is consistent with the Act to remove this reporting obligation because it will be duplicative and no longer necessary.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [29] in general and Section 6(b)(5) of the Act [30] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(l) is designed to prevent

[19] *See* Rules 14.11(c)(3)(C), 14.11(c)(6)(A), and 14.11(c)(9)(B)(e) related to Index Fund Shares and Rules 14.11(i)(3)(C), 14.11(i)(4)(B)(i), 14.11(i)(4)(B)(iii)(b), and 14.11(i)(4)(B)(iv) related to Managed Fund Shares.

[20] *See* Rule 6c–11 Release at 62.

[21] *See* Id., at 66.

[22] *See* Id.

[23] *See* Id., at 63.

[24] *See* Id., at 63.

[25] *See* Id., at 65.

[26] *See* Id., at 61.

[27] *See* Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100) (the ''MFS Approval Order'').

[28] *See* MFS Approval Order at footnote 14.

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(5).

fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(l)(4) sets forth initial and continued listing criteria applicable to ETF Shares, specifically providing that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.11(l) on an initial and continued listing basis. The Exchange will submit a Form 19b–4(e) for all series of ETF Shares upon being listed pursuant to Rule 14.11(l), including those series of ETF Shares that are listed under Rule 14.11(l) pursuant to proposed Rule 14.11(l)(7).

Proposed Rule 14.11(l)(4)(B) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the Proposed Rule 14.11(l)(4)(B)(i) and (ii). Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(l)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

The Exchange further believes that proposed Rule 14.11(l) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.11(l)(2)(C) along with the similarities of proposed Rule 14.11(l) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as ETF Shares. Proposed Rule 14.11(l) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c–11 is effective. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. As such, the Exchange believes that using the Current ETF Standards as the basis for proposed Rule 14.11(l) is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.11(l) and the Current ETF Standards that are not otherwise required under Rule 6c–11 are as follows: (i) Proposed Rule 14.11(l) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; and (ii) proposed Rule 14.11(l) does not include any requirements related to the dissemination of a fund's Intraday Indicative Value.

Quantitative Standards

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act [31] in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 14.11(l) by performing ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(l) does not include the quantitative requirements applicable to a fund and a fund's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),[32] the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(l)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(l)(4)(B)(i). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional Disclosure Obligations.[33] The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.[34] The Exchange will monitor for compliance with Rule 6c–11 in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of ETF Shares in order to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of ETF Shares listed on the Exchange in order to ensure that certain investment requirements and limitations under the 1940 Act are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) and proposed Rule 14.11(l)(4)(A)(ii) would require an issuer of ETF Shares to notify the Exchange of any failure to comply with Rule 6c–11 or the 1940 Act.

To the extent that any of the requirements under Rule 6c–11 or the 1940 Act are not being met, the Exchange may halt trading in a series of ETF Shares as provided in proposed Rule 14.11(l)(4)(B)(ii). Further, the

[31] 15 U.S.C. 78f(b)(1).

[32] The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the ''Holdings Standards'') as well as related to the minimum number of beneficial holders of a fund (the ''Distribution Standards''). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

[33] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Rule 6c–11 Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[34] The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

Exchange may also suspend trading in and commence delisting proceedings for a series of ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.[35]

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of ETF Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 14.10(e)(1)(E) and Interpretation and Policy .13 to Rule 14.10.

Intraday Indicative Value

As described above, proposed Rule 14.11(l) does not include any requirements related to the dissemination of an Intraday Indicative Value. Both Rule 14.11(c) and Rule 14.11(i) include the requirement that a series of Index Fund Shares and Managed Fund Shares, respectively, disseminate and update an Intraday Indicative Value at least every 15 seconds.[36] Historically (and theoretically), the IIV could provide valuable information about an ETF that would not otherwise be available or easily calculable. However, as consistently highlighted in the Rule 6c–11 Release, that is not reflective of the current marketplace and the Commission has expressed concerns regarding the accuracy of IIV estimates for certain ETFs. Specifically, the Commission noted that an IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently as such IIV can be stale or inaccurate.[37] Additionally, the Commission indicated that even in circumstances when an IIV may be reliable, retail investors do not have easy access to free, publicly available IIV information.[38] Further, in instances when IIV may be free and publicly available, it can be delayed by up to 45 minutes.[39]

Aside from the fact that the disseminated IIV may provide investors with stale or misleading data, the Commission also stated that market makers and authorized participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information.[40] Such information allows those market participants to support the arbitrage mechanism for ETFs. Therefore, as market participants who engage in arbitrage typically calculate their own intraday value of an ETF's portfolio based on the ETF's daily portfolio disclosure and pricing information and use an IIV only as a secondary check to their own calculation,[41] the Commission noted that IIV was not necessary to support the arbitrage mechanism.[42] Given this, combined with potential shortcomings of the IIV noted above, the Commission concluded that ETFs will not be required to disseminate an IIV under Rule 6c–11.[43]

The Exchange generally agrees with the limitations and shortcomings of IIV described in the Rule 6c–11 Release. The Exchange further agrees with the conclusion of the Adopting Release that the ''IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure.'' The transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares. The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there are certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange is simply not proposing to require the dissemination of such information.

As such, the Exchange believes that it is appropriate and consistent with the Act to not include a requirement for the dissemination of an IIV for a series of ETF Shares to be listed on the Exchange.

The Exchange also believes that the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for ETF Shares will be available via the CTA high-speed line. The website for each series of ETF Shares will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a circular of the special characteristics and risks associated with trading in the series of ETF Shares. As noted above, series of ETF Shares will not be required to publicly disseminate an IIV. The

[35] Specifically, proposed Rule 14.11(l)(4)(B) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of the Proposed Rule 14.11(l)(4)(B)(i) and (ii). Proposed Rule 14.11(l)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (b) if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(l)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

[36] *See* Rules 14.11(c)(3)(C), 14.11(c)(6)(A), and 14.11(c)(9)(B)(e) related to Index Fund Shares and Rules 14.11(i)(3)(C), 14.11(i)(4)(B)(i), 14.11(i)(4)(B)(iii)(b), and 14.11(i)(4)(B)(iv) related to Managed Fund Shares.

[37] *See* Rule 6c–11 Release at 62.

[38] *See* Id., at 66.

[39] *See* Id.

[40] *See* Id., at 63.

[41] *See* Id., at 63.

[42] *See* Id., at 65.

[43] *See* Id., at 61.

Exchange continues to believe that this proposal is consistent with the Act and is designed to promote just and equitable principles of trade and to protect investors and the public interest because the transparency that comes from daily portfolio holdings disclosure as required under Rule 6c–11 provides market participants with sufficient information to facilitate the intraday valuation of ETF Shares, rendering the dissemination of the IIV unnecessary.

The Exchange notes that it is not proposing to prohibit the dissemination of an IIV for a series of ETF Shares and believes that there could be certain instances in which the dissemination of an IIV could provide valuable information to the investing public. The Exchange proposes to leave that decision to an issuer of ETF Shares and is simply not proposing to require the dissemination of an IIV.

Based on the foregoing discussion regarding proposed Rule 14.11(l) and its similarities to and differences between the Current ETF Standards, the Exchange believes that the proposal is consistent with the Act and is designed to prevent fraudulent and manipulative transactions and that the manipulation concerns that the quantitative standards and the IIV requirements are designed to address are otherwise mitigated by the proposal and the new Disclosure Obligations and flexibility under Rule 6c–11.

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 ETF Shares in a manner that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that approval of this proposal will streamline current procedures, reduce the costs and timeline associated with bringing ETFs to market, and provide significantly greater regulatory certainty to potential issuers considering bringing ETF Shares to market, thereby enhancing competition among ETF issuers and reducing costs for investors.[44]

The Exchange also believes that the corresponding change to amend Rule 14.10(e)(1)(E) and Interpretation and Policy .13 to Rule 14.10 in order to add ETF Shares to a list of product types listed on the Exchange, including Index Fund Shares, Managed Fund Shares, and Managed Portfolio Shares, that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A–3 because it is a non-substantive change meant only to subject ETF Shares to the same corporate governance requirements currently applicable to Index Fund Shares and Managed Fund Shares. All other corporate governance requirements that ETF Shares are not specifically exempted from will otherwise apply. The Exchange also believes that the non-substantive change to amend Rule 14.11(c)(3)(A)(i)(a) in order to include ETF Shares in the definition of Derivative Securities Products is also a non-substantive change because it is just intended to add ETF Shares to a definition that includes Index Fund Shares and Managed Fund Shares in order to make sure that ETF Shares are treated consistently with Index Fund Shares and Managed Fund Shares throughout the Exchange's rules.

Finally, the Exchange believes that eliminating the quarterly reporting requirement for Managed Fund Shares is designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest because the report no longer serves the purpose for which it was originally intended. The type of information provided in the reports was created to provide a window into the creation and redemption process for Managed Fund Shares in order to ensure that the arbitrage mechanism would work as expected for products that were listed pursuant to the newly approved generic listing standards. In the Rule 6c–11 Release, the Commission concluded that ''the arbitrage mechanism for existing actively managed ETFs has worked effectively with small deviations between market price and NAV per share.''[45] The Exchange generally agrees with this conclusion and, while such quarterly reports were useful when Managed Fund Shares were first able to be listed pursuant to generic listing standards, the Exchange believes that such a window into the creation and redemption process for Managed Fund Shares no longer provides useful information related to the prevention of manipulation or protection of investors which it was originally designed to provide. Further, because the same general types of information provided in those reports will be made available under Rule 6c–11 directly from the issuers of such securities the Exchange also believes that it is consistent with the Act to remove this reporting obligation because it will be duplicative and no longer necessary.

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. To the contrary, the Exchange believes that the proposed rule change would enhance competition by streamlining current procedures, reducing the costs and timeline associated with bringing ETFs to market, and providing significantly greater regulatory certainty to potential issuers considering bringing ETF Shares to market, all of which the Exchange believes would enhance competition among ETF issuers and reduce costs for investors. The Exchange also believes that the proposed change would make enhance competition among ETF Shares by ensuring the application of uniform listing standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–097, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[46] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy

[44] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204

[45] *See* Rule 6c–11 Release at 23.

[46] 15 U.S.C. 78s(b)(2)(B).

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,[47] 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.'' [48]

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 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.[49]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 12, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 26, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[50] 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:

1. The Exchange's proposed generic listing requirements would require that, for the Exchange to list and trade ETF Shares, the requirements of Rule 6c–11 must be satisfied on a continued listing basis. The Exchange states that it will monitor for compliance with the 1940 Act, generally, as well as with Rule 6c–11, specifically, in order to ensure that the continued listing standards are being met. The Exchange states that it plans to review the website of series of ETF Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolios underlying each series of ETF Shares listed on the Exchange to ensure that certain investment requirements and limitations under the 1940 Act are being met. The Exchange also states that it will employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances, the Exchange notes that current BZX rules require, and BZX's proposed rules would require, an issuer of ETF Shares to notify the Exchange of any failure to comply with Rule 6c–11 under the 1940 Act. What are commenters' views on whether the Exchange's surveillance procedures are adequate to monitor for non-compliance with respect to the proposed continued listing requirements? Do commenters believe that the Exchange should adopt other procedures or employ additional measures to ensure that it is capable of adequately monitoring for non-compliance with the proposed listing rule?

2. Under the proposal, the Exchange describes its discretion to halt trading in ETF Shares in its proposed listing rule. For ETF Shares that are based on an underlying index, what are commenters' views on whether the Exchange should consider halting trading if there is an interruption or disruption in the calculation and dissemination of the underlying index value? What are commenters' views on whether the Exchange should consider halting trading in the event of an interruption or disruption in the calculation and dissemination of the intraday indicative value, to the extent such value is calculated and publicly disseminated for an Exchange-Traded Fund? Do commenters believe there are other circumstances in which the Exchange ought to consider halting trading in ETF Shares listed under the proposed rule?

3. What are commenters' views on whether the proposed rule change is sufficiently clear regarding Exchange members' obligations with respect to disclosures to ETF Share purchasers? More generally, what are commenters' views on whether the proposal provides sufficient clarity for members' obligations with respect to transactions in ETF Shares on the Exchange?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–097 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–2019–097. 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.

[47] *Id.*

[48] 15 U.S.C. 78f(b)(5).

[49] 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).

[50] *See supra* note 6.

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–2019–097 and should be submitted by March 12, 2020. Rebuttal comments should be submitted by March 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03328 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[51] 17 CFR 200.30–3(a)(12) & 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88191; File No. SR–NSCC–2019–004]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Municipal Bonds

February 13, 2020.

On December 13, 2019, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–NSCC–2019–004 to revise NSCC's methodology for calculating margin amounts applicable to municipal bonds.[3] The proposed rule change was published for comment in the **Federal Register** on January 2, 2020,[4] and the Commission received no comment letters regarding the changes proposed in the proposed rule change.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposed Rule Change

The proposed rule change would revise NSCC's Rules and Procedures (''Rules'')[6] to change the methodology NSCC uses for calculating the haircut-based margin charge applicable to municipal bonds.

A. Background

NSCC provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and certain other securities. NSCC manages its credit exposure to its members by determining an appropriate Required Fund Deposit (*i.e.,* margin) for each member.[7] NSCC collects each member's Required Fund Deposit to mitigate potential losses to NSCC associated with the liquidation of the member's portfolio in the event of the member's default.[8] The aggregate of all NSCC members' Required Fund Deposits (together with certain other deposits required under the Rules) constitutes NSCC's Clearing Fund, which NSCC would access should a defaulting member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of the defaulting member's portfolio.[9]

Each member's Required Fund Deposit consists of a number of applicable components, which are calculated to address specific risks that the member's portfolio presents to NSCC.[10] Generally, the largest component of a member's Required Fund Deposit is the volatility component.[11] The volatility component is designed to calculate the potential losses on a portfolio over a given period of time assumed necessary to liquidate the portfolio, within a 99% confidence level.

The methodology for calculating the volatility component of the Required Fund Deposit depends on the type of security.[12] Specifically, for certain securities, including municipal bonds, NSCC calculates a haircut-based volatility component by multiplying the absolute value of a member's positions in such securities by a certain percentage designated by NSCC.[13]

NSCC's current methodology for designating the percentages used in calculating the haircut-based volatility component for municipal bonds involves distinguishing between municipal bonds based on tenor (*i.e.,* remaining time to maturity), municipal sector (*e.g.,* general obligation, transportation, healthcare, etc.), and credit rating.[14] Pursuant to that methodology, NSCC assigns each tenor-based group a percentage.[15] For municipal bonds rated higher than BBB+, the tenor-based percentage is the percentage NSCC uses to calculate the haircut-based volatility component.[16] However, for municipal bonds rated BBB+ or lower, NSCC multiplies the tenor-based percentage by a sector-based risk factor, resulting in a larger percentage for the haircut.[17] The additional sector-based risk factors

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NSCC also filed the proposals contained in the proposed rule change as advance notice SR–NSCC–2019–801 with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). Notice of Filing of the Advance Notice was published for comment in the **Federal Register** on January 14, 2020. Securities Exchange Act Release No. 87911 (January 8, 2020), 85 FR 2197 (January 14, 2020) (File No. SR–NSCC–2019–801).

[4] Securities Exchange Act Release No. 87858 (December 26, 2019), 85 FR 149 (January 2, 2020) (''Notice of Filing'').

[5] As the proposals contained in the proposed rule change were also filed as an advance notice, all public comments received on the proposals are considered regardless of whether the comments are submitted on the proposed rule change or the advance notice.

[6] Capitalized terms not defined herein are defined in NSCC's Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[7] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules (''Procedure XV''), *supra* note 6.

[8] The Rules identify when NSCC may cease to act for a member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a member's access to NSCC's services in the event that member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services), *supra* note 6.

[9] *See id.*

[10] Procedure XV, *supra* note 6.

[11] *See id.*

[12] For most securities (*e.g.,* equity securities), NSCC calculates the volatility component as the greater of (1) the larger of two separate calculations that utilize a parametric Value at Risk (''VaR'') model, (2) a gap risk measure calculation based on the largest non-index position in a portfolio that exceeds a concentration threshold, which addresses concentration risk that can be present in a member's portfolio, and (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio, which addresses risks that might not be adequately addressed with the other volatility component calculations. *See id.; see also* Securities Exchange Act Release No. 82780 (February 26, 2018), 83 FR 9035 (March 2, 2018) (File No. SR–NSCC–2017–808); Securities Exchange Act Release No. 82781 (February 26, 2018), 83 FR 9042 (March 2, 2018) (File No. SR–NSCC–2017–020).

[13] Procedure XV, *supra* note 6.

[14] *Id.*

[15] *Id.*

[16] *Id.* For example, a $10MM short position in a municipal bond rated above BBB+ with 3 years to maturity is subject to the 2–5 years tenor-based group haircut of 5%, which applies to the absolute market value of the positions, resulting in a haircut-based volatility component of $500,000. Notice of Filing, *supra* note 4 at 150.

[17] Procedure XV, *supra* note 6. For example, a $10MM short position in a healthcare sector municipal bond rated BBB+ or lower with 3 years to maturity is subject to the 2–5 years tenor-based group haircut (5%) multiplied by the sector-based factor of 1.2, resulting in a 6% haircut-based volatility component of $600,000. Notice of Filing, *supra* note 4 at 151.

account for the variable risks between municipal sectors associated with the various industries in which the bonds are issued and the sources of bond repayment.[18]

In all cases, the percentage used to calculate the municipal bond haircut-based volatility component is not less than 2%, regardless of a municipal bond's credit rating.[19]

B. Changes to NSCC's Methodology for Calculating Municipal Bond Haircut Percentages

NSCC states that it regularly assesses its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of the various products, portfolios, and markets that NSCC serves.[20] NSCC further states that based on recent impact studies, the margin levels generated from municipal bonds using the current methodology exceed the levels necessary to mitigate the risk associated with those securities.[21] In the proposed rule change, NSCC seeks to change the methodology for calculating the municipal bond haircut-based volatility component so that the amount of margin NSCC collects is more commensurate with the risk attributes of those securities.

As proposed, NSCC would retain the current provision that in all cases the percentage used to calculate the municipal bond haircut-based volatility component is not less than 2%, regardless of a municipal bond's credit rating. NSCC would also continue to distinguish between municipal bonds based on tenor, credit rating, and municipal sector. However, NSCC would calculate the haircut percentages for various groups of municipal bonds based on the historical returns of one or more benchmark indices over a look-back period not shorter than 10 years, using a minimum 99% calibration percentile.

The proposal would change the manner in which NSCC addresses the risk presented by lower-rated municipal bonds. Instead of the current methodology's approach which applies a sector-based straight risk factor to the tenor-based haircut resulting in a larger haircut percentage, the proposed approach would allow the calculation to be more precisely tailored to the risks presented by particular municipal bonds. Specifically, the new approach would base the haircut percentage on the historical returns of one or more benchmark indices, such as tenor-based indices, municipal bond sector-based indices, and high-yield indices, over a look-back period of at least ten years, and would no longer use a sector-based straight risk factor for lower-rated municipal bonds. This approach should allow NSCC to more accurately calculate margin amounts appropriate for the risks presented by such municipal bonds by allowing NSCC to take into account a broader range of risk characteristics associated with municipal bonds. NSCC notes that, based on recent impact studies comparing the current and proposed methodologies, the proposed methodology would manage NSCC's applicable risks well above the 99% confidence level, although it would generate lower overall margin amounts.[22]

NSCC states that for municipal bonds rated higher than BBB+, NSCC would use the percentage derived from a tenor-based index as the haircut for the purpose of calculating the volatility component.[23] For municipal bonds rated BBB+ or lower (or not rated), NSCC states that it would use a percentage that is the highest of: (1) The applicable tenor-based index, (2) municipal bond sector-based indices, and (3) a high-yield index.[24] For all municipal bonds, when deriving the haircut percentage from the applicable indices, NSCC would use a look-back period of a 10-year rolling window plus a 1-year ''worst case scenario'' stress period.[25] NSCC would identify the largest 3-day price return movement (reflected as a percentage) within the 99th percentile of all 3-day price return movements during the look-back period. Additionally, NSCC proposes to re-calibrate the municipal bond haircut percentages no less frequently than annually.

As proposed, NSCC would have the ability to modify certain aspects of the application of the proposed methodology consistent with NSCC's relevant governance procedures and based on NSCC's determination that such modifications are necessary to manage the applicable risks above the 99% confidence level. Specifically, based on NSCC's regular review of its margin methodologies, NSCC would be able to modify: The frequency of re-calibrating the municipal bond haircut percentages; which benchmark indices to use; the applicable period for the price return used in the calculations; and the look-back period. NSCC states that any such modifications would be subject to the governance procedures applicable to all of NSCC's margin methodologies, as set forth in NSCC's Clearing Agency Model Risk Management Framework, which the Commission has approved.[26]

Finally, NSCC proposes a method to address extraordinary circumstances in which a certain municipality or issuer may present unique risks not otherwise captured by the proposed methodology's use of a percentage derived from the maximum of the applicable tenor-based index, municipal bond sector-based indices, and high-yield indices.[27] In such scenarios, NSCC proposes to have the ability to use the highest percentage generated for any municipal bond group when calculating the haircut-based volatility component for municipal bonds issued by the municipality or issuer presenting such unique risks.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[28] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the proposed rule change is consistent with Section

[18] Notice of Filing, *supra* note 4 at 151.

[19] Procedure XV, *supra* note 6.

[20] Notice of Filing, *supra* note 4 at 151.

[21] Notice of Filing, *supra* note 4 at 151–52. As part of the proposed rule change, NSCC filed Exhibit 3—NSCC Impact Studies, comparing the current and proposed methodologies. Pursuant to 17 CFR 240.24b–2, NSCC requested confidential treatment of Exhibit 3.

[22] *Id.*

[23] Notice of Filing, *supra* note 4 at 151.

[24] *Id.*

[25] NSCC believes that a 10-year window plus 1-year stress period would capture relevant data and cover sufficient market data without diluting the ''tail'' with an abundance of data. NSCC believes this look-back period is typically long enough to capture at least two recent market cycles, whereas a longer look-back period might ''flatten'' out the results because recent volatile periods might be offset by non-volatile periods, making the more recent volatility appear less significant. Notice of Filing, *supra* note 4 at 152.

[26] Notice of Filing, *supra* note 4 at 151–52; *See also* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–NSCC–2017–008); Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009).

[27] For example, the market price risk for issues of a municipality facing technical default following a natural disaster may not be fully captured by the proposed methodology due to the liquidity profile of municipal securities.

[28] 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F)[29] of the Act and Rules 17Ad–22(e)(4) and (e)(6) thereunder.[30]

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as NSCC, be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[31]

First, as described above in Section I.A., NSCC's current methodology calculates municipal bond haircut percentages using tenor-based percentages and sector-based risk factors. NSCC states that the current methodology generates margin amounts greater than necessary to mitigate NSCC's risks associated with municipal bonds.[32] NSCC proposes to replace the current methodology with one that would calculate the haircut percentages based on the historical returns of one or more benchmark indices over a look-back period of not shorter than 10 years, using a minimum 99% calibration percentile. These changes would result in margin amounts that are more commensurate with the risk attributes of municipal bonds. As noted above, while the proposed methodology would reduce margin requirements for members holding positions in municipal bonds, NSCC states that based on recent impact studies, the proposed methodology would fully manage NSCC's applicable risks well above the 99% confidence level.[33] NSCC's collection of margin amounts with respect to municipal bonds in a manner that fully manages NSCC's applicable credit exposures should help ensure that, in the event of a member default, NSCC's operations would not be disrupted and non-defaulting members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission finds that NSCC's proposed methodology for calculating municipal bond haircut percentages would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[34] Moreover, NSCC's collection of margin amounts with respect to municipal bonds in a manner that fully manages NSCC's applicable credit exposures would help ensure that NSCC maintains adequate funds necessary to manage the risks associated with performing its clearance and settlement functions, which could, in turn, help reduce the amount of credit losses that would potentially be charged to the Clearing Fund contributions of non-defaulting members in the event of a default. Accordingly, the Commission finds that NSCC's proposed methodology for calculating municipal bond haircut percentages should safeguard the securities and funds that are in NSCC's custody or control or for which NSCC is responsible, consistent with Section 17A(b)(3)(F).[35]

Second, as described above in Section I.B., NSCC proposes to re-calibrate the municipal bond haircut percentages no less frequently than annually. Regular re-calibration of the municipal bond haircut percentages is necessary to ensure that the relevant calculations and resulting margin levels take into account any changes over time to the risk attributes of municipal bonds. The proposal to re-calibrate the municipal bond haircut percentages no less frequently than annually would require NSCC to regularly review the municipal bond haircut percentages, thus helping to ensure that NSCC collects margin amounts commensurate with the particular risk attributes of municipal bonds. By enabling NSCC to continue to collect margin amounts sufficient to manage the risks associated with municipal bonds, NSCC's proposal to re-calibrate the municipal bond haircut percentages no less frequently than annually should help limit NSCC's applicable credit exposures such that, in the event of a default of a member with positions in municipal bonds, NSCC's operations would not be disrupted and non-defaulting members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission believes that NSCC's proposal to re-calibrate the municipal bond haircut percentages no less frequently than annually would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).[36]

Third, as described above in Section I.B., a certain municipality or issuer may present unique risks to NSCC not otherwise captured by the proposed methodology's use of a percentage derived from the maximum of the applicable tenor-based index, municipal bond sector-based indices, and high-yield indices. In such scenarios, NSCC proposes to have the ability to use the highest percentage generated for any municipal bond group when calculating the haircut-based volatility component for municipal bonds issued by the municipality or issuer presenting such unique risks. By enabling NSCC to increase margin requirements in such scenarios, the proposed rule change should help limit NSCC's exposure such that, in the event of a default of a member with positions in uniquely risky municipal bonds, NSCC's operations would not be disrupted and non-defaulting members would not be exposed to losses that they cannot anticipate or control. Accordingly, the Commission believes that NSCC's proposed discretion to increase margin requirements in scenarios where municipal bonds present unique risks should promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).[37] Moreover, by enabling NSCC to increase margin requirements in scenarios where municipal bonds present unique risks, the proposed rule change would help ensure that NSCC maintains adequate funds necessary to manage the risks associated with performing its clearance and settlement functions, which could, in turn, help reduce the amount of credit losses that would potentially be charged to the Clearing Fund contributions of non-defaulting members in the event of a default. Accordingly, the Commission finds that NSCC's proposed discretion to increase margin requirements in scenarios where municipal bonds present unique risks should safeguard the securities and funds that are in NSCC's custody or control or for which NSCC is responsible, consistent with Section 17A(b)(3)(F) of the Act.[38]

B. Consistency With Rule 17Ad–22(e)(4)(i)

Rule 17Ad–22(e)(4)(i) requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[39]

As described above in Section I.B., NSCC proposes to replace the current

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(e)(4) and (e)(6).

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] Notice of Filing, *supra* note 4 at 151–52.

[33] Notice of Filing, *supra* note 4 at 151–52, 154.

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] 17 CFR 240.17Ad–22(e)(4)(i).

methodology for calculating municipal bond haircut percentages with a methodology that would utilize the historical returns of one or more benchmark indices over a look-back period of not shorter than 10 years, using a minimum 99% calibration percentile. These changes would result in more precisely determined margin amounts, while still managing NSCC's applicable risks well above the 99% confidence level.[40] Accordingly, the Commission believes that the proposed methodology is consistent with Rule 17Ad–22(e)(4)(i) because it should enable NSCC to effectively identify, measure, monitor, and manage its credit exposures to members with positions in municipal bonds, including by maintaining sufficient financial resources to cover NSCC's credit exposure to such members fully with a high degree of confidence.[41]

As described above in Section I.B., NSCC proposes to re-calibrate the municipal bond haircut percentages no less frequently than annually. The proposal would require NSCC to regularly review the municipal bond haircut percentages, thereby helping to ensure that the haircut percentages and resulting margin levels take into account any changes over time to the risk attributes of municipal bonds. Accordingly, the Commission believes that the proposal to re-calibrate the municipal bond haircut percentages no less frequently than annually is consistent with Rule 17Ad–22(e)(4)(i) because it should allow NSCC to effectively identify, measure, monitor, and manage its credit exposures to members with positions in municipal bonds, including by maintaining sufficient financial resources to cover NSCC's credit exposure to such members fully with a high degree of confidence.[42]

As described above in Section I.B., NSCC proposes to have the ability to use the highest percentage generated for any municipal bond group when calculating the haircut-based volatility component for municipal bonds issued by a municipality or issuer presenting unique risks not otherwise captured by the calculations in the proposed methodology. Such discretion should help ensure that NSCC collects sufficient margin amounts with respect to those securities. Accordingly, the Commission believes that the proposed ability to apply the highest percentage to such municipal bonds is consistent with Rule 17Ad–22(e)(4)(i) because it should better enable NSCC to effectively identify, measure, monitor, and manage its credit exposures to members with positions in such municipal bonds, including by maintaining sufficient financial resources to cover NSCC's credit exposure to such members fully with a high degree of confidence.[43]

C. Consistency With Rules 17Ad–22(e)(6)(i) and (v)

Rule 17Ad–22(e)(6)(i) requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[44] Rule 17Ad–22(e)(6)(v) requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[45]

As described above in Section I.B., NSCC proposes to replace the current methodology for calculating municipal bond haircut percentages with a methodology that would utilize the historical returns of one or more benchmark indices over a look-back period of not shorter than 10 years, using a minimum 99% calibration percentile. NSCC designed the proposed methodology to generate margin amounts that are more commensurate with the risk attributes of municipal bonds than the current methodology. Accordingly, the Commission believes that the proposed methodology is consistent with Rules 17Ad–22(e)(6)(i) and (v) because it is designed to establish a risk-based margin system that (1) considers and produces relevant margin levels commensurate with the risks and particular attributes of municipal bonds, and (2) uses an appropriate method for measuring credit exposure that accounts for municipal bond risk factors and portfolio effects.[46]

As described above in Section I.B., NSCC proposes to re-calibrate the municipal bond haircut percentages no less frequently than annually. The proposal would require NSCC to regularly review the municipal bond haircut percentages, thereby helping to ensure that the haircut percentages and resulting margin levels take into account any changes over time to the risk attributes of municipal bonds. Accordingly, the Commission believes that the proposal to re-calibrate the municipal bond haircut percentages no less frequently than annually is consistent with Rules 17Ad–22(e)(6)(i) and (v) because it would contribute to a risk-based margin system designed to (1) consider and produce relevant margin levels commensurate with the risks and particular attributes of municipal bonds, and (2) use an appropriate method for measuring credit exposure that accounts for municipal bond risk factors and portfolio effects.[47]

As described above in Section I.B., NSCC proposes to have the ability to use the highest percentage generated for any municipal bond group when calculating the haircut-based volatility component for municipal bonds issued by a municipality or issuer presenting unique risks not otherwise captured by the calculations in the proposed methodology. This discretion should help ensure that NSCC collects sufficient margin amounts with respect to those securities. Accordingly, the Commission believes that the proposed discretion to apply the highest percentage to such municipal bonds is consistent with Rules 17Ad–22(e)(6)(i) and (v) because it would contribute to a risk-based margin system designed to (1) consider and produce relevant margin levels commensurate with the risks and particular attributes of municipal bonds, and (2) use an appropriate method for measuring credit exposure that accounts for municipal bond risk factors and portfolio effects.[48]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[49] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[50] that proposed rule change SR–NSCC–2019–004, be, and hereby is, APPROVED.[51]

[40] Notice of Filing, *supra* note 4 at 151–52.

[41] 17 CFR 240.17Ad–22(e)(4)(i).

[42] *Id.*

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(6)(i).

[45] 17 CFR 240.17Ad–22(e)(6)(v).

[46] 17 CFR 240.17Ad–22(e)(6)(i) and (v).

[47] *Id.*

[48] *Id.*

[49] 15 U.S.C. 78q–1.

[50] 15 U.S.C. 78s(b)(2).

[51] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03317 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88211; File No. SR–NYSENAT–2020–05]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE National Integrated Feed

February 14, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 3, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE National Integrated Feed. 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.

[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt the NYSE National Proprietary Market Data Fee Schedule (''Fee Schedule'') and establish the fees for the NYSE National Integrated Feed that would be effective February 3, 2020.[4]

In summary, the NYSE National Integrated Feed is a NYSE National-only market data feed that provides vendors and subscribers on a real-time basis with a unified view of events, in sequence, as they appear on the NYSE National matching engine. The NYSE National Integrated Feed includes depth-of-book order data, last sale data, security status updates (*e.g.,* trade corrections and trading halts), and stock summary messages. Because the NYSE National Integrated Feed has a unified view of events, in sequence, it also includes information about the Exchange's best bid or offer at any given time.

The Exchange currently does not charge any fees for the NYSE National Integrated Feed market data product.[5]

The Exchange initially filed to introduce fees for the NYSE National Integrated Feed on December 4, 2019 (the ''Initial Proposal'').[6] Pursuant to the Initial Proposal, the fees would not be implemented until February 3, 2020. The Initial Proposal was published in the **Federal Register** and two comment letters were submitted in response. The Initial Proposal was temporarily suspended pursuant to a Suspension Order (the ''Initial Suspension Order'').[7] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.

[4] The proposed rule change establishing the NYSE National Integrated Feed was immediately effective on May 31, 2018. *See* Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09) (''NYSE National Integrated Feed Product Filing''). The NYSE National Integrated Feed Product Filing also established the NYSE National BBO and NYSE National Trades market data feeds.

[5] The Exchange also currently does not charge any fees for the NYSE National BBO and NYSE National Trades market data products and proposes to adopt rule text on the Fee Schedule to reflect that there are no fees charged for NYSE National BBO and NYSE National Trades market data products.

[6] *See* Securities Exchange Act Release No. 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019).

[7] *See* Securities Exchange Act Release No. 88109 (January 31, 2020) (SR–NYSENAT–2019–13) (''Initial Suspension Order'').

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.'' [8]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [9] Equity trading is currently dispersed across 13 exchanges,[10] 31 alternative trading systems,[11] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[12]

The recent growth of NYSE National's market share demonstrates this competitive marketplace. Between February 2017 and mid-May 2018, NYSE National was non-operational, and therefore had 0% of market share. On May 21, 2018, NYSE National re-launched on its current platform as an affiliated exchange of New York Stock Exchange, LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca, Inc.''), and NYSE American LLC (''NYSE American''). Within four months, NYSE National began regularly executing 1% of consolidated trading volume. By August 2019, NYSE National began executing approximately 1.5% of consolidated trading volume on a more regular basis. By October 2019, the Exchange had

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[9] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[10] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[11] *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.*

[12] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

1.9% market share of executed volume of equity trades.[13]

As NYSE National's transaction market share has increased, so has the value of its market data. For example, in May 2018, when NYSE National re-launched trading operations, the Exchange had 12 customers for its NYSE National Integrated Feed. As NYSE National's market share has increased, the number of subscribers of the NYSE National Integrated Feed has steadily increased and as of November 2019, the Exchange had 57 customers that subscribed to the NYSE National Integrated Feed. In November 2019, customers of the NYSE National Integrated Feed accounted for over 99% of the executed trade volume on the Exchange.

On December 4, 2019, the Exchange filed the Initial Proposal to introduce fees for the NYSE National Integrated Feed, effective February 3, 2020. The Exchange explained in the Initial Proposal that it filed its proposed rule change early, in December 2019, because the Exchange believed it was appropriate to provide market participants with early notice of the proposed changes, so that they could begin determining whether the value of the NYSE National Integrated Feed to their businesses is such that they would choose to continue using the product once it was no longer provided for free. The Exchange explained that it believes that market participants should have the opportunity to begin such determinations before the Exchange begins charging fees.

Since the date of the Initial Proposal and before the proposed fees went into effect, five subscribers to the NYSE National Integrated Feed product (*i.e.,* nearly nine percent of the prior subscriber base) have canceled their subscriptions. In each instance, the subscriber told the Exchange that its reason for cancelling its subscription was the imminent imposition of fees. A sixth customer informed the Exchange that if the Exchange is permitted to impose the fees, the customer will cancel its subscription to the NYSE National Integrated Feed product and instead subscribe to the NYSE National BBO feed, which will remain available for free. These six lost subscribers constitute 10.5 percent of the prior subscriber base.

Proposed NYSE National Integrated Feed Fees

To reflect the value of NYSE National's market data, as correlated to the Exchange's increased transaction volume market share, the Exchange proposes to establish the fees listed below for the NYSE National Integrated Feed, operative on February 3, 2020. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE, NYSE Arca, and NYSE American) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on NYSE National market data subscribers that also currently subscribe to market data feeds from NYSE, NYSE Arca, or NYSE American.

1. *Access Fee.* For the receipt of access to the NYSE National Integrated Feed, the Exchange proposes to charge $2,500 per month. This proposed Access Fee would be charged to any data recipient that receives a data feed of the NYSE National Integrated Feed. Data recipients that only use display devices to view NYSE National Integrated Feed market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee is charged only once per firm.

2. *Redistribution Fee.* For redistribution of the NYSE National Integrated Feed, the Exchange proposes to establish a fee of $1,500 per month. The proposed Redistribution Fee would be charged to any Redistributors of the NYSE National Integrated Feed, which is defined to mean a vendor or any person that provides a real-time NYSE National market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee is charged only once per Redistributor account.

3. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of $10 per month and a Non-Professional User Fee (Per User) of $1 per month. These user fees would apply to each display device that has access to the NYSE National Integrated Feed.

4. *Non-Display Use Fees.* The Exchange proposes to establish non-display fees for the NYSE National Integrated Feed that are based on the non-display use categories charged by NYSE, NYSE Arca, NYSE American, the Consolidated Tape Association, and the UTP Plan for non-display use.[14] Non-display use would mean accessing, processing, or consuming the NYSE National Integrated Feed, delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

The Exchange proposes three categories of Non-Display Use of the NYSE National Integrated Feed and related fees applicable to each category. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be $5,000 per month and would apply when a data recipient's Non-Display Use of the NYSE National Integrated Feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be $5,000 per month and would apply to a data recipient's Non-Display Use of the NYSE National Integrated Feed on behalf of its clients.
- As proposed, Category 3 Fees would be $5,000 per month and would apply to a data recipient's Non-Display Use of the NYSE National Integrated Feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools,

[13] *See id.*

[14] *See* Endnote 1 to the NYSE Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE Arca Equites Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Fee_Schedule.pdf;* Endnote 1 to the NYSE American LLC Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf;* Endnote 8 to the Schedule of Market Data Charges for the Consolidated Tape Association, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf;* and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: *http://utpplan.com/DOC/Datapolicies.pdf. See, e.g.,* Securities Exchange Act Release Nos. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25) and 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014) (SR–NYSE–2014–43).

multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged $5,000 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of $15,000 per month; even if the data recipient uses the NYSE National Integrated Feed for more than three platforms, it will not pay more than $15,000 for such Category 3 use per month.

The Exchange proposes to adopt the description of the three non-display use categories in the Fee Schedule in proposed endnote 1 on the Fee Schedule.[15]

Data recipients that receive the NYSE National Integrated Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE National Integrated Feed for a Category 3 Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration.

5. *Non-Display Use Declaration Late Fee.* Data recipients that receive the NYSE National Integrated Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. NYSE National Integrated Feed data recipients would be required to submit, by December 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration would apply to all real-time NYSE National data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of $1,000 per month to any data recipient that pays an Access Fee for the NYSE National Integrated Feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by December 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the December 31 due date, and would apply beginning January 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee would be set forth in endnote 2 on the Fee Schedule. Proposed endnote 2 would provide that a data recipient that pays an Access Fee and that fails to timely complete and submit a Non-Display Use Declaration must pay the Non-Display Use Declaration Late Fee.[16] Proposed endnote 2 to the Fee Schedule would also provide that the annual Non-Display Use Declaration would be due by December 31 of each year. Finally, proposed endnote 2 would provide that the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the December 31 due date, and would apply beginning January 1 of each year and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

In addition, if a data recipient's use of the NYSE National Integrated Feed data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

6. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE National Integrated Feed in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[17]

7. *Fee Waiver for Federal Agencies.* The Exchange proposes to adopt rule text in the Fee Schedule with respect to Federal agencies that subscribe to the NYSE National Integrated Feed. The proposed rule would provide that market data fees would not apply to any Federal agency for their use of NYSE National real-time proprietary market data products. The term ''Federal agency'' as used in the Fee Schedule would include all Federal agencies subject to the Federal Acquisition Regulation (FAR),[18] as well as any Federal agency not subject to FAR that has promulgated its own procurement rules.[19] More specifically, the Exchange proposes to specify that access fees, professional user fees and non-display fees would not apply to Federal agencies for those products to which those fees apply.[20] The proposed fee waiver is designed to allow the Exchange to provide Federal agencies with NYSE National real-time proprietary market data products at no cost in support of Federal agencies' regulatory responsibilities. With the adoption of the proposed fee waiver, the Exchange is not waiving any other contractual rights, and all Federal agencies that subscribe to NYSE National real-time proprietary market data products will be required to execute the appropriate subscriber agreement, which includes, among other things, provisions against the redistribution of data.

8. *One-Month Free Trial.* Finally, the Exchange proposes a one-month free trial for any firm that subscribes to a particular NYSE National market data product for the first time. As proposed, a first-time subscriber would be any firm that has not previously subscribed to a particular NYSE National market data product listed on the Fee Schedule. As proposed, a first-time subscriber of a particular NYSE National market data product would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Redistribution Fee for that product for one calendar month. For example, a firm that currently subscribes to NYSE National BBO for free would be eligible to receive a free one-month trial of the NYSE National Integrated Feed, whether in a display-only format or for non-display use. On the other hand, if a firm pays an Access Fee and receives the NYSE National Integrated Feed for non-display use, it would not be eligible to receive a free one-month trial of the NYSE National Integrated Feed in a display-only format (or vice-versa). The proposed free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to the particular NYSE National

[15] *See* Fee Schedule, proposed endnote 1.

[16] *See* Fee Schedule, proposed endnote 2.

[17] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE National Integrated Feed product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[18] FAR is the principal set of rules governing the process by which the U.S. federal government purchases goods and services.

[19] *See* 48 CFR 2.101. FAR defines ''Federal agency'' as ''any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).'' ''Executive agency'' is defined as ''an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.''

[20] Currently, pursuant to this proposed rule change, the NYSE National Integrated Feed is the only product to which fees would apply.

market data product. The Exchange would provide the one-month free trial for each particular product to each subscriber once.

The Exchange believes that providing a one-month free trial to NYSE National market data products listed on the Fee Schedule would enable potential subscribers to determine whether a particular NYSE National market data product provides value to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs subscribers would ordinarily have to expend before using a product.

Application of Proposed Fees

The Exchange is not required to make the NYSE National Integrated Feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE National Integrated Feed. Firms that choose to purchase the NYSE National Integrated Feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE National Integrated Feed or any other similar products are attractively priced.

The Exchange produces and disseminates the NYSE National Integrated Feed as part of its market data offerings to support its transaction execution services. Since May 2018, when NYSE National relaunched trading, the Exchange has observed a direct correlation between the steady increase of subscribers to the NYSE National Integrated Feed and the increase in the Exchange's transaction market share volume over the same period.

Based on the reported usage of the NYSE National Integrated Feed, the Exchange believes that its data subscribers use the order-by-order detail information available in this market data product to make trading decisions that directly benefit the transaction services that the Exchange offers. Specifically, in the period before the Initial Proposal was published, subscribers of the NYSE National Integrated Feed represented firms that provided over 99% of the Exchange's executed transaction volume. More than half of the feed's subscribers overall (*i.e.,* 34 of 57) reported ''Category 1'' non-display use of the NYSE National Integrated Feed, which means that they used the data for trading on their own behalf. This figure confirms that a substantial portion of the NYSE National Integrated Feed's subscribers analyzed whether it was in their business interest to use the feed for their own trading, and concluded that it was.

The Exchange determined the level of the fees to charge for the NYSE National Integrated Feed based on the value of the Exchange's transaction services. As noted above, over an 18-month period, NYSE National has grown from 0% to nearly 2% market share of consolidated trading volume. During that same period, the Exchange has had a steady increase in the number of subscribers to the NYSE National Integrated feed.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE American Integrated Feed.[21] Both NYSE American and NYSE National trade all NMS Stocks. As noted above, in October 2019, NYSE National had 1.9% market share; for that same month, NYSE American had 0.29% market share.[22] Even though NYSE National's market share is several times higher than NYSE American's, the Exchange is proposing fees for the NYSE National Integrated Feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE American Integrated Feed. Specifically, the fees for the NYSE American Integrated Feed—which like the NYSE National Integrated Feed, includes top of book, depth of book, trades, and security status messages—consist of an Access Fee of $2,500 per month, a Professional User Fee (Per User) of $10 per month, a Non-Professional User Fee (Per User) of $2 per month, Non-Display Fees of $5,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of $1,500 per month. NYSE American also charges a Non-Display Use Declaration Late Fee of $1,000 per month and a Multiple Data Feed Fee of $200 per month.[23]

In the Initial Proposal, the Exchange noted that each of the then-current subscribers to the NYSE National Integrated Feed would be impacted by the proposed rule change, and that the scope of the fee impact for each data recipient would depend on that data recipient's use of the data. The Exchange noted that, based on current usage, at least 34 firms would be subject to Category 1 Non-Display Use fees, at least 14 firms would be subject to Category 2 Non-Display Use fees, and at least 10 firms would be subject to Category 3 Non-Display Use fees.

The Exchange further explained that, because the NYSE National Integrated Feed had not been previously been subject to fees, the Exchange did not know the full impact of the proposed fees on current data recipients because subscribers may choose to reduce or eliminate their use of data. The Exchange stated that it anticipated that there might be data recipients of the NYSE National Integrated Feed that subscribed only because it was free and might choose to discontinue using the product once the fees were implemented. The Exchange noted that a data recipient that chooses to discontinue the NYSE National Integrated Feed may also choose to shift order flow away from the Exchange, and that, given the current competitive environment, if data recipients were to both discontinue the product and shift order flow away from the Exchange, the Exchange would reevaluate the fees and potentially file a separate proposed rule change to amend its fees. The Exchange explained that in advance of implementing the proposed fees, however, the Exchange could not estimate with precision the impact of the proposed fees on the Exchange's transaction services business or the number of NYSE National Integrated Feed subscribers.

Since the Initial Proposal became publicly known on December 4, 2019, five subscribers to the NYSE National Integrated Feed product have canceled their subscriptions. In each instance, the subscriber told the Exchange that the reason for ending its subscription was the imminent imposition of fees. A sixth customer informed the Exchange that if the Exchange is permitted to impose the fees, the customer will cancel its subscription to the NYSE National Integrated Feed product and instead subscribe to the NYSE National BBO feed, which will remain available for free.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[21] *See* Securities Exchange Act Release Nos. 76525 (November 25, 2015), 80 FR 75148 (December 1, 2015) (SR–NYSEMKT–2015–95) (Notice of filing and immediate effectiveness of proposed rule change to establish fees for NYSE MKT Integrated Feed), and 76975 (January 26, 2016), 81 FR 5139 (February 1, 2016) (SR–NYSEMKT–2016–11) (Notice of filing and immediate effectiveness of proposed rule change amending the fees for NYSE MKT Integrated Feed to add a Multiple Data Feed Fee).

[22] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/*.

[23] *See* NYSE American LLC Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.*

the provisions of Section 6 of the Act,[24] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[25] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. 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.'' [26]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [27]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [28]

In this competitive marketplace, the Exchange's executed trading volume has grown from 0% market share to nearly 2% market share in less than two years and the Exchange believes that it is reasonable to begin charging fees for the NYSE National Integrated Feed.

1. The Proposed Fees Are Constrained by Significant Competitive Forces

a. Exchange Market Data Is Sold in a Competitive Market

In 2018, Charles M. Jones, the Robert W. Lear Professor of Finance and Economics of the Columbia University School of Business, conducted an analysis of the market for equity market data in the United States. He canvassed the demand for both consolidated and exchange proprietary market data products and the uses to which those products were put by market participants, and reported his conclusions in a paper annexed hereto.[29] Among other things, Professor Jones concluded that:

- ''The market [for exchange market data] is characterized by robust competition: Exchanges compete with each other in selling proprietary market data products. They also compete with consolidated data feeds and with data provided by alternative trading systems ('ATSs'). Barriers to entry are very low, so existing exchanges must also take into account competition from new entrants, who generally try to build market share [as NYSE National has done with its Integrated Feed] by offering their proprietary market data products for free for some period of time.'' [30]
- ''Although there are regulatory requirements for some market participants to use consolidated data products, there is no requirement for market participants to purchase any proprietary market data product for regulatory purposes.'' [31]
- ''There are a variety of data products, and consumers of equity market data choose among them based on their needs. Like most producers, exchanges offer a variety of market data products at different price levels. Advanced proprietary market data products provide greater value to those who subscribe. As in any other market, each potential subscriber takes the features and prices of available products into account in choosing what market data products to buy based on its business model.'' [32]
- ''Exchange equity market data fees are a small cost for the industry overall: The data demonstrates that total exchange market data revenues are orders of magnitude smaller than (i) broker-dealer commissions, (ii) investment bank earnings from equity trading, and (iii) revenues earned by third-party vendors.'' [33]
- ''For proprietary exchange data feeds, the main question is whether there is a competitive market for proprietary market data. More than 40 active exchanges and alternative trading systems compete vigorously in both the market for order flow and in the market for market data. The two are closely linked: An exchange needs to consider the negative impact on its order flow if it raises the price of its market data. Furthermore, new entrants have been frequent over the past 10 years or so, and these venues often give market data away for free, [again, as NYSE National has done with its Integrated Feed] serving as a check on pricing by more established exchanges. These are all the standard hallmarks of a competitive market.'' [34]

Professor Jones' conclusions are consistent with the demonstration of the competitive constraints on the pricing of market data demonstrated by analysis of exchanges as platforms for market data and trading services, as shown below.

b. Exchanges That Offer Market Data and Trading Services Function as Two-Sided Platforms

An exchange may demonstrate that its fees are constrained by competitive forces by showing that the platform theory of competition applies. When the platform theory of competition applies, an exchange is not additionally required to demonstrate that there is a substitute for the specific market data product at issue, because the relevant question is whether a constraint on fees exists, not the specific mechanism of constraint.

As the United States Supreme Court recognized in *Ohio* v. *American Express,* platforms are firms that act as intermediaries between two or more sets of agents, and typically the choices made on one side of the platform affect the results on the other side of the platform via externalities, or ''indirect network effects.'' [35] Externalities are linkages between the different sides of a platform such that one cannot understand pricing and competition for goods or services on one side of the platform in isolation; one must also

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4), (5).

[26] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[27] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[28] *Id.* at 535.

[29] *See* Exhibit 3A, Charles M. Jones, *Understanding the Market for U.S. Equity Market Data,* August 31, 2018 (hereinafter ''Jones Paper'').

[30] *Id.* at 2.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.* at 39–40.

[35] *Ohio* v. *American Express,* 138 S. Ct. 2274, 2280–81 (2018).

account for the influence of the other sides. As the Supreme Court explained:

> To ensure sufficient participation, two-sided platforms must be sensitive to the prices that they charge each side. . . . Raising the price on side A risks losing participation on that side, which decreases the value of the platform to side B. If the participants on side B leave due to this loss in value, then the platform has even less value to side A—risking a feedback loop of declining demand. . . . Two-sided platforms therefore must take these indirect network effects into account before making a change in price on either side.[36]

The Exchange and its affiliated exchanges have long maintained that they function as platforms between consumers of market data and consumers of trading services. Proving the existence of linkages between the two sides of this platform requires an in-depth economic analysis of both public data and confidential exchange data about particular customers' trading activities and market data purchases. Exchanges, however, are prohibited from publicly sharing details about these specific customer activities and purchases. For example, pursuant to Exchange Rule 7.41, transactions executed on the Exchange are processed anonymously.

The Exchange and its affiliated exchanges have retained a third-party expert, Marc Rysman, Professor of Economics at Boston University, to analyze how platform economics applies to stock exchanges' sale of market data products and trading services, and to explain how this affects the assessment of competitive forces affecting the exchanges' data fees.[37] Professor Rysman was able to analyze exchange data that is not otherwise publicly available in a manner that is consistent with the exchanges' confidentiality obligations to its customers. As shown in his paper, Professor Rysman surveyed the existing economic literature analyzing stock exchanges as platforms between market data and trading activities, and explained the types of linkages between market data access and trading activities that must be present for an exchange to function as a platform. In addition, Professor Rysman undertook an empirical analysis of customers' trading activities within the NYSE group of exchanges in reaction to NYSE's introduction in 2015 of the NYSE Integrated Feed, a full order-by-order depth of book data product similar to the NYSE National Integrated Feed that is the subject of this fee filing.[38]

Professor Rysman's analysis of this confidential firm-level data shows that firms that purchased the NYSE Integrated Feed market data product after its introduction were more likely to route orders to NYSE as opposed to one of the other NYSE-affiliated exchanges, such as NYSE Arca or NYSE American.[39] Moreover, Professor Rysman shows that the same is true for firms that did *not* subscribe to the NYSE Integrated Feed: The introduction of the NYSE Integrated Feed led to more trading on NYSE (as opposed to other NYSE-affiliated exchanges) by firms that did *not* subscribe to the NYSE Integrated Feed.[40] This is the sort of externality that is a key characteristic of a platform market.[41]

From this empirical evidence, Professor Rysman concludes:

- ''[D]ata is more valuable when it reflects more trading activity and more liquidity-providing orders. These linkages alone are enough to make platform economics necessary for understanding the pricing of market data.''[42]
- ''[L]inkages running in the opposite direction, from data to trading, are also very likely to exist. This is because market data from an exchange reduces uncertainty about the likelihood, price, or timing of execution for an order on that exchange. This reduction in uncertainty makes trading on that exchange more attractive for traders that subscribe to that exchange's market data. Increased trading by data subscribers, in turn, makes trading on the exchange in question more attractive for traders that do not subscribe to the exchange's market data.''[43]
- The ''mechanisms by which market data makes trading on an exchange more attractive for subscribers to market data . . . apply to a wide assortment of market data products, including BBO, order book, and full order-by-order depth of book data products at all exchanges.''[44]
- ''[E]mpirical evidence confirms that stock exchanges are platforms for data and trading.''[45]
- ''The platform nature of stock exchanges means that data fees cannot be analyzed in isolation, without accounting for the competitive dynamics in trading services.''[46]
- ''Competition is properly understood as being between platforms (*i.e.,* stock exchanges) that balance the needs of consumers of data and traders.''[47]
- ''Data fees, data use, trading fees, and order flow are all interrelated.''[48]
- ''Competition for order flow can discipline the pricing of market data, and vice-versa.''[49]
- ''As with platforms generally, overall competition between exchanges will limit their overall profitability, not margins on any particular side of the platform.''[50]

The Exchange has observed a similar correlation in connection with its offering of the NYSE National Integrated Feed. Since May 2018, when the Exchange re-launched trading, the number of subscribers of the NYSE National Integrated Feed grew from 12 to a high of 57. Over this same period, the Exchange has increased market share from 0% to nearly 2%. The Exchange therefore believes that its proposed fees for the NYSE National Integrated Feed are subject to platform-based competitive constraints on pricing.

c. Exchange Market Data Fees Are Constrained by the Availability of Substitute Platforms

Professor Rysman's conclusions that exchanges function as platforms for market data and transaction services mean that exchanges do not set fees for market data products without considering, and being constrained by, the effect the fees will have on the order-flow side of the platform. As the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.''[51] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.''[52]

[36] *Id.* at 2281.

[37] *See* Exhibit 3B, Marc Rysman, *Stock Exchanges as Platforms for Data and Trading,* December 2, 2019 (hereinafter ''Rysman Paper''), ¶ 6.

[38] *See* Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03) (Notice of filing and immediate effectiveness of proposed rule change to establish NYSE Integrated Feed) and 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR–NYSE–2015–57) (Notice of filing and immediate effectiveness of proposed rule change to establish fees for the NYSE Integrated Feed).

[39] Rysman Paper ¶¶ 80–90.

[40] *Id.* ¶¶ 91–93.

[41] *Id.* ¶ 91.

[42] *Id.* ¶ 95.

[43] *Id.* ¶ 96.

[44] *Id.*

[45] *Id.* ¶ 97.

[46] *Id.* ¶ 98.

[47] *Id.*

[48] Id.

[49] Id.

[50] *Id.* ¶ 100.

[51] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[52] *Id.*

Similarly, the Commission itself has recognized that the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [53] The Commission's Division of Trading and Markets has also recognized that with so many ''operating equities exchanges and dozens of ATSs, there is vigorous price competition among the U.S. equity markets and, as a result, [transaction] fees are tailored and frequently modified to attract particular types of order flow, some of which is highly fluid and price sensitive.'' [54] Indeed, today, equity trading is currently dispersed across 13 exchanges,[55] 31 alternative trading systems,[56] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share.[57]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to compete with the Exchange.[58] In addition to the 13 presently-existing exchanges, three new ones are expected to enter the market in 2020: Long Term Stock Exchange (LTSE), which has been approved as an equities exchange but is not yet operational; [59] Members Exchange (MEMX), which has recently filed its application to be approved as a registered equities exchange; [60] and Miami International Holdings (MIAX), which has announced its plan to introduce equities trading on an existing registered options exchange.[61]

Given Professor Rysman's conclusion that exchanges are platforms for market data and trading, this fierce competition for order flow on the trading side of the platform acts to constrain, or ''discipline,'' the pricing of market data on the other side of the platform.[62] And due to the ready availability of substitutes and the low cost to move order flow to those substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.[63] Although the various exchanges may differ in their strategies for pricing their market data products and their transaction fees for trades—with some offering market data for free along with higher trading costs, and others charging more for market data and comparatively less for trading—the fact that exchanges are platforms ensures that no exchange makes pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform.

In sum, the fierce competition for order flow thus constrains any exchange from pricing its market data at a supracompetitive price, and constrains the Exchange here in setting its fees for the NYSE National Integrated Feed.

The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute platforms offering market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in setting fees for the NYSE National Integrated Feed, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers have their pick of an increasing number of alternative platforms to use instead of the Exchange. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of numerous alternative platforms to the Exchange's platform ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market in which it operates as a platform.

d. NYSE National Integrated Feed Is an Optional Market Data Product

Subscribing to the NYSE National Integrated Feed is entirely optional. The Exchange is not required to make the NYSE National Integrated Feed available to any customers, nor is any customer required to purchase the NYSE National Integrated Feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[64] a customer's decision whether to purchase the NYSE National Integrated Feed is entirely discretionary. Most firms that choose to subscribe to the NYSE National Integrated Feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange for order flow. Such firms are able to determine for themselves whether the NYSE National Integrated Feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE National Integrated Feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE National Integrated Feed.[65] If they do not choose to use the NYSE National Integrated Feed, they could also choose not to direct order flow to the Exchange.

As noted above, the current subscribers to the NYSE National Integrated Feed began changing their behavior in response to the potential imposition of fees as set out in the Initial Proposal and herein. Since the Initial Proposal became publicly known on December 4, 2019, five subscribers to the NYSE National Integrated Feed product have canceled their subscriptions even before the fees go into effect. In each instance, the subscriber told the Exchange that the reason for ending its subscription was the imminent imposition of fees. These cancellations are evidence that

[53] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18).

[54] Commission Division of Trading and Markets, Memorandum to EMSAC, dated October 20, 2015, available here: *https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf.*

[55] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[56] *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.*

[57] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[58] *See* Jones Paper at 10–11.

[59] *See* Securities Exchange Act Release No. 85828 (May 10, 2019) (File No. 10–234) (Findings, Opinion, and Order of the Commission in the Matter of the Application of Long Term Stock Exchange, Inc. for Registration as a National Securities Exchange).

[60] *See* Securities Exchange Act Release No. 87436 (October 31, 2019) (File No. 10–237) (Notice of filing of application of MEMX LLC for registration as a national securities exchange under Section 6 of the Act).

[61] *See* Press Release of Miami International Holdings Inc., dated May 17, 2019, available here: *https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_05172019.pdf.*

[62] Rysman Paper ¶ 98.

[63] *See* Jones Paper at 11.

[64] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[65] *See generally* Jones Paper at 8, 10–11.

subscribing to the NYSE National Integrated Feed is discretionary, that each customer makes the decision whether to subscribe based on its own analysis of the benefits and costs to itself, and that customers can and do make those decisions quickly based on reactions to fee changes.

But even if such firms determine that the fees for NYSE National Integrated Feed are too high, customers can access much of the same data on the NYSE National Integrated Feed for free by subscribing to the NYSE National BBO feed (which includes best-bid-and-offer information for NYSE National on a real-time basis) and NYSE National Trades (which includes last-sale information on a real-time basis), both of which are offered at no cost. NYSE National top-of-book quotation information and last-sale information is also available on the consolidated SIP feeds. In this way, the NYSE National BBO, NYSE National Trades, and SIP data products are all substitutes for a significant portion of the data available on the NYSE National Integrated Feed. Indeed, as already noted, after the Initial Proposal was made public, a sixth customer informed the Exchange that if the Exchange is permitted to impose the fees as proposed, the customer will drop its subscription to the NYSE National Integrated Feed product and instead subscribe to the NYSE National BBO feed, which will remain available for free. This is clear evidence that the availability of these substitute products constrains the Exchange's ability to charge supracompetitive prices for the NYSE National Integrated Feed.

The only content available on NYSE National Integrated Feed that is not available on these other products is the order-by-order look at the NYSE National book, which provides information about depth of book on the Exchange. The Exchange has been a vocal advocate for the creation of a ''SIP Premium'' product that would include depth-of-book information on the consolidated market data feeds.[66] Future products such as SIP Premium would include not only integrated depth-of-book information from NYSE National, but all other exchanges as well, and would further constrain the Exchange's ability to price NYSE National Integrated Feed at a supracompetitive price.

Further, in the case of products that are also redistributed through market data vendors such as Bloomberg and Refinitiv, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Currently, only one vendor redistributes the NYSE National Integrated Feed. Even in the absence of fees for the NYSE National Integrated Feed, vendors have not elected to make available the NYSE National Integrated Feed and likely will not unless their customers request it, and customers will not elect to pay the proposed fees unless the NYSE National Integrated Feed can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

In setting the proposed fees for the NYSE National Integrated Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The existence of alternatives to the Exchange's platform and the continued availability of the Exchange's separate data feeds for free ensure that the Exchange cannot set unreasonable fees when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

2. The Proposed Fees Are Reasonable

The specific fees that the Exchange proposes for the NYSE National Integrated Feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE National Integrated Feed are reasonable because they represent not only the value of the data available from the NYSE National BBO and NYSE National Trades data feeds but also the value of receiving the data on an integrated basis. Receiving the data on an integrated basis provides greater efficiencies and reduced errors for vendors and subscribers that currently choose to integrate the data themselves after receiving it from the Exchange. Some vendors and subscribers may not have the technology or resources to integrate separate data feeds in a timely and/or efficient manner, and thus the integration feature of the product may be valuable to them.

The Exchange believes the proposed fees for the NYSE National Integrated Feed are also reasonable when compared to fees for comparable products, such as the NYSE American Integrated Feed.[67] Even though NYSE National's market share is several times higher than NYSE American's, the Exchange is proposing fees for the NYSE National Integrated Feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE American Integrated Feed. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on NYSE National data subscribers that also currently subscribe to market data feeds from NYSE, NYSE Arca, or NYSE American.

Access Fee. The Exchange believes that is reasonable to charge access fees because of the value of the data to data recipients in their profit-generating activities. The Exchange believes that the proposed monthly Access Fee of $2,500 for the NYSE National Integrated Feed is reasonable because it is comparable to the monthly access fee for the NYSE American Integrated Feed, which is also $2,500.[68]

Redistribution Fees. The Exchange believes that it is reasonable to charge redistribution fees because vendors receive value from redistributing the data in their business products for their customers. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange's market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE National Integrated Feed, regardless of the number of customers to which that vendor redistributes the data. Currently, there is only one vendor that redistributes the NYSE National Integrated Feed. Accordingly, this proposed fee would have limited impact. The Exchange believes the proposed monthly Redistribution Fee of $1,500 for the NYSE National Integrated Feed is reasonable because it is comparable to the monthly Redistribution Fee for NYSE American Integrated Feed, which is also $1,500, and the monthly External Distributor

[66] *See* NYSE, ''Stock Quotes and Trade Data: One Size Doesn't Fit All'' (August 22, 2019), posted at *https://www.nyse.com/equities-insights#20190822.*

[67] *See* NYSE American Integrated Feed, *https://www.nyse.com/market-data/real-time/integrated-feed.*

[68] *See* NYSE American LLC Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.*

Fee for Nasdaq BX, Inc.'s (''Nasdaq BX'') BX TotalView Product, which is also $1,500.[69]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE National Integrated Feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE National Integrated Feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of $10 and monthly Non-Professional User Fee (Per User) of $1 are reasonable because they are comparable to per user fees for the NYSE American Integrated Feed. The monthly Professional User Fee (Per User) for the NYSE American Integrated Feed is $10, and the monthly Non-Professional User Fee (Per User) for the NYSE American Integrated Feed is $2.[70]

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are reasonable, because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Use fees reflect the significant value of the non-display data use to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, the Exchange and its affiliated exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead looks merely at the three following categories of potential use of non-display data: Use of the data on the customer's own behalf (Category 1), use on behalf of clients (Category 2), and use to internally match buy and sell orders within an organization (Category 3).

The Exchange believes that it is reasonable to segment the fee for non-display use into these three categories. As noted above, the uses to which customers can put the NYSE National Integrated Feed are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how many categories of use the customer makes of the data. Segmenting the fees for non-display data in this way avoids the unreasonable result of customers that make only limited non-display use of the data paying the same fees as customers that use the data for numerous different revenue-generating and cost-saving purposes.

The Exchange believes that the proposed fees of $5,000 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to the NYSE American Integrated Feed fees for non-display use for the different categories of use, which is also $5,000 per category.[71] The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

The Exchange also believes that, regarding Category 3 fees, it is reasonable to charge $5,000 per month for each trading platform on which the data recipient uses the Non-Display data, because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. The Exchange believes that it is reasonable to cap such fees for Category 3 use at $15,000 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE National Integrated Feed for use by their trading platforms.

The proposed Non-Display Use fees for the NYSE National Integrated Feed are also reasonable because they take into account the extra value of receiving the data for Non-Display Use on an integrated basis. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the NYSE National Integrated Feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[72]

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE National Integrated Feed and can correctly assess fees for the uses of the NYSE National Integrated Feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE National Integrated Feed, the Exchange needs to have current and accurate information about the use of the NYSE National Integrated Feed. The failure of data recipients to submit the Non-Display

[69] *See* Section 119(a) of Nasdaq BX Equity 7 Pricing Schedule.

[70] *See* NYSE American LLC Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.*

[71] *See id.*

[72] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee for taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Fee Waiver for Federal Agencies. The Exchange believes the proposal to not charge the access fees, display fees for professional users, and non-display fees associated with its proprietary market data products to customers that are Federal agencies is reasonable because it is designed to facilitate federal government regulation without giving an undue advantage to one set of commercial users over another. The Exchange believes that it is reasonable to assess no fees to Federal agencies that subscribe to the Exchange's proprietary market data products because Federal agencies do not use the Exchange's proprietary market data for commercial gain, but only for regulatory purposes.

One-Month Free Trial. The Exchange believes the proposal to provide the NYSE National Integrated Free to new customers free-of-charge for their first subscription month is reasonable because it would allow vendors and subscribers to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available for free for a trial period is consistent with offerings of other exchanges. For example, Nasdaq BX offers new subscribers of BX TotalView a 30-day waiver of user fees.[73]

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE National Integrated Fee are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE National Integrated Feed are allocated fairly and equitable among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE National Integrated Feed. Any subscriber or vendor that chooses to subscribe to the NYSE National Integrated Feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors may choose to continue to receive some or all of the data on the NYSE National Integrated Feed through the existing separate feeds for free, or they can choose to pay for the NYSE National Integrated Feed in order to receive integrated data, or they or they can choose a combination of the two approaches, thereby allowing each vendor or subscriber to choose the best business solution for itself.

Access Fee. The Exchange believes the proposed monthly Access Fee of $2,500 for the NYSE National Integrated Feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE National Integrated Feed, regardless of what type of business they operate or the use they plan to make of the data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $1,500 for redistributing the NYSE National Integrated Feed is equitably allocated because it would be charged on an equal basis to those vendors that choose to redistribute the feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($10 per month per user) from Non-Professional User fees ($1 per month per user) for display device access to the NYSE National Integrated Feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[74] Offering the NYSE National Integrated Feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE National Integrated Feed.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading, risk management, and compliance) as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a $5,000 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange also believes that, regarding Category 3 fees, it is equitable to charge $5,000 per month for each trading platform on which the data recipient uses the Non-Display data, because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. The Exchange believes that it is equitable to cap such fees for Category 3 use at $15,000 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE National Integrated Feed for use by their trading platforms.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to

[73] *See* Section 123(a)(4) of Nasdaq BX's Equity 7 Pricing Schedule.

[74] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

any data recipient that pays an Access Fee for the NYSE National Integrated Feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE National Integrated Feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Fee Waiver for Federal Agencies. The Exchange believes that the proposal to not charge the access fees, display fees for professional users, and non-display fees associated with its proprietary market data products to customers that are Federal agencies is equitable because it is designed to facilitate federal government regulation without giving an undue advantage to one set of commercial users over another. The Exchange believes that it is equitable to waive fees for Federal agencies that subscribe to the Exchange's proprietary market data products because Federal agencies do not use the Exchange's proprietary market data for commercial gain, but only for regulatory purposes.

One-Month Free Trial. The Exchange believes the proposal to provide the NYSE National Integrated Feed to new customers free-of-charge for their first subscription month is equitable because it applies to any first-time subscriber, regardless of the use they plan to make of the feed. As proposed, any first-time subscriber of the NYSE National Integrated Feed would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Redistribution Fee for one calendar month. The Exchange believes it is equitable to restrict the availability of this one-month free trial to customers that have not previously subscribed to the NYSE National Integrated Feed, since customers who are current or previous subscribers of the feed are already familiar with it and whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE National Integrated Fee are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE National Integrated Feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE National Integrated Feed. Any vendor or subscriber that chooses to subscribe to the NYSE National Integrated Feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Vendors and subscribers may choose to continue to receive some or all of the data on the NYSE National Integrated Feed through the existing separate feeds for free, or they can choose to pay for the NYSE National Integrated Feed in order to receive integrated data, or they or they can choose a combination of the two approaches, thereby allowing each vendor or subscriber to choose the best business solution for itself.

Access Fee. The Exchange believes the proposed monthly Access Fee of $2,500 for the NYSE National Integrated Feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE National Integrated Feed, regardless of what type of business they operate or the use they plan to make of the data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $1,500 for redistributing the NYSE National Integrated Feed is not unfairly discriminatory because it would be charged on an equal basis to those vendors that choose to redistribute the feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($10 per month per user) from Non-Professional User fees ($1 per month per user) for display device access to the NYSE National Integrated Feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[75] Offering the NYSE National Integrated Feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE National Integrated Feed.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading, risk management, and compliance) as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a $5,000 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange also believes that, regarding Category 3 fees, it is not unreasonably discriminatory to charge $5,000 per month for each trading platform on which the data recipient uses the Non-Display data, because such use of the data is directly in competition with the Exchange and the Exchange

[75] *See e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook). *See e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing nonprofessional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. The Exchange believes that it is not unreasonably discriminatory to cap such fees for Category 3 use at $15,000 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE National Integrated Feed for use by their trading platforms.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE National Integrated Feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE National Integrated Feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Fee Waiver for Federal Agencies. The Exchange believes that the proposal to not charge the access fees, display fees for professional users, and non-display fees associated with its proprietary market data products to customers that are Federal agencies is not unreasonably discriminatory because it is designed to facilitate federal government regulation without giving an undue advantage to one set of commercial users over another. The Exchange believes that it is not unfairly discriminatory to waive fees for Federal agencies that subscribe to the Exchange's proprietary market data products because Federal agencies do not use the Exchange's proprietary market data for commercial gain, but only for regulatory purposes.

One-Month Free Trial. The Exchange believes the proposal to provide the NYSE National Integrated Feed to new customers free-of-charge for their first subscription month is not unfairly discriminatory because it applies to any first-time subscriber, regardless of the use they plan to make of the feed. As proposed, any first-time subscriber of the NYSE National Integrated Feed would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Redistribution Fee for one calendar month. The Exchange believes it is not unfairly discriminatory to restrict the availability of this one-month free trial to customers that have not previously subscribed to the NYSE National Integrated Feed, since customers who are current or previous subscribers of the feed are already familiar with it and whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE National Integrated Fee are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fee schedule would apply to all subscribers of the NYSE National Integrated Feed, and customers may not only choose whether to subscribe to the feed at all, but may tailor their subscriptions by choosing particular uses of the feed but not others (*e.g.,* Category 1 only versus all three categories; display device access only versus non-display use).

The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (*e.g.,* Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. As demonstrated above and in Professor Rysman's attached [sic] paper, exchanges are platforms for market data and trading. In setting the proposed fees, the Exchange was constrained by the availability of numerous substitute platforms also offering market data products and trading, and low barriers to entry mean new exchange platforms are frequently introduced. The fact that exchanges are platforms ensures that no exchange can make pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform. In setting fees for the NYSE National Integrated Feed, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers will have its pick of an increasing number of alternative platforms to use instead of the Exchange. Given this intense competition between platforms, no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

In addition, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute market data products. Many other exchanges offer proprietary data feeds like the NYSE National Integrated Feed, supplying depth of book order data, last sale data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another platform, in which case the platform would stand to lose both market data and trading fees. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on

competition, and the Exchange's proposed fees do not do so here.

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) [76] of the Act and subparagraph (f)(2) of Rule 19b–4 [77] 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) [78] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–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–NYSENAT–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 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–2020–05, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03411 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[76] 15 U.S.C. 78s(b)(3)(A).

[77] 17 CFR 240.19b–4(f)(2).

[78] 15 U.S.C. 78s(b)(2)(B).

[79] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88213; File No. SR–Phlx–2020–03]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell

February 14, 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 February 3, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 relocate rules from its current Rulebook into its new Rulebook shell.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to relocate Phlx rules into the new Rulebook shell with some amendments to the shell.[3] The Exchange has already relocated options rules of its Affiliated Exchanges so that it may harmonize its rules, where applicable, across Nasdaq markets. The relocation and harmonization of the Phlx options rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that the placement of the Phlx Rules into their new location in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Previously, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, Nasdaq BX, Inc.; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (''Affiliated Exchanges''). The shell structure currently contains eight (8) Chapters which, once complete, will apply a common set of rules to the Affiliated Exchanges. *See* Securities Exchange Act Release No. 82169 (November 29, 2017), 82 FR 57508 (December 5, 2017) (SR–Phlx–2017–97).

shell will facilitate the use of the Rulebook by members.

Universal Changes

The Exchange proposes to replace references to ''Phlx XL'', ''Phlx XL II'', ''trading system'' and ''system'' with the defined term ''System'' throughout the new rules. The Exchange proposes to replace the terms ''specialist'' and ''Specialist'' with the term ''Lead Market Maker'' to define this market participant throughout the Rulebook. The Exchange proposes to replace the terms ''Remote Specialist'' with the term ''Remote Lead Market Maker'' to define this market participant throughout the Rulebook. Any references to ''Directed Specialist'' shall be replaced with ''Directed Lead Market Maker.'' The Exchange proposes to replace the term ''Registered Options Trader'' with the term ''Market Maker'' to define this participant throughout the Rulebook. Any references to (''ROTs'') will be removed from the Rulebook. With respect to renaming the market participants, the Exchange notes that there are no changes to the roles and responsibilities of these market participants in connection with the name change.

The Exchange proposes to change references to ''Commentary'' to ''Supplementary Material'' to conform the term throughout the Rulebook. The defined terms ''Exchange Act'' and ''SEC'' replaced the terms ''Securities Exchange Act of 1934'' and ''Securities and Exchange Commission'', respectively.

The Exchange proposes to update all cross-references within the Rule to the new relocated rule cites. The Exchange proposes to replace internal rule references to simply state ''this Rule'' where the rule is citing itself without a more specific cite included in the Rule. For example, if Phlx Rule 1014 refers currently to ''Rule 1014'' or ''this Rule 1014'' the Exchange will amend the phrase to simply ''this Rule.'' The Exchange proposes to conform numbering and lettering in certain rules to the remainder of the Rulebook. Finally, the Exchange proposes to delete any current Rules that are reserved in the Rulebook and add new reserved rules where other Nasdaq Affiliated Exchanges may have a rule in use and there is no comparable rule on Phlx.

General 1

The Exchange proposes to relocate definitions from Rule 1 into proposed General 1, Section 1, except for the term ''Options Exchange Official,'' which will be relocated into proposed Options 1, Section 1.

General 2

General 2 would be comprised of the following rules:

Proposed new rule No.	Current rule No.
Section 1	Reserved.
Section 2	Rule 52. Fees, Dues and Other Charges; Rule 924. Obligations of Members and Member Organizations to the Exchange; Rule 56. Effect of Suspension or Termination on Payment of Fees; and Rule 63. Effect of Suspension or Termination (re-titled ''Fees, Dues and Other Charges'').
Section 3	Rule 651. Exchange's Cost of Defending Legal Proceedings.
Section 4	Rule 985. Affiliation of Ownership Restrictions.
Section 5	Reserved.
Section 6	Reserved.
Section 7	Reserved.
Section 8	Reserved.
Section 9	Reserved.
Section 10	Reserved.
Section 11	Reserved.
Section 12	Rule 926. The Exchange's Business Continuity and Disaster Recovery Plan Testing Requirements for Member Organizations and PSX Participants Pursuant to Regulation SCI (re-titled ''Business Continuity and Disaster Recovery'').
Section 13	Reserved.
Section 14	Rule 990. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates.
Section 15	Reserved.
Section 16	Reserved.
Section 17	Rule 1015. Accommodations.
Section 18	Rule 57. Members' Contracts and Rule 58. Exchange Contracts (re-titled ''Contracts'').
Section 19	Rule 59. Deliveries through Registered Clearing Agencies.
Section 20	Rule 62. Disapproval of Business.
Section 21	Rule 64. Office Vacated by Suspension or Termination.
Section 22	Rule 1094. Sponsored Participants.

The Exchange proposes to reserve those sections where Phlx does not have rules similar to other Nasdaq Affiliated Markets.

General 3

The Exchange proposes to relocate the following rules into General 3, ''Membership and Access.''

Proposed new rule No.	Current rule No.
Section 1	Rule 910. Qualification as Member Organization.
Section 2	Rule 901. Denial of and Conditions to Membership.
Section 3	Reserved.
Section 4	Reserved.
Section 5	Rule 900.2. Membership Applications.
Section 6	Reserved.
Section 7	Rule 600. Registration.
Section 8	Rule 602. Status Verification.
Section 9	Rule 900. Administration of Rules by Membership Department.

Proposed new rule No.	Current rule No.
Section 10	Rule 900.1. General Powers and Duties of Membership Department.
Section 11	Rule 908. Rights and Privileges of A–1 Permits.
Section 12	Rule 911. Member and Member Organization Participation.
Section 13	Rule 921. Qualification; Designation of Executive Representative.
Section 14	Rule 912. Transfer of Accounts.
Section 15	Rule 922. Certificate of Incorporation.
Section 16	Rule 923. Review of Membership Department Decisions.

The Exchange proposes to delete Rule 900 as unnecessary given the new Rulebook organization structure. The Exchange proposes to delete current Rule 900.2(e) within proposed General 3, Section 5, because Rule 798 is currently reserved and that provision is no longer applicable.

General 9

The Exchange proposes to adopt a new General 9, titled ''Regulation.'' The Exchange proposes to relocate the following rules into General 9:

Proposed new rule No.	Current rule No.
Section 1	Rule 765. Prohibition Against Trading Ahead of Customer Orders and Rule 782. Manipulative Operations (re-titled ''General Standards'').
Section 2	Rule 741. Customers' Securities and Rule 771. Excessive Trading of Members (re-titled Customers' Securities and Excessive Trading of Members'').
Section 3	Reserved.
Section 4	Reserved.
Section 5	Reserved.
Section 6	Reserved.
Section 7	Rule 783. Report of Financial Arrangements.
Section 8	Reserved.
Section 9	Reserved.
Section 10	Rule 763. Recommendations to Customers (Suitability).
Section 11	Rule 764. Best Execution and Interpositioning.
Section 12	Reserved.
Section 13	Reserved.
Section 14	Reserved.
Section 15	Reserved.
Section 16	Reserved.
Section 17	Reserved.
Section 18	Reserved.
Section 19	Rule 754. Discretionary Power as to Customers' Accounts.
Section 20	Rule 748. Supervision Rule.
Section 21	761. Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information.
Section 22	Reserved.
Section 23	Reserved.
Section 24	Reserved.
Section 25	Rule 751. Accounts of Employees of Member Organizations.
Section 26	Reserved.
Section 27	Reserved.
Section 28	Reserved.
Section 29	Rule 749. Transactions for Employees of Exchange, etc. and Rule 750. Speculative Transactions for Employees of Certain Employers (re-titled ''Transactions for Employees and Speculative Transactions for Employees of Certain Employers'').
Section 30	Reserved.
Section 31	Reserved.
Section 32	Reserved.
Section 33	Reserved.
Section 34	Reserved.
Section 35	Rule 2040. Nonregistered Foreign Finders.
Section 36	Reserved.
Section 37	Reserved.
Section 38	Reserved.
Section 39	Rule 705. Fidelity Bonds.
Section 40	Reserved.
Section 41	Reserved.
Section 42	Reserved.
Section 43	Reserved.
Section 44	Reserved.
Section 45	Reserved.
Section 46	Reserved.
Section 47	Reserved.
Section 48	Reserved.
Section 50	Reserved.
Section 51	Reserved.
Section 52	Reserved.

Proposed new rule No.	Current rule No.
Section 53	Rule 774. Disruptive Quoting and Trading Activity Prohibited.
Section 54	Rule 777. Guarantees Not Permitted.
Section 55	Rule 601. Office, Other Than Main Offices.
Section 56	Rule 602. Status Verification.
Section 57	Rule 603. Control of Offices.
Section 58	Rule 605. Advertisements, Market Letters, Research Reports and Sales Literature.
Section 59	Rule 610. Notification of Changes in Business Operations.
Section 60	Rule 625. Training.
Section 61	Rule 704. Assignment of Interest of Partner.
Section 62	Rule 745. Partial Payments.
Section 63	Rule 746. Diligence as to Accounts.
Section 64	Rule 747. Approval of Accounts.
Section 65	Rule 752. Statements to Be Sent to Customers.
Section 66	Rule 753. Notwithstanding Power of Attorney.
Section 67	Rule 773. Participation in Joint Accounts.
Section 68	Rule 784. Report of Options.
Section 69	Rule 786. Periodic Reports.
Section 70	Rule 796. Underwriting of Securities by Member Organizations.

Equities 7

The Exchange proposes to relocate Rule 607 titled ''Covered Sales Fee'' to Equities 7, Equity Pricing at new proposed Section 5.[4] Also, Rule 2040, Nonregistered Foreign Finders, does not appear in PSX Rule 3202, this rule applies to equity products today. The Exchange believes its failure to be included within PSX Rule 3202 was an oversight and proposes to include this Rule within General 9.

Options 1

The Exchange proposes to rename current Options 1 from ''Options Definitions'' to ''General Provisions.'' The Exchange proposes to relocate definitions from Rule 1000, Applicability, Definitions and References, into proposed General 1, Section 1. The Exchange proposes not to relocate the terms ''System Book Feed'' and ''System Securities'' from Rule 1000 into Options 1, Section 1. The term ''System Book Feed'' is not utilized in the Rulebook currently. The term ''System Securities'' is only utilized within the definition of the term ''System'' at proposed Options 1, Section 1(a)(52) and within current Rule 911 which was relocated to General 2, Section 12. The term is simply replaced by referring to option series. The Exchange believes that replacing the term with the term ''option series'' will make the Rulebook clear. The Exchange also proposes to relocate the definition of ''Option Exchange Official'' which is currently located in General I, Section 1 into this section as this term relates to the trading of options.

Options 2

The Exchange proposes to rename Options 2 from ''Options Trading Rules'' to ''Options Market Participants'' and relocate the following rules into this chapter:

Proposed new rule No.	Current rule No.
Section 1	Rule 507. Application for Approval as an SQT, RSQT, or RSQTO and Assignment in Options.
Section 2	Reserved.
Section 3	Rule 506. Allocation Application, Allocation, Reallocation, and Transfer; Rule 508. Transfer Application; and Rule 513. Voluntary Resignation of Options Privileges (re-titled ''Allocation Application, Allocation, Reallocation, Transfer and Voluntary Resignation''.
Section 4	Rule 1014. Obligations of Market Makers (a–d).
Section 5	Rule 1081. Electronic Market Maker Obligations and Quoting Requirements.
Section 6	Rule 1014. Obligations of Market Makers, subparagraph (e) only.
Section 7	Rule 1022. Securities Accounts and Orders of Specialists and Registered Options Traders.
Section 8	Reserved.
Section 9	Rule 510. Good Standing for Specialist, SQT, and RSQT.
Section 10	Rule 1068. Directed Orders.
Section 11	Rule 501. Specialist Appointment.
Section 12	Rule 1020. Registration and Functions of Options Specialists.
Section 13	Rule 1036. Affiliated Persons Of Specialists.
Section 14	Rule 175. Limitations on Options Market Making.

The Exchange proposes to relocate a portion of a sentence from current Rule 1014(b) to Options 8, Section 11(b). The sentence provides, ''. . . Exchange options transactions initiated by such Market Maker on the Trading Floor for any account in which he had an interest shall to the extent prescribed by the Exchange be in such assigned classes.'' This sentence is being relocated into Options 8, Section 11 because it pertains to Floor Market Maker assignments. The remainder of current Rule 1014(b) was relocated to Options 3, Section 4(b).

Rule 452, ''Limitations on Members' Trading Because of Customers' Orders'' is being relocated into Options 8, Section 17.

[4] Rule 607 is both and options and equities rule and is therefore being replicated in both Equity 7 and Options 7.

Options 2A

The Exchange proposes to reserve Options Section 2A.

Options 3

The Exchange proposes to rename Options 3 from ''Options Market Participants'' to ''Options Trading Rules'' and relocate the following rules into this chapter:

Proposed new rule No.	Current rule No.
Section 1	Rule 101. Hours of Business.
Section 2	Rule 1013. Units of Trading and Rule 1067. Precedence of Highest Bid and Lowest Offer (re-titled ''Units of Trading'').
Section 3	Rule 1034. Minimum Increments.
Section 4	Rule 1019. Entry and Display of Quotes.
Section 5	Rule 1096. Entry and Display of Orders.
Section 6	Rule 1082. Firm Quotations, except Rule 1082(a)(ii)(C).
Section 7	Rule 1080. Electronic Acceptance of Quotes and Orders.
Section 8	Rule 1017. Openings In Options.
Section 9	Rule 1047. Trading Halts.
Section 10	Rule 1089. Electronic Execution Priority and Processing in the System and Rule 1035. Zero-Bid Option Series (this rule will remain titled ''Electronic Execution Priority and Processing in the System'').
Section 11	Reserved.
Section 12	Rule 1088. Qualified Contingent Cross Order (re-titled ''Electronic Qualified Contingent Cross Order'').
Section 13	Rule 1087. Price Improvement XL (''PIXL'').
Section 14	Rule 1098(a)–(f) Complex Orders on the System (re-titled ''Complex Orders'').
Section 15	Rule 1099. Risk Protections (re-titled ''Simple Risk Protections).
Section 16	Rule 1098(g)–(j) to be titled ''Complex Orders Risk Protections''.
Section 17	Rule 1073. Kill Switch.
Section 18	Rule 1074. Detection of Loss of Communication.
Section 19	Rule 1090. Mass Cancellation of Trading Interest.
Section 20	Rule 1092. Nullification and Adjustment of Options Transactions including Obvious Errors.
Section 21	Rule 1016. Exchange Sharing of Phlx XL Participant-Designated Risk Settings (re-titled as ''Access to and Conduct on Phlx'').
Section 22	Rule 1097. Limitations on Order Entry.
Section 23	Rule 1070. Data Feeds and Trade Information.
Section 24	Rule 128. Price of Execution Binding.
Section 25	Reserved.
Section 26	Rule 1082(a)(ii)(C) to be titled ''Message Traffic Mitigation''.
Section 27	Rule 652. Limitation of Exchange Liability and Reimbursement of Certain Expenses.
Section 28	Reserved.

Options 4

The Exchange proposes to relocate rules within Options 4 Options Listing Rules as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 1007. Designation Of Securities.
Section 2	Rule 1008. Rights And Obligations Of Holders And Writers.
Section 3	Rule 1009. Criteria for Underlying Securities/Rule 1011. Option Contracts To Be Traded.
Section 4	Rule 1010. Withdrawal of Approval of Underlying Securities or Options.
Section 5	Rule [sic]. Series of Options Open for Trading.
Section 6	Reserved.
Section 7	Reserved.
Section 8	Reserved.
Section 9	Reserved.
Section 10	Rule 99. Backup Trading Arrangements.
Section 11	Rule 1057. U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value.

Rule text within current Commentary .01(6) of Rule 1010, which provides, ''. . . provided, however, that in the case of a Restructure Security approved for options listing and trading under paragraph (d) of Commentary .05 under Rule 1009, such trading volume requirements must be satisfied based on the trading volume history of the Restructure Security.''

Options 4A

The Exchange proposes to relocate rules within new proposed Options 4A, which is proposed to be titled ''Options Index Rules'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 1000A. Applicability and Definitions (paragraph (a)).
Section 2	Rule 1000A. Applicability and Definitions (paragraph (b)).
Section 3	Rule 1009A. Designation of the Index.
Section 4	Reserved.
Section 5	Rule 1100A. Dissemination of Information.
Section 6	Rule 1001A. Position Limits.
Section 7	Reserved.
Section 8	Reserved.
Section 9	Reserved.
Section 10	Rule 1002A. Exercise Limits.
Section 11	Reserved.
Section 12	Rule 1101A. Terms of Option Contracts.
Section 13	Reserved.
Section 14	Reserved.
Section 15	Rule 1042A. Exercise of Option Contracts.
Section 16	Reserved.
Section 17	Rule 1006A. Other Restrictions on Options Transactions and Exercises.
Section 18	Rule 1047A. Trading Rotations, Halts or Reopenings.
Section 19	Rule 1102A. Limitation of Exchange Liability.
Section 20	Rule 1105A. Standard & Poor's® Index.
Section 21	Rule 1107A. Nasdaq, Inc. Indexes.

The Exchange proposes to amend the rule text within Options 4A, Section 18(b) to remove the word ''Specialist'' and replace that word with ''Exchange'' and cite to the manual authority within current Rule 1047(b). The Exchange previously removed any functionality which permitted executions to be manually handled by a specialist.[5] An Options Exchange Official determines a manual trading halt.

Options 4B

The Exchange proposes a new Options 4B, titled ''Options on Treasury Securities.''

Proposed new rule No.	Current rule No.
Section 1	Rule 1000D. Applicability of 1000D Series—Treasury Securities Options.
Section 2	Rule 1001D. Definitions—Treasury Securities Options.
Section 3	Rule 1002D. Position Limits—Treasury Securities Options.
Section 4	Rule 1003D. Exercise Limits—Treasury Securities Options.
Section 5	Rule 1004D. Reports Related to Position Limits and Liquidation of Positions—Treasury Securities Options.
Section 6	Rule 1005D. Reports Related to Position Limits and Liquidation of Positions—Treasury Securities Options.
Section 7	Rule 1006D. Criteria for Securities Underlying Treasury Securities Options.
Section 8	Rule 1007D. Withdrawal of Approval of Underlying Treasury Securities or Options.
Section 9	Rule 1008D. Terms of Treasury Securities Options.
Section 10	Rule 1009D. Series of Treasury Securities Options Open for Trading.
Section 11	Rule 1010D. Days and Hours of Business of Treasury Securities Options.
Section 12	Rule 1011D. Trading Rotations—Treasury Securities Options.
Section 13	Rule 1012D. Trading Halts and Suspension of Trading, Obvious and Catastrophic Errors—Treasury Securities Options.
Section 14	Rule 1013D. Minimum Increment and Meaning of Premium Bids and Offers for Treasury Securities Options.
Section 15	Rule 1014D. Specialist and Registered Option Trader Obligations and Electronic Trading—Treasury Securities Options.
Section 16	Rule 1015D. Accommodation Trading—Treasury Securities Options.
Section 17	Rule 1016D. Reconciliation of Unmatched Trades—Treasury Securities Options.
Section 18	Rule 1018D. Limit Book for Treasury Securities Options.
Section 19	Rule 1019D. Bid/Ask Differentials—Treasury Securities Options.
Section 20	Rule 1020D. Allocation of Exercise Assignment Notices—Treasury Securities Options.
Section 21	Rule 1021D. Delivery and Payment—Treasury Securities Options.
Section 22	Rule 1022D. Margin Requirements—Treasury Securities Options.
Section 23	Rule 1023D. Furnishing of Books, Records and Other Information—Treasury Securities Options.
Section 24	Rule 1024D. Communication Links—Treasury Securities Options.
Section 25	Rule 1025D. Doing Business With the Public—Treasury Securities Options.

Options 5

The Exchange proposes to rename Options 5 from ''Options Trade Administration'' to ''Order Protection and Locked and Crossed Markets'' and relocate rules within Options 5 as follows:

[5] Manual execution by a specialist could previously occur in AUTOM, a prior exchange system. Specialist manual handling is obsolete. AUTOM and AUTO–X were replaced by Phlx XL, which is now defined as ''System''. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

Proposed new rule No.	Current rule No.
Section 1	Rule 1083. Order Protection; Locked and Crossed Markets.
Section 2	Rule 1084. Order Protection.
Section 3	Rule 1086. Locked and Crossed Markets.
Section 4	Rule 1093. Away Markets and Order Routing (re-titled ''Order Routing'').
Section 5	Rule 1091. Cancellation of Orders and Error Account.

Options 6

The Exchange proposes rename Options 6 from ''Order Protection and Locked and Cross Markets'' to ''Options Trade Administration'' and relocate rules within Options 6 as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 1037. Authorization to Give Up.
Section 2	Rule 1052. Responsibility Of Clearing Members For Exchange Options Transactions.
Section 3	Rule 1051. General Comparison And Clearance Rule.
Section 4	Reserved.
Section 5	Rule 1058. Transfer of Positions.
Section 6	Rule 1045. Off-Exchange RWA Transfers.
Section 7	Rule 1059. In-Kind Exchange of Options Positions and ETF Shares.
Section 8	Rule 1046. Clearing Arrangements.
Section 9	Rule 1048. Stock Transfer Tax.
Section 10	Rule 1053. Filing Of Trade Information.
Section 11	Rule 1054. Verification Of Trades And Reconciliation Of Uncompared Trades.
Section 12	Rule 1055. Reporting Of Compared Trades To Options Clearing Corporation.
Section 13	Rule 1056. Maintaining Office And Filing Signatures.

Options 6A

The Exchange proposes to relocate rules within new proposed Options 6A titled ''Closing Transactions'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 1041. Options Contracts Of Suspended Members.
Section 2	Rule 1040. Failure To Pay Premium.

Options 6B

The Exchange proposes to relocate rules within new proposed Options 6B titled ''Exercises and Deliveries'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 1042. Exercise Of Equity Option Contracts.
Section 2	Rule 1043. Allocation of Exercise Notices.
Section 3	Rule 1044. Delivery and Payment.

Options 6C

The Exchange proposes to relocate rules within new proposed Options 6C titled ''Margins'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Reserved.
Section 2	Reserved.
Section 3	Rule 721. Proper and Adequate Margin.
Section 4	Reserved.
Section 5	Reserved.
Section 6	Reserved.
Section 7	Rule 723. Prohibition on Free-Riding in Cash Accounts.

Options 6D

The Exchange proposes to relocate rules within new proposed Options 6D titled ''Net Capital Requirements'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 703. Financial Responsibility and Reporting.
Section 2	Reserved.
Section 3	Reserved.
Section 4	Reserved.

Options 6E

The Exchange proposes to relocate rules within new proposed Options 6E titled ''Records, Reports and Audits'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 760. Maintenance, Retention and Furnishing of Books, Records and Other Information.
Section 2	Rule 1003. Reporting Of Options Positions.
Section 3	Reserved.
Section 4	Rule 712. Independent Audit.
Section 5	Rule 785. Automated Submission of Trading Data.
Section 6	Reserved.
Section 7	Rule 980. Regulatory Services Agreements.
Section 8	Reserved.
Section 9	Reserved.

The commentary section in Rule 760 has been relocated to Options 6E, Section 1(b).

Options 7

The Exchange proposes to relocate Rule 607 titled ''Covered Sales Fee to Options 7, Options Pricing, at new proposed Section 12.[6]

[6] Rule 607 is both and options and equities rule and is therefore being replicated in both Equity 7 and Options 7.

Options 8

Rule 110, ''Bids and Offers—Manners,'' Rule 119, ''Precedence of Highest Bid'' and Rule 120, ''Precedence of Offers at Same Price'' are being relocated within the Supplementary Material to Options 8, Section 24, ''Bids and Offers—Premium''.

The Exchange proposes to remove references to Rule 723 as this rule no longer exists. The Exchange also proposes to remove obsolete rule text at the end of Options 8, Section 39 at C–2, Options Floor Based Management System, which provides, ''*The Exchange anticipates that it will implement the Snapshot feature referenced herein and described further in Options 8, Section 28(e) during the Fourth Quarter of 2017. The Exchange will notify members via an Options Trader Alert, to be posted on the Exchange's website, at least seven calendar days prior to the date when Snapshot will be available for use.*''

Options 9

The Exchange proposes to relocate rules within new proposed Options 9 titled ''Business Conduct'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Rule 707. Conduct Inconsistent with Just and Equitable Principles of Trade.
Section 2	Reserved.
Section 3	Reserved.
Section 4	Reserved.
Section 5	Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange.
Section 6	Reserved.
Section 7	Reserved.
Section 8	Reserved.
Section 9	Reserved.
Section 10	Reserved.
Section 11	Reserved.
Section 12	Reserved.
Section 13	Rule 1001. Position Limits.
Section 14	Reserved.
Section 15	Rule 1002. Exercise Limits.
Section 16	Reserved.
Section 17	Rule 1004. Liquidation Of Positions.
Section 18	Rule 1005. Limit On Uncovered Short Positions.
Section 19	Rule 1006. Other Restrictions on Exchange Options Transactions and Exercises.
Section 20	Reserved.
Section 21	Rule 757. Anti-Money Laundering Compliance Program.
Section 22	Reserved.
Section 23	Reserved.
Section 24	Rule 1050. Violation Of By-Laws And Rules Of Options Clearing Corporation.

Options 10

The Exchange proposes to relocate rules within new proposed Options 10 titled ''Doing Business with the Public'' as follows:

Proposed new rule No.	Current rule No.
Section 1	Reserved.
Section 2	Rule 1024. Conduct of Accounts for Options Trading subparagraph (a) (re-titled ''Registration of Options Principals'').
Section 3	Reserved.
Section 4	Reserved.
Section 5	Reserved.
Section 6	Rule 1024. Conduct of Accounts for Options Trading subparagraph (b) (re-titled ''Opening of Accounts'').
Section 7	Rule 1025. Supervision of Accounts.
Section 8	Rule 1026. Suitability.
Section 9	Rule 1027. Discretionary Accounts.
Section 10	Rule 1028. Confirmations and Complaints subparagraph (a) (re-titled ''Confirmations to Customers'').
Section 11	Rule 1032. Statements of Accounts.
Section 12	Reserved.
Section 13	Rule 1029. Delivery of Options Disclosure Documents.
Section 14	Rule 742. Restrictions on Pledge of Customers' Securities.
Section 15	Reserved.
Section 16	Reserved.
Section 17	Reserved.
Section 18	Reserved.
Section 19	Reserved.
Section 20	Rule 1049. Options Communications.
Section 21	Reserved.
Section 22	Rule 1028. Confirmations and Complaints subparagraph (b) (re-titled ''Customer Complaints'').
Section 23	Rule 762. Telemarketing.
Section 24	Rule 1030. Transactions With Issuers.
Section 25	Rule 1031. Restricted Stocks.

The Exchange proposes to reserve Options 10, Sections 24 and 25. The Commentary section in Phlx Rules 1027 is being relocated to Section (f) within Options 10, Section 9. The Commentary section in Phlx Rules 1028 is being relocated to Section (f) within Options 10, Section 22.

Options 11

Finally, the Exchange proposes to relocate the Options Minor Rule Violations into Options 11 titled ''Minor Rule Plan Violations'' as follows:

Proposed new rule No.	Current rule No.
Section 1	A–1 Specialist as ROT.
Section 2	F–1 Option Quote Parameters.

Proposed new rule No.	Current rule No.
Section 3	F–2 Failure to Comply with an Exchange Inquiry.
Section 4	F–3 Affiliations.
Section 5	F–4 Unusual Market Conditions.
Section 6	F–5 Supervisory Procedures Relating to ITSFEA.
Section 7	F–6 Minor Infractions of Position/Exercise Limits and Hedge Exemptions.
Section 8	F–7 Clearing Agents' Responsibility for Carrying Positions in Market Maker Accounts.
Section 9	F–8 Options Exchange Official Rulings.
Section 10	F–9 Failure to Provide Notification of Changes in Business Operations.
Section 11	F–10 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD.
Section 12	F–11 Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts.
Section 13	G–1 Index Option Exercise Advices.

PSX Rules [7]

Rule 133, ''Trading Halts Due to Extraordinary Market Volatility'' is being relocated to new PSX Rule 3101 as this rule is solely an equities rule. Rule 652, ''Limitation of Exchange Liability and Reimbursement of Certain Expenses'' is being relocated into new PSX Rule 3102.[8] Rule 103, ''Dealings on the Exchange—Securities'' is being relocated to new PSX Rule 3400. Rule 112, ''Bids and Offers—''When Issued'' '' is being relocated to new PSX Rule 3401. Rule 128, ''Price of Execution Binding'' is being relocated to new PSX Rule 3402.[9] Rule 274, ''Payment on Delivery—Collect on Delivery'' is being relocated to new PSX Rule 3403.[10] Rule 279, ''Book-Entry Settlement'' is being relocated to new PSX Rule 3404. Rule 431, ''Ex-dividend, Ex-rights'' is being relocated into new PSX Rule 3405. Rule 432, ''Ex-warrants'' is being relocated into new PSX Rule 3406. Rule 433, ''Buyer Entitled to Dividend, etc.'' is being relocated into new PSX Rule 3407. Rule 434, ''Claims for Dividend, etc.'' is being relocated into new PSX Rule 3408. Rule 451, ''Taking or Supplying Securities Named in Order'' is being relocated into new PSX Rule 3409. Rule 452, ''Limitations on Members' Trading Because of Customers' Orders'' is being relocated into new PSX Rule 3410.[11] Rule 453, ''Successive Transactions by Members'' is being relocated into new PSX Rule 3411. Rule 455, ''Short Sales'' is being relocated into new PSX Rule 3412. Rule 721, ''Proper and Adequate Margin'' is being relocated into new PSX Rule 3413.[12] Rule 723, ''Prohibition on Free-Riding in Cash Accounts'' is being relocated into new PSX Rule 3414.[13] Rule 703, ''Financial Responsibility and Reporting'' is being relocated into new PSX Rule 3500.[14] Rule 712, ''Independent Audit'' is being relocated into new PSX Rule 3501.[15] Rule 785, ''Automated Submission of Trading Data'' is being relocated into new PSX Rule 3502.[16] Rule 707, ''Conduct Inconsistent with Just and Equitable Principles of Trade'' is being relocated into Rule 3503.[17] Rule 708, ''Acts Detrimental to the Interest or Welfare of the Exchange'' is being relocated into Rule 3504.[18] Rule 742, ''Restrictions on Pledge of Customers' Securities'' is being relocated into new PSX Rule 3505.[19] Rule 757, ''Anti-Money Laundering Compliance Program'' is being relocated into new PSX Rule 3506.[20] Rule 762, ''Telemarketing'' is being relocated into new PSX Rule 3507.[21] Rule 980, ''Regulatory Services Agreements'' is being relocated into new PSX Rule 3600.[22]

The Exchange also proposes to amend PSX Rule 3202 to remove rules that: (1) Have been relocated into a general section and are therefore applicable to equities; (2) have been relocated into the PSX Rules or Equity 7; (3) which are reserved rules; and (4) remove references to Rule 623 (Fingerprinting), Rule 722 (Miscellaneous Securities Margin Accounts) and Rule 772 (Trading for Joint Account) as these rules do not exist in the Phlx Rulebook.

Equity Titles

The Exchange proposes to amend the current titles of Equity 2, 3, 4 and 7. The Exchange proposes to rename Equity 2, from ''Equity Trading Rules'' to ''Equity Market Participants.'' The Exchange proposes to rename Equity 3 from ''Equity Market Participants'' to ''Equity Trading Rules.'' The Exchange proposes to rename Equity 4 from ''Equity Listing Rules'' to ''Limit Up-Limit Down''. Finally, the Exchange proposes to reserve Equity 6 which is currently titled ''Limit Up-Limit Down.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by relocating its Rules into the new Rulebook shell together with other rules which have already been relocated. The Exchange's proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules, where

[7] PSX Rule 3202 currently notes rules which are incorporated by reference into PSX Rules. The rules within this section which are being relocated are currently part of the PSX Rules today.

[8] Rule 652 is also being replicated into Options 3, Section 27 as this rule applies to both equities and options.

[9] Rule 128 is being replicated within Options 3, Section 24 and also within the PSX Rules as this rule applies to both equities and options.

[10] The Exchange is eliminating rule text related to the effective date of the rule. This language is obsolete. The Supplementary Material is being relocated to the main body of the Rule.

[11] Rule 452, ''Limitations on Members' Trading Because of Customers' Orders'' is also being relocated into Options 8, Section 17. The Supplementary Material is being relocated to the main body of the Rule.

[12] Rule 721 is being replicated within Options 6C, Section 3 and also within the PSX Rules as this rule applies to both equities and options.

[13] Rule 723 is being replicated within Options 6C, Section 7 and also within the PSX Rules as this rule applies to both equities and options.

[14] Rule 703 is being replicated within Options 6D, Section 1 and also within the PSX Rules as this rule applies to both equities and options.

[15] Rule 712 is being replicated within Options 6E, Section 4 and also within the PSX Rules as this rule applies to both equities and options.

[16] Rule 785 is being replicated within Options 6E, Section 5 and also within the PSX Rules as this rule applies to both equities and options.

[17] Rule 707 is being replicated within Options 9, Section 1 and also within the PSX Rules as this rule applies to both equities and options.

[18] Rule 708 is being replicated within Options 9, Section 5 and also within the PSX Rules as this rule applies to both equities and options.

[19] Rule 742 is being replicated within Options 10, Section 14 and also within the PSX Rules as this rule applies to both equities and options.

[20] Rule 757 is being replicated within Options 9, Section 21 and also within the PSX Rules as this rule applies to both equities and options.

[21] Rule 762 is being replicated within Options 10, Section 23 and also within the PSX Rules as this rule applies to both equities and options.

[22] Rule 980 is being replicated within Options 6E, Section 7 and also within the PSX Rules as this rule applies to both equities and options.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

applicable, across Nasdaq markets so that members can readily locate rules which cover similar topics. The relocation and harmonization of the Phlx Rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that the placement of the Phlx Rules into their new location in the shell will facilitate the use of the Rulebook by members. Specifically, the Exchange believes that market participants that are members of more than one Nasdaq market will benefit from the ability to compare Rulebooks.

The Exchange is not substantively amending rule text unless noted otherwise within this rule change. The renumbering, re-lettering, deleting reserved rules, amending cross-references and other minor technical changes will bring greater transparency to Phlx's Rules. The Exchange intends to file other rule change to relocate Affiliated Exchange Rulebooks to relocate corresponding rules into the same location in each Rulebook for ease of reference. The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook and promoting easy comparisons among the various Nasdaq Rulebooks.

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 believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the Rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules. Renumbering, re-lettering, deleting reserved rules and amending cross-references will bring greater transparency to Phlx's Rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [27] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [28] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange could immediately relocate its rules. According to the Exchange, the proposal is intended to make it easier for members to locate the various Exchange rules, and is part of a larger effort to reorganize the Exchange's rules and those of its Affiliated Exchanges. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–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–Phlx–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–Phlx–2020–03, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03413 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88209; File No. SR–NASDAQ–2020–007]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Assume Operational Responsibility for Certain Enforcement Functions Currently Performed by FINRA Under the Exchanges Authority and Supervision

February 13, 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 February 3, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority (''FINRA'') under the Exchange's authority and supervision. Specifically, the Exchange proposes to assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities. In carrying out that responsibility, the Exchange plans to engage a third party, such as a law firm or another self-regulatory organization. Nasdaq Rule General 1, Section 7 [3] requires Commission approval for this proposal.

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

Section 6 of the Act requires that national securities exchanges enforce their members' compliance with federal securities laws and rules as well as the exchanges' own rules.[4] As a self-regulatory organization (''SRO''), Nasdaq must have a comprehensive regulatory program that includes investigation and prosecution of violative activity. Since it became a national securities exchange, Nasdaq has contracted with FINRA through various regulatory services agreements (''RSAs'') to perform certain of these regulatory functions on its behalf. However, as the Commission has made clear, ''the Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf.'' [5]

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation [6] for certain investigation and enforcement activity,[7] namely:

- Investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,[8] and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only, *i.e.,* not also on non-Nasdaq-affiliated equities markets.[9]

Notwithstanding that approval, FINRA continues to perform certain functions pursuant to a RSA,[10] including, among other things, the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities.[11] Nasdaq now requests Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain enforcement activity, namely the handling of contested disciplinary proceedings through the use a third party, not just FINRA.[12]

In its prior request for Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement functions, the Exchange noted that its expertise in its own market structure coupled with its expertise in surveillance activities will enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently and with immediacy.[13] The Exchange believes that assuming responsibility for litigating contested disciplinary proceedings through the use of more than one third party will similarly ensure that matters are handled effectively, efficiently and with immediacy. As it does with FINRA, the Exchange would directly oversee the work performed by the third party. This will ensure that the Exchange continues to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings. Moreover, the Exchange will only use third parties that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Formally Nasdaq Rule 0150.

[4] 15 U.S.C. 78(f).

[5] Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

[6] Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

[7] Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2016).

[8] As appropriate, Nasdaq Regulation coordinates with other SROs to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs.

[9] With respect to the operational responsibilities described, Nasdaq Regulation already performed these functions for the Nasdaq PHLX LLC (''Phlx''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX'') because there is no comparable rule to Rule General 1, Section 7 on those markets. Nasdaq BX, Inc. (''BX''), which does have a comparable rule to Rule General 1, Section 7, received Commission approval to perform these functions in June 2019. *See* Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

[10] In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d–2 of the Act.

[11] For example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent (''AWC'') letter, or if the Respondent executes the AWC letter but the Nasdaq Review Council, Review Subcommittee or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its behalf. FINRA's Office of Hearing Officers continues to be responsible for the administration of the hearing process.

[12] A third party may include a law firm or another self-regulatory organization. The Exchange will continue to use FINRA's Office of Hearing Officers to administer the hearing process.

[13] Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5748, 5752 (February 22, 2019).

have the requisite legal experience, ensuring that only those third parties with the appropriate qualifications handle contested matters on the Exchange's behalf. Having the option to use a third party other than FINRA will also ensure that contested cases are handled promptly when, for example, FINRA's litigation resources are strained or when it is otherwise unable to handle a particular matter.[14] The Exchange notes that this proposal would not change or alter in any way the disciplinary processes around how contested matters are handled.

Nasdaq Rule General 1, Section 7 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by another independent self-regulatory organization. Nasdaq believes that assuming operational responsibility for contested disciplinary proceedings by using more than one third party to litigate such matters will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to deliver increased efficiencies in the regulation of its market and to act promptly and provide more effective regulation.[15]

Finally, Nasdaq notes that its proposal is consistent with work performed by other national securities exchanges. For example, in 2015, the SEC approved the New York Stock Exchange's (''NYSE'') application whereby NYSE amended certain of its disciplinary rules to facilitate the reintegration of certain market surveillance, investigation and enforcement functions performed on behalf of NYSE by FINRA.[16] That reintegration also included the handling of contested disciplinary proceedings.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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. In addition, the Exchange believes that the proposal furthers the objectives of Section 6(b)(7) of the Act,[19] in particular, in that these changes will continue to provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that this proposal is in keeping with those principles because it will ensure that contested matters are handled effectively, efficiently and with immediacy. The ability to assume responsibility for this function by using more than one party to handle contested matters will ensure that contested cases are handled promptly when, for example, FINRA's litigation resources are strained or when it is otherwise unable to handle a particular matter. This will enable the Exchange to take timely action when appropriate to enforce its rules, hold bad actors accountable, and protect investors and market integrity. This proposal, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, it will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function through the use of a third party other than FINRA will also enhance regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings. Moreover, the Exchange, consistent with its statutory obligations, will only use third parties that have the requisite legal experience, ensuring that only those third parties with the appropriate qualifications handle contested matters on the Exchange's behalf.

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 proposed rule change is not intended to address competitive issues but rather to enable the Exchange to have the option to use a third party other than FINRA to litigate contested matters on the Exchange's behalf.

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 (i) as the Commission may designate up to 90 days of such date 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 shall: (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–2020–007 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–2020–007. 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

[14] The Exchange intends to continue to use FINRA to handle contested disciplinary proceedings. The Exchange is requesting permission to have the option to use a third party other than FINRA when it believes that doing so is consistent with ensuring prompt resolution of regulatory matters.

[15] BX, which has a comparable rule to Rule General 1, Section 7, will file a similar rule filing to request Commission approval to use a third party to handle contested disciplinary proceedings.

[16] *See* Securities Exchange Act Release No. 75721 (August 18, 2015), 80 FR 51334 (August 24, 2015) and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 3 and 5, Amending Exchange Disciplinary Rules to Facilitate the Reintegration of Certain Regulatory Functions from Financial Industry Regulatory Authority, Inc., Securities Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460 (November 19, 2015) (SR–NYSE–2015–35).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(7).

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–NASDAQ–2020–007 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03322 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88219; File No. SR–CboeEDGX–2020–008]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

February 14, 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 February 4, 2020, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') 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 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 EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no comment letters on the Initial Proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Initial Suspension Order'').[4] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5] On October 1, 2019, the Exchange re-filed its proposed rule change with additional information about the basis for the proposed fee change (''Second Proposal''). The Second Proposal was published in the **Federal Register** on October 15, 2019,[6] and the Commission received no comment letters on the Second Proposal. The Program again remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'').[7] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposal.[8] On November 27, 2019, the Exchange re-filed its proposed rule change a third time with one revision to the requirements for participating in the Program and additional information about the basis for the proposed fee change (''Third Proposal''). The Third Proposal was published in the **Federal Register** on December 16, 2019.[9] Today, the Exchange is withdrawing the Third Proposal, and replacing it with this proposed fee change as part of its ongoing efforts to continue to facilitate retail investor access to reasonably priced market data.

Current Fees

Today, the Exchange offers two top of book data feeds that provide real-time

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86678 (August 14, 2019), 84 FR 43246 (August 20, 2019) (SR–CboeEDGX–2019–048).

[4] *See* Securities Exchange Act Release No. 87172 (September 30, 2019), 84 FR 53192 (October 4, 2019) (SR–CboeEDGX–2019–048).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 87295 (October 11, 2019), 84 FR 55624 (October 17, 2019) (SR–boeEDGX–2019–059).

[7] *See* Securities Exchange Act Release No. 87635 (November 26, 2019), 84 FR 66242 (December 3, 2019) (SR–CboeEDGX–2019–059).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 87711 (December 10, 2019), 84 FR 68501 (December 16, 2019) (SR–CboeEDGX–2019–071).

U.S. equity quote and trade information to investors. First, the Exchange offers the EDGX Top Feed, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System. The fee for external distribution of EDGX Top data is $1,500 per month, and external distributors are also liable for a fee of $4 per month for each Professional User, and $0.10 per month for each Non-Professional User.

Second, the Exchange offers the Cboe One Summary Feed, which offers similar information based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe EDGA Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[10]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide either the EDGX Top Feed or Cboe One Summary Feed (''EDGX Equities Exchange Data'') to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing EDGX Equities Exchange Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) At least 90% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving EDGX Equities Exchange Data; and (3) Distributor distributes EDGX Equities Exchange Data to no more than 5,000 Users.[11] [12]

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide EDGX Equities Exchange Data to a limited number of subscribers. As explained later in this filing, distributors that provide EDGX Equities Exchange Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Exchange's top of book products with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Exchange's top of book offerings as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution fees for access to the EDGX Top Feed, and lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[13] First, the distribution fee charged for EDGX Top would be lowered by 50% from the current $1,500 per month to $750 per month for distributors that meet the requirements of the Program. Second, the distribution fee charged to these distributors for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month. Finally, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access EDGX Top or Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[14]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information

[10] The Exchange also offers an Enterprise license for the EDGX Top and Cboe One Summary Feeds. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers. An Enterprise license is $15,000 per month for the EDGX Top Feed, and $50,000 per month for the Cboe One Summary Feed.

[11] The Initial Proposal, Second Proposal, and Third Proposal would have allowed small retail brokers to participate in the Program if they distribute Cboe One Summary Feed Data to no more than 5,000 Non-Professional Users. The current proposal instead reflects a threshold of 5,000 Users—*i.e.,* including both Non-Professional and Professional Users.

[12] Distributors would have to meet these requirements for whichever product they would like to distribute pursuant to the Program. For example, a distributor that distributes Cboe One Summary Feed data pursuant to the Program, would be limited to distributing the Cboe One Summary Feed to no more than 5,000 Users.

[13] New external distributors of the EDGX Top Feed or Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[14] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[15] The EDGX Top Feed and Cboe One Summary Feed therefore compete with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[16]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, as was the Second Proposal, the Exchange believes that its experience in offering the Program while it has been in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange reduced the fees charged to small retail brokers pursuant to the Initial Proposal, Second Proposal, and Third Proposal, while each of those were in effect, it successfully onboarded three new customers due to the attractive pricing.[17] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[20] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[21] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. 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] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to two top of book data products: The EDGX Top Feed and the Cboe One Summary Feed. The EDGX Top Feed provides top of book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 5% of U.S. equity market volume today.[23] The Cboe One Summary Feed is a competitively-priced alternative to top of book data

[15] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[16] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

[17] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78k–1.

[21] *See* 17 CFR 242.603.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[23] *See https://markets.cboe.com/us/equities/market_share/.*

disseminated by SIPs, or similar data disseminated by other national securities exchanges.[24] It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[25] Together, these products are purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the EDGX Top and Cboe One Summary Feeds benefit a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,[26] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded three new Distributors that have decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from EDGX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [27]

Today, the Exchange's top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up a significant majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having significantly more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors.

[24] *See e.g.,* supra note 14 (discussing Nasdaq Basic).

[25] *Id.*

[26] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

[27] *See* Regulation NMS Adopting Release, supra note 22, at 37503.

This understanding is confirmed by an analysis conducted by the Exchange on the user population of its retail broker clients that purchase market data from the Exchange and its affiliated exchanges. To perform its analysis, the Exchange reviewed user populations for each broker dealer that it identified as primarily engaged in serving retail investors (*i.e.,* retail brokers), and for which the Exchange has reported usage broken down into Professional and Non-Professional Users.[28] This analysis showed that each retail broker identified currently provides market data from the Exchange or its affiliates to at least 90% Non-Professional Users, with the Professional/Non-Professional breakdown ranging from 90.9% Non-Professional Users on the low end to 100% Non-Professional Users on the high end. As a result of this analysis, the Exchange believes that a requirement that at least 90% of a broker-dealer's user population qualify as Non-Professional Users is appropriate to ensure that the benefits provided by the Program inure to the benefit of broker-dealers that primarily serve retail investors. Indeed, this belief is further supported by the Exchange's experience with the customers that currently participate in the Program, each of which are focused on providing trading services to ordinary investors.

As such, the Program would be broadly available to a wide range of retail brokers that either purchase EDGX Equities Exchange Data today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are currently participating in the Program, a number of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[29] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. The Program is designed to ensure that small retail brokers have access to Exchange data at a modest cost, and therefore contains an eligibility cutoff based on the number of Users that would receive EDGX Equities Exchange Data. The retail broker clients identified by the Exchange provide data from the Exchange or its affiliates to an average of more than 160,000 Non-Professional Users, with a small handful of large retail brokers operating pursuant to an Enterprise license accounting for about 95% of those Non-Professional Users.[30] Many retail broker clients, however, have significantly smaller Non-Professional User populations, with retail brokers that are not operating pursuant to an Enterprise license providing data from the Exchange or its affiliates to an average of 8,845 Non-Professional Users. The 5,000 User threshold would therefore ensure that the benefits of the Program flow to small retail brokers, as intended, and not larger firms that already benefit from the current fee structure.

Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide EDGX Equities Exchange Data to more than 5,000 Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for firms with more than 1,200 Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Users.[31] Further, EDGX Top Data, which is already subject to a lower distribution fee than Nasdaq Basic, would become even more cost effective. After 5,000 Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels,

[28] Broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. As a result, the Exchange has excluded those firms from this portion of its analysis. That said, the Exchange believes those firms may have a similar Professional/Non-Professional breakdown to other retail brokers.

[29] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.*

[30] As explained, broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. *See* supra note 28. To perform this analysis, the Exchange therefore assumed that retail brokers qualifying for the enterprise cap had a similar breakdown of Professional/Non-Professional Users as retail brokers that reported this information.

[31] For purposes of illustration, the examples included in the table assume that the small retail broker provides Cboe One Summary Data solely to Non-Professional Users, which pursuant to the requirements of the Program must make up at least 90% of the Distributor's total subscriber population, and may, in practice, make up an even larger proportion of the user population.

cheaper than the current Cboe One Summary fee.

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	1,200			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$3,850.00	$3,850	0.00
EDGX Top	1,200	$ 1,500.00	$ 750.00	$3,850	3100.00

	3,350			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$3,850.00	$6,000	2150.00
EDGX Top	3,350	$ 1,500.00	$ 750.00	$6,000	5250.00

	7,500			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$3,850.00	$10,150	4150.00
EDGX Top	7,500	$ 1,500.00	$ 750.00	$10,150	9400.00

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The Exchange also notes that the proposed fees for the Cboe One Summary Feed are designed in a manner that would allow a market data vendor to offer a similar competing product that includes data from the Exchange and its affiliated equities exchanges. Specifically, the Distribution fees proposed for the Cboe One Summary Feed are equivalent to the fees that would be charged to a small retail broker for access to the top of book feeds offered by the individual exchanges. In addition, Distributors of the Cboe One Summary Feed are liable for a Data Consolidation Fee that is designed to reflect the value of the consolidation of the data. Thus, the pricing for the Cboe One Summary Feed would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no pricing disadvantage relative to the exchanges. The examples below illustrate the fees that would be associated with the Cboe One Summary Feed compared with the fees that would be charged for a competing product that incorporates top of book information taken from the Exchange and its affiliated equities exchanges.[32]

Example 1: Vendor Distributes Cboe One Summary Feed to Two Small Retail Brokers

A vendor that distributes the Cboe One Summary Feed to one or more clients for further internal or external distribution would be liable for an External Distribution Fee of $5,000 per month and a Data Consolidation Fee of $1,000 per month.[33] In addition, each small retail broker that receives data from the vendor would be liable for its own Distribution Fees, which would be reduced to $3,500 per month pursuant to the Program, and Data Consolidation Fees, which would be reduced to $350 per month. These amounts would be paid directly by each small retail broker to the Exchange pursuant to a license agreement despite the fact that such clients are utilizing the services of a

[32] All Distributors that receive an uncontrolled data feed, including small retail brokers that qualify for the Program, would have to license directly with the Exchange, and would be responsible for paying any applicable fees, but would be able to access such market data through the services of a vendor.

[33] Typically, a vendor's business involves distributing market data to a wide range of customers, which would likely include a number of firms that do not qualify for the Program (*e.g.,* other vendors, larger broker-dealers, etc.). In both examples, the fees charged to the vendor would permit it to distribute to each of those downstream customers without paying additional fees for each customer.

vendor to facilitate their access to the data.

Example 2: Vendor Distributes Competing Product to Two Small Retail Brokers

Similar to Example 1, a vendor that consolidates and distributes top of book data taken from the Exchange and its affiliated equities exchanges would be liable for External Distribution Fees of $5,000 per month—*i.e.,* $2,500 for BZX Top, $1,000 per month for BYX Top, and $1,500 for EDGX Top, and $0 per month for EDGA Top. Unlike Example 1, however, the vendor would be performing its own consolidation of the data incorporated from the four top of book feeds, and would not be liable for the Data Consolidation Fee. Similarly, each of the small retail brokers would pay their own Distribution Fees to the Exchange, which would be reduced to $3,500 under the Program—*i.e.,* $2,500 per month for BZX Top, $250 per month for BYX Top, $750 per month for EDGX Top, and $0 per month for EDGA Top. Similar to the vendor, the small retail brokers would not pay any Data Consolidation Fee. As a result, a vendor could offer its own competing product at a price that is competitive with the Exchange's pricing.[34]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with the Act.

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) of the Act[35] and paragraph (f) of Rule 19b–4[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2020–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2020–008. 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

[34] The discounted Data Consolidation Fee should continue to allow a vendor that takes top of book feeds from the Exchange and its affiliated equities exchanges to offer a competing product at a similar cost. In this regard, the Exchange notes that Nasdaq similarly charges a $350 data consolidation fee for Nasdaq Last Sale Plus. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 139(e)(1).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f).

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–CboeEDGX–2020–008 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03417 Filed 2–19–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88207; File No. SR–NASDAQ–2019–090]

Self-Regulatory Organizations; The Nasdaq Stock Market 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 Nasdaq Rule 5704 and Other Related Amendments

February 13, 2020.

On November 8, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC), 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, among other things, adopt new Nasdaq Rule 5704 to list and trade Exchange Traded Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 22, 2019.[3]

On December 17, 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] On February 6, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[6] The Commission has received no comment letters on the proposed rule change.

The Commission is publishing this notice and order to 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 Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to adopt new Nasdaq Rule 5704 to list and trade shares of securities issued by an exchange-traded fund, as defined herein, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b). This Amendment No. 1 replaces and supersedes the original filing in its entirety.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes Nasdaq Rule 5704 to establish generic listing standards that permit the listing and trading of shares (''Exchange Traded Fund Shares'') of exchange-traded funds (''ETFs'' as defined below) that meet the criteria established by the Commission in its adoption of Rule 6c–11[8] (''Rule 6c–11'') under the Investment Company Act of 1940, as amended (1940 Act''), to operate without obtaining an exemptive order from the SEC under the 1940 Act.[9] This will help to accomplish the SEC's goal in adopting Rule 6c–11 to allow such ETFs to come directly to market without the cost and delay of obtaining exemptive relief while still protecting the interests of investors and other market participants. Rule 6c–11 will provide exemptions applicable to both index-based and transparent actively managed ETFs. Rule 6c–11 will enhance the regulatory framework through streamlining existing procedures and reducing the costs and time frames associated with bringing ETFs to market. This, in turn, will also serve to enhance competition among ETF issuers and ultimately reduce investor costs.[10]

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87559 (Nov. 18, 2019), 84 FR 64574.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87776, 84 FR 70610 (Dec. 23, 2019). The Commission designated February 20, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nasdaq-2019-090/srnasdaq2019090-6786146-208249.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Specifically, Rule 6c–11 applies to open-end funds that (i) issue and redeem creation units to and from authorized participants in exchange for a basket of securities and other assets (and any cash balancing amount), and (ii) whose shares are listed on a national securities exchange and trade at market-determined prices. Rule 6c–11 does not apply to leveraged, inverse, non-transparent, share classes, or exchange-traded funds structured as unit investment trusts.

[9] *See* Release No. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (''Adopting Release'').

[10] The SEC said in the Adopting Release that Rule 6c–11 ''will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' *See* Adopting Release at 57163. The SEC also said that in reference to the impact of Rule 6c–11 that: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' *See* Adopting Release at 57204.

Nasdaq believes that the proposed generic listing rules for Exchange Traded Fund Shares, described below, will facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c–11. The Exchange also believes that proposed Nasdaq Rule 5704 is consistent with, and will further, the Commission's goals in adopting Rule 6c–11. Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, which, in turn, will promote competition among issuers of Exchange Traded Fund Shares, to the benefit of investors.

Nasdaq will notify the Commission through the filing of a Form 19b–4(e) when an ETF lists on Nasdaq pursuant to proposed Nasdaq Rule 5704. The Form 19b–4(e) will identify the Nasdaq rule under which the ETF is being filed. The Exchange will retain its right to file a Form 19b–4 to receive SEC approval under Nasdaq Rule 5705(b) and Nasdaq Rule 5735, respectively, for the listing and trading of Index Fund Shares or Managed Fund Shares. Additionally, Nasdaq will also file a Form 19b–4(e) for ETFs that decide to switch from operating under Nasdaq rules other than proposed Nasdaq Rule 5704 to operating in compliance with Rule 6c–11 and in conformity with proposed Nasdaq Rule 5704.

The Exchange also proposes to amend Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

Proposed Nasdaq Rule 5704 will enable ETFs, whether index-based or actively managed, to qualify for listing and trading on the Exchange both on an initial and continued basis by meeting and maintaining compliance with the criteria set forth in Rule 6c–11.[11] The specific provisions of proposed Nasdaq Rule 5704 are presented below, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), which would be necessitated by adoption of the proposed rule. Additionally, the proposed rule change to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b) is also discussed below.

Proposed Nasdaq Rule 5704

Proposed Definitions.

Proposed Nasdaq Rule 5704(a)(1)(A) defines the term ''Exchange Traded Fund'' (''ETF'') as having the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11.[12] In the case of an ETF that is not currently listed on a national securities exchange, the portion of the definition found in Rule 6c–11 requiring such listing will become applicable if the ETF is listed on a national securities exchange.

Proposed Nasdaq Rule 5704(a)(1)(B) defines the term ''Exchange Traded Fund Share'' as having the same meaning as the term is defined as having in Rule 6c–11.[13]

Proposed Nasdaq Rule 5704(a)(1)(C) defines the term ''Reporting Authority'' in respect of a particular series of Exchange Traded Fund Shares to mean Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares. The definition also notes that it does not imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by Nasdaq; the term ''Reporting Authority'' does not refer to an institution or reporting service not so designated.

Initial and Continued Listing.

Proposed Nasdaq Rule 5704(b) states that Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Act, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 and satisfies the requirements of Rule 5704 on an initial and continued listing basis.[14]

Proposed Nasdaq Rule 5704(b)(1) says that each series of Exchange Traded Fund Shares must also satisfy the follow criteria on an initial and continued listing (except for paragraph (A) below) basis:

Proposed Nasdaq Rule 5704(b)(1)(A) states that for each series of Exchange Traded Fund Shares, Nasdaq will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

Proposed Nasdaq Rule 5704(b)(1)(B) sets forth the requirements regarding index calculation and dissemination that must be satisfied on both an initial and continued listing basis. Proposed

[11] Rule 6c–11 is now effective so Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be eligible for listing and trading on Nasdaq under proposed Nasdaq Rule 5704.

[12] Rule 6c–11(a)(1) defines ''exchange-traded fund'' as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms ''authorized participant,'' ''basket'' and ''creation unit'' are defined in Rule 6c–11(a).

[13] Rule 6c–11(a)(1) defines ''exchange-traded fund share'' as a share of stock issued by an exchange-traded fund.

[14] Rule 6c–11(c) sets forth certain conditions applicable to exchange-traded funds, and specifies the information required to be disclosed prominently on the fund's website free of charge, including the following: (i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the estimated cash balancing amount (if any) and the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio; (ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day; (iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth (and computed in a manner described in Rule 6c–11(c)(v)(A) through (D)); and (vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter. Rule 6c–11(c)(4) provides that the exchange-traded fund may not seek, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.

Nasdaq Rule 5704(b)(1)(B)(i) states that if the investment adviser to an ETF is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the underlying portfolio. Additionally, personnel who make decisions on the ETF's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable ETF portfolio. Proposed Nasdaq Rule 5704(b)(1)(B)(ii) states that the Reporting Authority that provides the ETF's portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. Proposed Nasdaq Rule 5704(b)(1)(B)(iii) states that if the index underlying a series of Exchange Traded Fund Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser. Proposed Nasdaq Rule 5704(b)(1)(B)(iv) states that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

Proposed Nasdaq Rule 5704(b)(1)(C) states that regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Exchange Traded Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 4:00 a.m. and/or a post-market session ending at 8:00 p.m.

Proposed Nasdaq Rule 5704(b)(1)(D) states that the minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is $0.01.

Nasdaq may list and trade a series of Exchange Traded Fund Shares based on one or more foreign or domestic indexes or portfolios. Each series of Exchange Traded Fund Shares based on each particular index or portfolio, or combination thereof, will be designated as a separate series and will be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Exchange Traded Fund Shares is based will be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as will have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio. Nasdaq will obtain a representation from the ETF that the net asset value per share for each series of Exchange Traded Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

Proposed Nasdaq Rule 5704(b)(2) sets forth the circumstances under which Nasdaq will consider the suspension of trading and removal in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares. These circumstances will include the following: (i) Proposed Nasdaq Rule 5704(b)(2)(A) states that if Nasdaq becomes aware that the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c–11 or if any of the other requirements set forth in this rule are not continuously maintained; (ii) Proposed Nasdaq Rule 5704(b)(2)(B) states that if, following the initial twelve month period after commencement of trading on Nasdaq of the series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders; (iii) Proposed Nasdaq Rule 5704(b)(2)(C) states that if Nasdaq files separate proposals under Section 19(b) of the Act, any of the statements or representations regarding (a) the index composition; (b) the description of the portfolio; (c) limitations on portfolio holdings or reference assets; (d) dissemination and availability of the index or intraday indicative values; or (e) the applicability of Nasdaq listing rules specified in such proposals are not continuously maintained as referenced in subsection (h) of this rule; and (iv) Proposed Nasdaq Rule 5704(b)(3)(D) states that if such other event will occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

An example of such an event as mentioned above in Proposed Nasdaq Rule 5704(b)(3)(D) would include if the value of the index or portfolio of securities on which the series of Exchange Traded Fund Shares is based is no longer calculated or available or an interruption to the dissemination persists past the trading day in which it occurred or the index or portfolio on which the series of Exchange Traded Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5704(b) for listing either pursuant to Rule 19b–4(e) under the Act (including the filing of a Form 19b–4(e) with the SEC) or by SEC approval of a filing pursuant to Section 19(b) of the Act.

The Exchange will also halt trading if it becomes aware that the net asset value for a series of Exchange Traded Fund Shares is not being disseminated to all market participants at the same time.[15] In addition, as proposed herein, Nasdaq may halt trading in Exchange Traded Fund Shares if trading in the underlying securities compromising the index or portfolio applicable to such series of Exchange Traded Fund Shares has been halted in the primary market(s), or if trading has ceased in securities underlying the index or portfolio, or in the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.[16]

Proposed Nasdaq Rule 5704(c) states that Nasdaq will implement and maintain written surveillance procedures for Exchange Traded Fund Shares. The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Exchange Traded Fund Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. Nasdaq believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, Nasdaq's ability to halt trading under the proposed Rule Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Nasdaq Rule 5704(b)(2)(B). As previously stated, Nasdaq is proposing to amend Nasdaq Rule 4120(b)(4)(A) to clarify that Exchange Traded Fund Shares are subject to Nasdaq's halt authority.

Nasdaq also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of

[15] *See* Nasdaq Rule 4120(a)(10).

[16] *See* Proposed Nasdaq Rule 4120(a)(9).

Exchange Traded Fund Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional disclosure obligations.[17] The Exchange believes that the combination of these factors will act to keep Exchange Traded Fund Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Exchange Traded Fund Shares on Nasdaq.

The Exchange will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met. The Exchange will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. Nasdaq also will employ intraday alerts that will notify Exchange personnel of unusual trading activity throughout the day that could be indicative of unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also notes that Nasdaq Rule 5701(d) would require an issuer of Exchange Traded Fund Shares to notify Nasdaq with prompt notification after the issuer becomes aware of any noncompliance with the requirements of the Nasdaq Rule 5700 Series, which would encompass any failure of the issuer to comply with Rule 6c–11 or the 1940 Act.

Additionally, Nasdaq represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to Nasdaq-listed securities, which are currently applicable to Index Fund Shares and Exchange Traded Fund Shares, among other product types, to monitor trading in Exchange Traded Fund Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in Exchange Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which Nasdaq has in place a comprehensive surveillance sharing agreement (''CSSA'').

Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange Traded Fund Shares reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's (''MSRB'') Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange Traded Fund Shares, to the extent that a series of Exchange Traded Fund Shares holds municipal securities. Finally, as noted above, the issuer of a series of Exchange Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Nasdaq Rule 5615(a)(6)(A) and the changes to Nasdaq Rule 5615(a)(6)(B) as proposed herein.

Proposed Nasdaq Rule 5704(d) states that upon termination of an ETF, Nasdaq requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.

Proposed Nasdaq Rule 5704(e) states that neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq will have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

Proposed Nasdaq Rule 5704(f) states that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Nasdaq Rule 5705(b) or Nasdaq Rule 5735(b)(1), or pursuant to an approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 5704 if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. At the time of listing of such security under this Rule 5704, the continued listing requirements applicable to such previously-listed securities will be those specified in paragraph (b) of this Rule. Any requirements for listing as specified in Nasdaq Rule 5705(b) or Nasdaq 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 5704 will no longer be applicable to such security.

Amendments to Nasdaq Rule 4120. Limit Up-Limit Down Plan and Trading Halts

The Exchange proposes to amend Nasdaq Rule 4120 to include Exchange Traded Fund Shares in Nasdaq Rule 4120(a)(9) and Nasdaq Rule 4120(a)(10)[18] as these rules apply to trading halts. This will ensure the applicability of trading halts to the trading of Exchange Traded Fund Shares listed on Nasdaq and traded on Nasdaq pursuant to unlisted trading privileges.

Amendments to Nasdaq Rule 5615. Exemptions From Certain Corporate Governance Requirements

The Exchange also proposes to amend the definition of ''Derivative Securities'' in Nasdaq Rule 5615 to incorporate Exchange Traded Fund Shares so Rule 5615 and its exemptions from certain corporate governance requirements are applicable to Exchange Traded Fund Shares. All Nasdaq rules affected by Rule 6c–11 will be conformed so that they comply with Rule 6c–11.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

On September 23, 2016, the SEC approved Nasdaq Rule 5735(b)(1), adopting generic listing standards for

[17] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Adopting Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[18] The definition of ''Derivative Securities'' found in Nasdaq Rule 4102(b)(4)(A) is referenced in Nasdaq Rule 4120(a)(10) as the applicable definition for that rule.

Managed Fund Shares.[19] In proposing that rule, Nasdaq represented that it would provide the Commission staff with a report each calendar quarter about issues of Managed Fund Shares listed under that rule.[20]

The quarterly reports were initially intended to provide SEC Staff insight into the number and type of funds listed pursuant to Nasdaq Rule 5735(b)(1), as well as highlight any issues regarding the trading of such funds or a funds' compliance with the continued listing standards. Nasdaq believes that since the implementation of this requirement, SEC Staff has received an ample number of reports as to gain sufficient understanding of the products listed pursuant to Nasdaq Rule 5735(b)(1). SEC Staff has now had several years experience monitoring through these reports and has not detected any significant issues involving Managed Fund Shares listed under Nasdaq Rule 5735(b)(1).

Nasdaq also believes such quarterly reports will no longer be necessary because Rule 6c–11 collapses the distinction between Index Fund Shares and Managed Fund Shares, which illustrates that the SEC has reached a sufficient level of comfort with Managed Fund Shares. As a result, the Exchange believes that the quarterly reports no longer serve an ongoing purpose and, therefore, proposes to discontinue such reporting going forward. Rule 6c–11(d) includes specific ongoing reporting requirements for ETFs, such as written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund.[21] This information will be sufficient for the SEC's examination staff to determine compliance with Rule 6c–11 and the applicable federal securities laws.[22]

Nasdaq also believes that for the reasons stated above, as well as that the quarterly reports as currently required are duplicative of the new Rule 6c–11(d) requirements, there is longer a reason to keep this reporting requirement. To avoid unnecessary overlap and potential inconsistency, as well as to avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity, the Exchange proposes to discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The 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 because it would facilitate the listing and trading of additional Exchange Traded Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. The generic listing rules in proposed Nasdaq Rule 5704, as described above, will facilitate efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c–11 and are consistent with and will further the SEC's goals in adopting Rule 6c–11. Nasdaq will notify the Commission through the filing of a Form 19b–4(e) when an ETF lists on Nasdaq pursuant to proposed Nasdaq Rule 5704. The Form 19b–4(e) will identify the Nasdaq rule under which the ETF is being filed. The Exchange will retain its right to file a Form 19b–4 to receive SEC approval under Nasdaq Rule 5705(b) and Nasdaq Rule 5735, respectively, for the listing and trading of Index Fund Shares or Managed Fund Shares. Additionally, Nasdaq will also file a Form 19b–4(e) for ETFs that decide to switch from operating under Nasdaq rules other than proposed Nasdaq Rule 5704 to operating in compliance with Rule 6c–11 and in conformity with proposed Nasdaq Rule 5704.

Additionally, by allowing Exchange Traded Fund Shares to be listed and traded on the Exchange without a prior SEC approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Nasdaq Rule 5704 will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, thereby promoting market competition among issuers of these securities, to the benefit of the investors. Also, the proposed change would fulfill the intended objective of Rule 19b–4(e) under the Act by permitting Exchange Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate SEC approval.

With respect to both proposed Nasdaq Rule 5704(a)(1)(A), which defines the term ''Exchange Traded Fund'', and proposed Nasdaq Rule 5704(a)(1)(B), which defines the term ''Exchange Traded Fund Share'', the Exchange believes these definitions will increase the clarity to the benefit of investors and the marketplace. Additionally, these terms mirror the definitions as set forth in Rule 6c–11.[25]

With respect to proposed Nasdaq Rule 5704(a)(1)(C), which defines the term ''Reporting Authority'', the Exchange

[19] *See* Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR–NASDAQ–2016–104).

[20] *See* Exchange Act Release No. 78616 (August 18, 2016), 81 FR 57968 at 57973 (August 24, 2016) (''the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Rule 5735(b)(1): (1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Nasdaq Rule 5735'').

[21] Rule 6c–11(d), which sets forth recordkeeping requirements applicable to exchange-traded funds, provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c–11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange traded fund.

[22] In the Adopting Release, the SEC stated, ''requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c–11 to require the ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed. We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws.'' *See* Adopting Release at 57195

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Adopting Release at 57178 and at 57234, respectively.

believes that defining the term generally consistent with how it is defined in Nasdaq Rule 5705 [26] and Nasdaq Rule 5735 [27] will increase the clarity to the benefit of investors and the marketplace.

With respect to proposed Nasdaq Rule 5704(b), Exchange Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 [28] and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis. This requirement will ensure that Exchange-listed Exchange Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c–11(c). This will also ensure that Exchange Traded Fund Shares listed and traded on the Exchange in accordance with Nasdaq Rule 5704 on an initial and continued listing basis will serve to perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

With respect to proposed Nasdaq Rule 5704(b)(1) and subparagraphs (A)–(D) thereunder (with the exception that subparagraph (A) only applies on an initial listing basis),[29] the Exchange believes it is to the benefit of investors and the marketplace that Nasdaq may approve an ETF for listing and trading pursuant to Rule 19b–4(e) under the Act. The approval is also contingent on each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 and satisfies the requirements of Rule 5704 on an initial and continued listing basis.

Nasdaq will monitor for compliance with the continued listing requirements as discussed above. If the ETF is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under proposed Nasdaq Rule 5704(b)(3). The Exchange believes that this will help to prevent fraudulent and manipulative acts and practices.

The Exchange believes this also fulfills the intended objective of Rule 19b–4(e) under the Act by allowing Exchange Traded Fund Shares to be listed and traded without requiring separate Commission approval and this will provide investors with additional investment choices that they may choose to invest in.

With respect to proposed Nasdaq Rule 5704(c), the Exchange will implement written surveillance procedures for Exchange Traded Fund Shares and represents that its surveillance procedures are adequate to properly monitor such trading in all trading sessions and to deter and detect violations of Nasdaq rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to securities, which will include Exchange Traded Fund Shares, to monitor trading in the Exchange Traded Fund Shares (additional surveillance processes and procedures are described herein). These surveillance procedures promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Exchange Traded Fund Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis.

The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of Exchange Traded Fund Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional disclosure obligations.[30] The Exchange believes that the combination of these factors will act to keep Exchange Traded Fund Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Exchange Traded Fund Shares on Nasdaq.

The Exchange will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met. The Exchange will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. Nasdaq also will employ intraday alerts that will notify Exchange personnel of unusual trading activity throughout the day that could be indicative of unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also notes that Nasdaq Rule 5701(d) would require an issuer of Exchange Traded Fund Shares to notify Nasdaq with prompt notification after the issuer becomes aware of any noncompliance with the requirements of the Nasdaq Rule 5700 Series, which would encompass any failure of the issuer to comply with Rule 6c–11 or the 1940 Act.

Nasdaq also believes that its surveillance procedures are adequate to properly monitor the trading of the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to Nasdaq-listed securities, which are currently applicable to Index Fund Shares and Exchange Traded Fund Shares, among other product types, to monitor trading in Exchange Traded Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which Nasdaq has in place a CSSA.

Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange Traded Fund Shares, to the extent that a series of Exchange Traded Fund Shares holds municipal securities. Finally, as noted above, the issuer of a series of Exchange Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and

[26] *See* Nasdaq Rule 5705(b)(1)(C).

[27] *See* Nasdaq Rule 5735(c)(4),

[28] Rule 6c–11(c) sets forth certain conditions applicable to ETFs, including information required to be disclosed on the ETF's website.

[29] Proposed Nasdaq Rule 5704(b)(1)(A)–(D) covers: (i) Establishing a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq (only applicable on an initial listing basis); (ii) index and portfolio calculation and dissemination, as well as ''fire walls'' and procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the index or portfolio; (iii) regular market session trading; and (iv) the minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is $0.01.

[30] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Adopting Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

continued listing of Exchange-Traded Fund Shares, as provided under Nasdaq Rule 5615(a)(6)(A) and the changes to Nasdaq Rule 5615(a)(6)(B) as proposed herein.

With respect to proposed Nasdaq Rule 5704(d), which states that upon termination of an ETF that Nasdaq will remove from listing the Exchange Traded Fund Shares issued in connection with such entity. The Exchange believes that adopting language similar to language already included in Nasdaq Rule 5705(b)(9)(B)(i) and in Nasdaq Rule 5735(d)(2)(E) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

With respect to proposed Nasdaq Rule 5704(e), which sets forth the limitation of liability applicable to Nasdaq, the Reporting Authority, or any agent of Nasdaq, the Exchange believes that requiring similar written disclosure to that already required under Nasdaq Rule 5707(b)(11) and Nasdaq Rule 5735(e) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by reducing potential confusion.

With respect to proposed Nasdaq Rule 5704(f), which states that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Nasdaq Rule 5705(b) or Nasdaq Rule 5735(b)(1), or pursuant to an approval of a proposed rule change filed or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this proposed Nasdaq Rule 5704 if the security is permitted to operate in reliance on Rule 6c–11 under the 1940 Act and at the time of listing of such security under this proposed Nasdaq Rule 5704, the continued listing requirements applicable to such security will be those specified in paragraph (b) of this proposed Nasdaq Rule 5704, the Exchange believes makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

The Exchange believes the rest of proposed Nasdaq Rule 5704(f), which states any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule 5704 will no longer be applicable to such securities will streamline the listing process for such security, consistent with the regulatory framework adopted in Rule 6c–11 under the 1940 Act. Additionally, any security that begins to operate in reliance on Rule 6c–11 under the 1940 Act prior to December 22, 2020, the SEC will rescind the existing approval order for that security at that time.

The Exchange believes that proposed Nasdaq Rule 5704, as well as amendments to Nasdaq Rules 4120 and 5615 will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

Proposed Nasdaq Rule 5704 and related amendments to other Nasdaq rules are also designed to protect investors and the public interest because Exchange Traded Fund Shares listed and traded pursuant to Rule 5704 and that rely on the conditions and requirements of Rule 6c–11 will continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[31]

Nasdaq believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place written surveillance procedures that are adequate to properly monitor trading in the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The surveillance procedures for monitoring compliance with Rule 6c–11will be consistent with the manner in which the Exchange conducts its trading surveillance for ETFs. The Exchange will also require that issuers of Exchange Traded Fund Shares listed under proposed Nasdaq Rule 5704 must notify the Exchange regarding instances of non-compliance. Additionally, the Exchange will require periodic certifications from the issuer that it has maintained compliance with Rule 6c–11. Nasdaq will also check the ETF's website on a periodic basis for the inclusion of proper disclosure in compliance with Rule 6c–11. As stated previously, Nasdaq will continue to monitor compliance with the continued listing standards.

The Exchange believes that the proposed rule change seeks to incorporate Rule 6c–11 into Nasdaq's rules will promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. As the SEC noted in its Adopting Release, Rule 6c–11 may to allow ETFs to operate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act,[32] as well as lead to increased capital formation particularly in the form of an increased demand for ETFs.[33]

The Exchange believes that the discontinuance of quarterly reports currently required for Managed Fund Shares under Nasdaq Rule 5735(b) will no longer be necessary in light of the requirements of Rule 6c–11(d)[34] and the breadth of information that has been submitted to date under this requirement promotes just and equitable principles of trade, removes impediments to, and perfects the mechanisms of, a free and open market and a national market system by eliminating a requirement no longer necessary or of benefit to the Commission.

As discussed above, Rule 6c–11(d) includes specific ongoing reporting requirements for exchange-traded funds, including written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund. The SEC has stated that the information required by Rule 6c–11(d) will provide the SEC's examination staff with information to determine compliance with Rule 6c–11 and applicable federal securities laws.

In addition, and as discussed above, Rule 6c–11 collapses the distinction between Index Fund Shares and Managed Fund Shares. Nasdaq believes that the SEC has reached a level of comfort with Managed Fund Shares that makes the ongoing receipt of the information included in the quarterly reports unnecessary.

In addition and as also discussed above, Nasdaq believes that since the implementation of this requirement, SEC Staff has received an ample number of reports as to gain sufficient understanding Managed Fund Shares and has not detected any significant issues involving Managed Fund Shares listed under Nasdaq Rule 5735(b)(1). The quarterly reports were initially intended to provide SEC Staff insight into the number and type of funds listed pursuant to Nasdaq Rule 5735(b)(1), as well as highlight any issues regarding the trading of such funds or a funds'

[31] *See* note 9 above, Adopting Release at 57171.

[32] *Id.* at 57166.

[33] *Id.* at 57220.

[34] *See* note 21 *supra.*

compliance with the continued listing standards.

As a result, Nasdaq believes it should discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b). This will avoid unnecessary overlap and potential inconsistency between the quarterly reports and the reporting requirements of Rule 6c–11(d). It will also avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity.

For the above reasons, the Exchange believes that the proposal 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 not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange Traded Fund Shares and result in a significantly more efficient process surrounding the listing and trading of ETFs, which will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that this would reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange Traded Fund Shares.

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.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2019–090, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [35] to determine whether the proposed rule change, as modified by Amendment No. 1, 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,[36] 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.'' [37]

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 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.[38]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 12, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 26, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[39] 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:

1. The Exchange's proposed generic listing requirements require that, for the Exchange to list and trade Exchange Traded Fund Shares, the requirements of Rule 6c–11 must be satisfied on a continued listing basis. The Exchange states that it will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met and will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. What are commenters' views on whether the Exchange's surveillance procedures are adequate to monitor for non-compliance with respect to the proposed continued listing requirements? Do commenters believe that the Exchange should adopt other procedures or employ additional measures to ensure that it is capable of adequately monitoring for non-compliance with the proposed listing rule?

2. Under the proposal, the Exchange describes its discretion to halt trading in Exchange Traded Fund Shares. For Exchange Traded Fund Shares that are based on an underlying index, what are commenters' views on whether the Exchange should consider halting trading if there is an interruption or disruption in the calculation and dissemination of the underlying index value? What are commenters' views on whether the Exchange should consider halting trading in the event of an interruption or disruption in the calculation and dissemination of the intraday indicative value, to the extent such value is calculated and publicly disseminated for an Exchange Traded Fund? Do commenters believe there are other circumstances in which the Exchange ought to consider halting trading in Exchange Traded Fund Shares listed under the proposed rule?

3. What are commenters' views on whether the proposed rule change is

[35] 15 U.S.C. 78s(b)(2)(B).

[36] *Id.*

[37] 15 U.S.C. 78f(b)(5).

[38] 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).

[39] *See supra* note 6.

sufficiently clear regarding Exchange members' obligations with respect to disclosures to Exchange Traded Fund Share purchasers? More generally, what are commenters' views on whether the proposal provides sufficient clarity for members' obligations with respect to transactions in Exchange Traded Fund Shares on the Exchange?

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–2019–090 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–2019–090. 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–NASDAQ–2019–090 and should be submitted by March 12, 2020. Rebuttal comments should be submitted by March 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03324 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88197; File No. SR–NYSEArca–2019–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Managed Portfolio Securities and To List and Trade Four Series of Managed Portfolio Securities Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under Proposed NYSE Arca Rule 8.601–E

February 13, 2020.

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) adopt proposed NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Managed Portfolio Securities, which are shares of an actively managed exchange-traded fund for which the portfolio is disclosed quarterly; and (2) list and trade the following Managed Portfolio Securities under proposed NYSE Arca Rule 8.601–E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 17, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on 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,[5] designates April 2, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR- NYSEArca-2019–92).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03326 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 34–88214/February 14, 2020]

In the Matter of the Financial Industry Regulatory Authority, Inc. for an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service (File No. SR–FINRA–2019–008); Order Granting Petition for Review and Scheduling Filing of Statements

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the approval, pursuant to delegated authority, of the Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change to establish a new issue reference data service for corporate bonds.

On April 2, 2019, the Commission issued a notice of filing of the proposed rule change filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2]

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[40] 17 CFR 200.30–3(a)(12) & 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87865 (December 30, 2019), 85 FR 380.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

thereunder.[3] On May 22, 2019, a longer time period was designated within which to act on the proposed rule change.[4] On July 1, 2019, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On October 3, 2019, FINRA filed partial Amendment No. 2 to the proposed rule change.[7] On October 4, 2019, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change and, pursuant to Section 19(b)(2) of the Exchange Act,[8] a longer time period was designated for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[9] On December 4, 2019, after consideration of the record for the proposed rule change, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[10] approved the proposed rule change, as modified by Amendment No. 2 (''Approval Order'').[11]

On December 18, 2019, pursuant to Commission Rule of Practice 430,[12] Bloomberg, L.P. (''Bloomberg'') filed a petition for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order is stayed by the filing with the Commission of a notice of intention to petition for review.[13] Pursuant to Rule 431 of the Rules of Practice,[14] the petition for review of the Approval Order of Bloomberg is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before March 16, 2020.

For the reasons stated above, it is hereby:

Ordered that the petition of Bloomberg for review of the Division's action to approve the proposed rule change by delegated authority be GRANTED; and

It is further *Ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before March 16, 2020.

It is further *Ordered* that the December 4, 2019, order approving the proposed rule change, as modified by Amendment No. 2 (File No. SR–FINRA–2019–008), shall remain stayed pending further order by the Commission.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03372 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Exchange Act Release No. 85488, 84 FR 13977 (Apr. 8, 2019).

[4] *See* Exchange Act Release No. 85911, 84 FR 24839 (May 29, 2019).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Exchange Act Release No. 86256, 84 FR 32506 (Jul. 8, 2019).

[7] Partial Amendment No. 1 was filed on October 3, 2019 and subsequently withdrawn on the same day due to a non-substantive administrative error; it was replaced with Amendment No. 2.

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Exchange Act Release No. 87232, 84 FR 54712 (Oct. 10, 2019).

[10] 17 CFR 200.30–3(a)(12).

[11] *See* Exchange Act Release No. 87656, 84 FR 67491 (Dec. 10, 2019).

[12] 17 CFR 201.430.

[13] 17 CFR 201.431(e).

[14] 17 CFR 201.431.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88199; File No. SR–NYSEArca–2019–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt NYSE Arca Rule 8.602–E To Permit the Listing and Trading of Actively Managed Solution Shares and To List and Trade Shares of the Natixis ETF Under Proposed NYSE Arca Rule 8.602–E

February 13, 2020.

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to (1) adopt proposed NYSE Arca Rule 8.602–E to permit the Exchange to list and trade Actively Managed Solution Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules; and (2) list and trade the following Actively Managed Solution Shares under proposed NYSE Arca Rule 8.602–E: Natixis ETF. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 17, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on 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,[5] designates April 2, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2019–95).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03318 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88195; File No. SR–CboeBZX–2019–107]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt Rule 14.11(m), Portfolio Fund Shares, and To List and Trade Shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF, Each a Series of the Fidelity Beach Street Trust, Under Proposed Rule 14.11(m)

February 13, 2020.

On December 12, 2019, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new BZX Rule 14.11(m), Portfolio Fund Shares, and to list and trade

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF under such proposed BZX Rule 14.11(m). The proposed rule change was published for comment in the **Federal Register** on December 31, 2019.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 14, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on 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,[5] designates March 30, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2019–107).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03323 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 87856 (Dec. 23, 2019), 84 FR 72414.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88215; File No. SR–BX–2020–002]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Order Types and Times-in-Force Provisions

February 14, 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 February 6, 2020, Nasdaq BX, Inc. (''BX'' 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 changes related to order types and times-in-force provisions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.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 Options 3, Section 7, ''Types of Orders and Quote Protocols'' to provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis. This proposed change is based on the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[3] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1,[4] Cboe Exchange, Inc. (''Cboe'') Rule 5.6[5] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[6] The Exchange proposes to also amend the title of the rule from ''Types of Orders and Quote Protocols'' to ''Types of Orders and Order and Quote Protocols'' to reflect the information in the rule.

The Exchange proposes to add rule text at the beginning of Options 3, Section 7 which states, ''The Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis.'' The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] BZX Options Rule 21.1(d), Definitions, provides ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.''

BZX Options Rule 21.1(f), Definitions, provides ''The term ''Time in Force'' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[4] EDGX Options Rule 21.1, Definitions, provides, ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.''

[5] Cboe Rule 5.6, Availability of Orders, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types are available on a class-by-class and system-by-system basis.''

[6] C2 Rule 6.10(a), Availability of Orders, provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

is consistent with BZX Options Rule 21.1, EDGX Options Rules 21.1(d) and 21.1(f), Cboe Rule 5.6 and C2 Rule 6.10(a), each of which provides these exchanges with the same flexibility. The Exchange intends to file rule changes to adopt this rule across all Nasdaq affiliated markets.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] 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 proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[9] The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

Adding this provision on all Nasdaq affiliated markets will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2. The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple affiliated exchanges and promotes a fair and orderly national options market system. The Exchange also notes that the proposed change is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as it has previously been filed with the Commission.

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[10] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

[10] *See* notes 4–6 above.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange notes that waiver of the operative delay will allow BX to exercise immediately the same flexibility to make certain order types available or unavailable as its affiliated exchanges (*i.e.,* BZX Options, EDGX Options, Cboe and C2). The Exchange states that this consistent flexibility among the affiliated exchanges would serve to protect investors and the public interest by mitigating risks associated with changing market conditions. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–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–BX–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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2020–002, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03414 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88190; File No. SR–NYSE–2019–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

February 13, 2020.

On December 11, 2019, New York Stock Exchange LLC (''NYSE'' 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 Chapter One of the Listed Company Manual to modify the provisions relating to direct listings. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 30, 2019.[3] The Commission has received eight comment letters on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87821 (December 20, 2019), 84 FR 72065 (December 30, 2019).

[4] *See* Letter from Allan Rosenbalm (December 4, 2019); Letter from Anonymous (December 4, 2019); Letter from Tina Rosenbalm (December 5, 2019); Letter from Christopher J. Iacovella, Chief Executive Officer, ACA (December 12, 2019); Letter from Anonymous (January 3, 2020); Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (January 16, 2020); Matthew B. Venturi, Founder & CEO, ClearingBid, Inc. (January 21, 2020); David Ludwig, Head of Americas Equity Capital Markets, Goldman Sachs Group, Inc. (February 7, 2020).

[5] 15 U.S.C. 78s(b)(2).

proposed rule change is February 13, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates March 29, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2019–67).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03325 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88204; File No. SR–NYSEArca–2019–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; 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 Establish Generic Listing Standards for Derivative Securities Products That Are Permitted To Operate in Reliance on Rule 6c–11 Under the Investment Company Act of 1940

February 13, 2020.

On November 1, 2019, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to, among other things, establish generic listing standards for Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940. The proposed rule change was published for comment in the **Federal Register** on November 20, 2019.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87542 (Nov. 14, 2019), 84 FR 64170.

On December 17, 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] On February 12, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[6] The Commission has received no comment letters on the proposed rule change.

The Commission is publishing this notice and order to 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 Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes new Rule 5.2–E(j)(8) to establish generic listing standards for Derivative Securities Products that are permitted to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940. In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Commentary .01 to NYSE Arca Rule 8.600–E. This Amendment No. 1 to SR–NYSEArca–2019–81 replaces SR–NYSEArca–2019–81 as originally filed and supersedes such filing in its entirety. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes new Rule 5.2–E(j)(8) to establish ''generic'' listing standards for Exchange-Traded Fund Shares, which are Derivative Securities Products [8] that are permitted to operate in reliance on Rule 6c–11 (''Rule 6c–11'') under the Investment Company Act of 1940 (''1940 Act'').[9] In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Rule Commentary .01 to Rule 8.600–E.

The Exchange currently lists and trades shares of exchange-traded funds (''ETFs'') under the generic listing criteria of NYSE Arca Rule 5.2(j)(3) for Investment Company Units or Commentary .01 to NYSE Arca Rule 8.600–E for Managed Fund Shares, or pursuant to a Securities and Exchange Commission (''Commission'') approval order or notice of effectiveness under Section 19(b)(2) or Section 19(b)(3)(A), respectively, of the Act. Issuers of Investment Company Units and Managed Fund Shares have heretofore been required to submit an application for exemptive relief from certain provisions under the 1940 Act and to receive such relief pursuant to an exemptive order by the Commission. The Commission recently adopted Rule 6c–11 to permit ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[10] The regulatory framework provided in Rule

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87775, 84 FR 70590 (Dec. 23, 2019). The Commission designated February 18, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nysearca-2019-81/srnysearca201981-6804771-208467.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The term ''Derivative Securities Product'' is defined in Rule 1.1(k) to mean a security that meets the definition of ''derivative securities product'' in Rule 19b–4(e) under the Exchange Act. 17 CFR 240.19b–4(e). As provided under Rule 19b–4(e), the term ''new derivative securities product'' means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. The term ''Exchange Act'' is defined in Rule 1.1(q) to mean the Securities Exchange Act of 1934, as amended.

[9] 15 U.S.C. 80a–1.

[10] *See* Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the ''Rule 6c–11 Release'').

6c–11, therefore, will streamline current procedures and reduce the costs and time frames associated with bringing ETFs to market, thereby enhancing competition among ETF issuers and reducing costs for investors.[11]

Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[12] if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[13] As contemplated by this Rule, the Exchange proposes new Rule 5.2–E(j)(8) to establish generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c–11. An ETF listed under proposed Rule 5.2–E(j)(8) would therefore not need a separate proposed rule change pursuant to Rule 19b–4 before it can be listed and traded on the Exchange.

The Exchange believes that the proposed generic listing rules for Exchange-Traded Fund Shares, described below, would facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c–11. The Exchange further believes that the proposed rule is fully consistent with, and will further, the Commission's goals in adopting Rule 6c–11. As with Investment Company Units and Managed Fund Shares listed under the generic listing standards in NYSE Arca Rules 5.2–E(j)(3) and 8.600–E, respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

Proposed Rule 5.2–E(j)(8)—Exchange-Traded Fund Shares

The Exchange is proposing standards that would pertain to Exchange-Traded Fund Shares to qualify for listing and trading pursuant to Rule 19b–4(e), as follows.[14]

Proposed Rule 5.2–E(j)(8)(a) would provide that the Exchange would consider for trading, whether by listing or pursuant to unlisted trading privileges (''UTP''), Exchange-Traded Fund Shares that meet the criteria of proposed Rule 5.2–E(j)(8).

Proposed Rule 5.2–E(j)(8)(b) would specify applicability of proposed Rule 5.2–E(j)(8) and would provide that it is applicable only to Exchange-Traded Fund Shares. Proposed Rule 5.2–E(j)(8)(b)would further provide that, except to the extent inconsistent with proposed Rule 5.2–E(j)(8), or unless the context otherwise requires, Exchange rules would be applicable to the trading on the Exchange of such securities and that Exchange-Traded Fund Shares would be included within the definition of NMS Stock as defined in Rule 1.1.

Proposed Rule 5.2–E(j)(8)(c) would set forth the definitions that would be used for purposes of the proposed rule as follows:

—Proposed Rule 5.2–E(j)(8)(c)(1) would define the term ''1940 Act'' to mean the Investment Company Act of 1940, as amended.

—Proposed Rule 5.2–E(j)(8)(c)(2) would define the term ''Exchange-Traded Fund'' as having the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11(a)(1) under the 1940 Act.[15]

—Proposed Rule 5.2–E(j)(8)(c)(3) would define the term ''Exchange-Traded Fund Share'' to mean a share of stock issued by an Exchange-Traded Fund.[16]

Proposed Rule 5.2–E(j)(8)(c)(4) would define the term ''Reporting Authority'' to mean, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.[17]

Proposed Rule 5.2–E(j)(8)(d) would specify the limitations on Exchange liability and relates to limitation of the Exchange, the Reporting Authority, or any agent of the Exchange as a result of specified events and conditions. Specifying such limitations of liability is standard in the Exchange's rules governing the listing of Derivative Securities Products and the proposed rule text is based on Rules 5.2–E(j)(3)(D), 8.100–E(f), 8.201–E(f), 8.200–E(f), 8.202–E(f), 8.203–E(f), 8.204–E(g),

[11] In approving the rule, the Commission stated that the ''rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' Rule 6c–11 Release, at 57163. The Commission also stated the following regarding the rule's impact: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' Rule 6c–11 Release, at 57204.

[12] 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

[13] Currently, ''passive'' ETFs (Investment Company Units) based on an underlying index as well as actively-managed ETFs (Managed Fund Shares) are listed on the Exchange pursuant to NYSE Arca Rules 5.2–E(j)(3) and 8.600–E, respectively, and such securities are eligible for Exchange listing pursuant to Rule 19b–4(e) if they satisfy the ''generic'' listing criteria specified in those Exchange rules. The Exchange may file with the Commission a proposed rule change pursuant to Rule 19(b) of the Act to permit listing of Investment Company Units and Managed Fund Shares that do not meet the applicable generic listing criteria. Such securities may be listed and traded on the Exchange following Commission approval or notice of effectiveness of the applicable proposed rule change.

[14] Rule 6c–11 became effective on December 23, 2019. Subject to approval of this proposed rule change, Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 would be eligible for listing and trading on the Exchange under proposed Rule 5.2–E(j)(8) after that date.

[15] Rule 6c–11(a)(1) defines ''exchange-traded fund'' as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms ''authorized participant,'' ''basket'' and ''creation unit'' are defined in Rule 6c–11(a).

[16] The definition of Exchange-Traded Fund Shares is the same as the definition of ''exchange-traded fund shares'' in Rule 6c–11(a) under the 1940 Act.

[17] Proposed Rule 5.2–E(j)(8)(c)(4) is based, for example, on Rules 8.100–E(a)(2) for Portfolio Depositary Receipts); 8.600–E(c)(4) (for Managed Fund Shares) and 8.700–E(c)(4) (for Managed Trust Securities).

8.300–E(f), 8.400–E(f), 8.500–E(e), 8.600–E(e), and 8.700–E(g).

Proposed Rule 5.2–E(j)(8)(e) would provide that Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to UTP) pursuant to Rule 19b–4(e) under the Exchange Act provided that each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c–11 under the 1940 Act and, except for subparagraph (1)(A) of Rule 5.2(j)(8)(e) (as described below), must satisfy the requirements of proposed Rule 5.2–E(j)(8) upon initial listing and on a continuing basis. As further proposed, an issuer of such securities must notify the Exchange of any failure to comply with such requirements.

Proposed Rule 5.2–E(j)(8)(e)(1) sets forth the initial and continued listing standards for Exchange-Traded Fund Shares to be listed on the Exchange and would provide that Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c–11(c) on an initial and continued listing basis.

Proposed Rule 5.2–E(j)(8)(e)(1)(A) provides that, for each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 5.2–E(j)(8)(e)(2) would set forth the standards for suspension of trading or removal of Exchange-Traded Fund Shares from listing on the Exchange and would provide that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5–E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(i) If the investment company notifies the Exchange or if the Exchange otherwise becomes aware that it is no longer eligible to operate in reliance on Rule 6c–11 or that it does not comply with the requirements set forth in Rule 5.2–E(j)(8) (see proposed Rule 5.2–E(j)(8)(e)(2)(A));

(ii) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares (see proposed Rule 5.2–E(j)(8)(e)(2)(B)); or

(iii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (see proposed Rule 5.2–E(j)(8)(e)(2)(C)). This proposed rule text is based, for example, on Rules 5.2–E(j)(6)(B)(2)(c)(3)(for Index-Linked Securities); 8.600–E(d)(2)(C)(vi)(for Managed Fund Shares); and 8.700–E(d)(2)(c)(vi)(for Managed Trust Securities).

Proposed Rule 5.2–E(j)(8)(f) would provide that transactions in Exchange-Traded Fund Shares would occur during the trading hours specified in Rule 7.34–E(a). As with other Derivative Securities Products listed on the Exchange, Exchange-Traded Fund Shares would trade during the Early, Core, and Late Trading Sessions, as defined in Rule 7.34–E(a). ETP Holders accepting orders in Exchange-Traded Fund Shares in the Early or Late Trading Session would be subject to the customer disclosure requirements specified in Rule 7.34–E(d).

Proposed Rule 5.2–E(j)(8)(g) would provide that the Exchange would implement written surveillance procedures for Exchange-Traded Fund Shares. This proposed rule is based, for example, on Commentary .01(f) to Rule 5.2–E(j)(3) (for Investment Company Units); Commentary .03 to Rule 8.600–E (for Managed Fund Shares); and Commentary .04 to Rule 8.700–E (for Managed Trust Securities).

Proposed Rule 5.2–E(j)(8)(h) would provide that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 5.2–E(j)(8)(i) would provide that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares. 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 certain information about the Exchange-Traded Fund Shares that is required to be disclosed under Rule 6c–11(c) of the 1940 Act is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[18]

Proposed Commentary .01 to Rule 5.2–E(j)(8) would provide that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2–E(j)(3) or Commentary .01 to Rule 8.600–E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2–E(j)(8) if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2–E(j)(8). Any requirements for listing as specified in Rule 5.2–E(j)(3) or Commentary .01 to Rule 8.600–E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2–E(j)(8) will no longer be applicable to such security.

The Exchange believes that proposed Commentary .01 harmonizes the Exchange's listing standards for all Exchange-Traded Funds that will be listed on the Exchange, even if they were previously listed pursuant to different continued listing requirements. Specifically, as noted in the Rule 6c–11 Release, one year following the effective date of Rule 6c–11, the Commission will be rescinding those portions of its prior ETF exemptive orders under the 1940 Act that grant relief related to the formation and operation of certain ETFs. The Exchange believes that once this occurs, all Exchange-Traded Funds will be subject to the same requirements under Rule 6c–11 and will no longer be subject to any differing requirements that may have been set forth in the exemptive orders issued before the effective date of Rule 6c–11. The Exchange therefore believes that any such Exchange-Traded Funds that were previously-listed on the Exchange under a different standard should be deemed approved for listing on the Exchange under proposed Rule 5.2–E(j)(8). To maintain consistent standards for all Exchange-Traded Fund Shares on the Exchange, the Exchange further believes that such previously-listed products should no longer be required to comply with the previously-applicable continued listing requirements for such Exchange-Traded Funds.

Proposed Commentary .02 to Rule 5.2–E(j)(8) would provide that the following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis. With respect to series of Exchange-Traded Fund Shares that are based on an index: (1) If the underlying index is maintained by a broker-dealer or fund

[18] The Exchange will propose applicable NYSE Arca listing fees for Exchange-Traded Fund Shares in the NYSE Arca Equities Schedule of Fees and Charges in a separate proposed rule change.

adviser, the broker-dealer or fund adviser will erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser. (2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. See proposed Commentary .02 (a) to Rule 5.2–E(j)(8)).

In addition, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio. (See proposed Commentary .02(b) to Rule 5.2–E(j)(8)).

The Exchange also proposes non-substantive amendments to include Exchange-Traded Fund Shares in other Exchange rules. Specifically, the Exchange proposes to amend Rule 5.3–E, concerning Corporate Governance and Disclosure Policies, and Rule 5.3–E(e), concerning Shareholder/Annual Meetings, to add Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the respective Rules. Thus, Exchange-Traded Fund Shares would be subject to corporate governance, disclosure and shareholder/annual meeting requirements that are consistent with other derivative and special purpose securities enumerated in those Rules.

The Exchange believes that proposed Rule 5.2–E(j)(8) would promote transparency surrounding the listing process for Exchange-Traded Fund Shares. The Exchange notes that Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading and that Rule 6c–11 does not change the Exchange rules applicable to these securities.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[19] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable.

NYSE Arca Rule 7.18–E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which a Net Asset Value (''NAV'') is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

Minimum Price Variation

As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3–E.

Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. As provided for under proposed Rule 5.2–E(j)(8)(e)(2), if the fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5–E(m).

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 5.2–E(j)(8). For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require periodic certification from the issuer of a series of Exchange-Traded Fund Shares that it is in compliance with

[19] *See* NYSE Arca Rule 7.12–E.

Rule 6c–11. In addition, the Exchange will periodically review issuer websites to monitor whether disclosures are being made for a series of Exchange-Traded Fund Shares as required by Rule 6c–11(c)(1). The Exchange also notes that proposed Rule 5.2–E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange that it is no longer eligible to operate in reliance on Rule 6c–11 or that it does not comply with the requirements of proposed Rule 5.2–E(j)(8). The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 5.2–E(j)(8).

Firewalls

Commentary .01(b)(1) and Commentary .02(b) to NYSE Arca Rule 5.2–E (j)(3) (applicable to Investment Company Units) and Commentary .06 to NYSE Arca Rule 8.600–E (applicable to Managed Fund Shares) require the establishment and maintenance of a ''firewall'' around personnel who have access to information concerning changes to an index or the composition and/or changes to a fund's portfolio; and that specified persons or entities be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio.

In the Rule 6c–11 Release, the Commission, in the context of index-based ETFs with affiliated index providers (''self-indexed ETFs''), noted the federal securities law provisions that currently relate to implementation by funds of appropriate measures to deal with misuse of non-public information.[20] The Exchange notes that these federal securities laws requirements will continue to apply to issues of index and actively-managed ETFs and the proposed generic listing rules for Exchange-Traded Fund Shares are consistent with such requirements. The Exchange notes that proposed Commentary .02(a) to Rule 5.2–E(j)(8) provides that, with respect to series of Exchange-Traded Fund Shares that are based on an index, if the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, proposed Commentary .02(b) provides that, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the Exchange-Traded Fund issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund portfolio.

In support of this proposal, the Exchange represents that:

(1) the Exchange-Traded Fund Shares will conform to the initial and continued listing criteria under Rule 5.2–E(j)(8);

(2) the Exchange's surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares;

(3) the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3–E; and

(4) Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

In its order approving the Exchange's proposal to adopt generic listing standards for Managed Fund Shares,[21] the Commission noted that the Exchange has represented that it would ''provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Rule 8.600–E: (1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to Rule 8.600–E or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Rule 8.600–E.'' [22] The Exchange has provided such information to the Commission on a quarterly basis for two years. The requirement to provide such quarterly reports for Managed Fund Shares is not separately specified in Rule 8.600–E, and Investment Company Units listed under Rule 5.2–E(j)(3) have not been subject to a similar requirement.

The generic listing criteria in proposed Rule 5.2–E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2–E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600–E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible to operate in reliance on Rule 6c–11.[23] The Exchange believes no purpose would be served by

[20] *See* Rule 6c–11 Release at 57168–57169. *See also,* 17 CFR 270.38a–1 (rule 38a–1 under the 1940 Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j–1(c)(1) (rule 17j–1(c)(1) under the Investment Company Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel (''access persons'') from misusing information regarding fund transactions); section 204A of the Investment Advisers Act of 1940 (''Advisers Act'') (15 U.S.C. 80b–204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder); section 15(g) of the Exchange Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

[21] *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (the ''Managed Fund Shares Approval Order'').

[22] *See* Managed Fund Shares Approval Order at footnote 18.

[23] The Exchange notes that Rule 6c–11(d) sets forth recordkeeping requirements applicable to exchange-traded funds, and provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c–11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange-traded fund.

continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

By facilitating efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c–11, the generic listing rules in proposed Rule 5.2–E(j)(8) described above are consistent with, and will further, the Commission's goals in adopting Rule 6c–11. In addition, by allowing Exchange-Traded Fund Shares to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Rule 5.2–E(j)(8) will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

In addition, the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by permitting Exchange-Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval.

As provided in proposed Rule 5.2–E(j)(8)(e), the Exchange may approve Exchange-Traded Fund Shares for listing and trading on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 [26] under the 1940 Act and must satisfy the requirements of Rule 5.2–E(j)(8) on an initial listing and a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements. These requirements will ensure that Exchange-listed Exchange-Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c–11(c).

As provided in proposed Rule 5.2–E(j)(8)(e)(1), Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c–11(c) under the 1940 Act on an initial and continued listing basis.

As provided in proposed Rule 5.2–E(j)(8)(e)(2) (Suspension of trading or removal), the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5–E(m) of, a series of Exchange-Traded Fund Shares if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2–E(j)(8); if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As provided in proposed Rule 5.2–E(j)(8)(g), the Exchange will implement written surveillance procedures for Exchange-Traded Fund Shares. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares.

Proposed Rule 5.2–E(j)(8)(h) provides that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 5.2–E(j)(8)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares, and that trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Proposed Commentary .01 to Rule 5.2–E(j)(8) provides that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2–E(j)(3) or Commentary .01 to Rule 8.600–E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2–E(j)(8) if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2–E(j)(8). Any requirements for listing as specified in Rule 5.2–E(j)(3) or Commentary .01 to Rule 8.600–E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2–E(j)(8) will no longer be applicable to such security. The Exchange believes proposed Commentary .01 will streamline the listing process for such securities, consistent with the regulatory framework adopted in Rule 6c–11 under the 1940 Act.

Proposed Commentary .02 to Rule 5.2–E(j)(8) would provide requirements to be met by shall be met on an initial and continued listing basis by series of Exchange-Traded Fund Shares that are based on an index or are actively managed regarding the erection and maintenance of a ''fire wall'' as well as implementation and maintenance of procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio. The Exchange believes the provisions of Commentary .02 will address possible concerns regarding misuse of material non-public information regarding an index underlying a series of Exchange-Traded Fund Shares or the portfolio for a series of Exchange-Traded Fund Shares, as applicable.

The proposed addition of Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3–E (Corporate Governance and Disclosure Policies) and Rule 5.3–E (e) (Shareholder/Annual Meetings) would subject Exchange-Traded Fund Shares to the same requirements currently applicable to other 1940 Act-registered investment company securities (*i.e.,* Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts).

The Exchange believes that the proposed rule change is designed to

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] Rule 6c–11(c) sets forth certain conditions applicable to exchange-traded funds, including information required to be disclosed on the fund's website.

prevent fraudulent and manipulative acts and practices. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares with other markets that are members of ISG, including all U.S. securities exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges on which the components are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3–E.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[27] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable. NYSE Arca Rule 7.18–E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which an NAV is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

The Exchange will monitor for compliance with the continued listing requirements. If the Exchange-Traded Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5–E(m).

The Exchange will also continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. In addition, the Exchange, on a periodic basis will review issues of Exchange-Traded Fund Shares listed on the Exchange for compliance with the website disclosure requirements of Rule 6c–11(c)(1). Proposed Rule 5.2–E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange if it is no longer eligible to operate in reliance on Rule 6c–11 or that it does not comply with the requirements of proposed Rule 5.2–E(j)(8) (except for subparagraph (1)(A) of Rule 5.2–E(j)(8)(e)).

With respect to the proposed discontinuance of quarterly reports currently required for Managed Fund Shares, the Exchange believes such quarterly reports are no longer necessary in view of the requirements of Rule 6c–11(d). The generic listing criteria in proposed Rule 5.2–E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2–E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600–E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible to operate in reliance on Rule 6c–11.[28] The Exchange believes no purpose would be served by continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[29] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange-Traded Fund Shares and result in an efficient process surrounding the listing and trading of Exchange-Traded Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this will reduce the time frame for bringing Exchange-Traded Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange-Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange-Traded Fund Shares.

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.

[27] *See* NYSE Arca Rule 7.12–E.

[28] *See* note 23, *supra.*

[29] 15 U.S.C. 78f(b)(8).

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2019–81, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [30] to determine whether the proposed rule change, as modified by Amendment No. 1, 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,[31] 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.'' [32]

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 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.[33]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 12, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 26, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[34] 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:

1. The Exchange's proposed generic listing requirements would require that, for the Exchange to list and trade Exchange-Traded Fund Shares, the requirements of Rule 6c–11 must be satisfied on a continued listing basis. The Exchange states that it will: (a) Require periodic certification by the issuer of a series of Exchange-Traded Fund Shares that it is in compliance with Rule 6c–11; and (b) periodically review issuer websites to monitor whether disclosures are being made for a series of Exchange-Traded Fund Shares as required by Rule 6c–11(a). Additionally, the proposed generic listing requirements would require an issuer of Exchange-Traded Fund Shares to notify the Exchange when such issuer is no longer eligible to operate in reliance on Rule 6c–11 or when such issuer fails to comply with the requirements of the proposed generic listing standards. The Exchange states that it will rely on such procedures to become aware of any non-compliance with the requirements of the proposed generic listing standards. What are commenters' views on whether the Exchange's surveillance procedures are adequate to monitor for non-compliance with respect to the proposed continued listing requirements? Do commenters believe that the Exchange should adopt other procedures or employ additional measures to ensure that it is capable of adequately monitoring for non-compliance with the proposed listing rule?

2. Under the proposal, the Exchange describes its discretion to halt trading in Exchange-Traded Fund Shares. For Exchange-Traded Fund Shares that are based on an underlying index, what are commenters' views on whether the Exchange should consider halting trading if there is an interruption or disruption in the calculation and dissemination of the underlying index value? What are commenters' views on whether the Exchange should consider halting trading in such securities in the event of an interruption or disruption in the calculation and dissemination of the intraday indicative value, to the extent such value is calculated and publicly disseminated for an Exchange-Traded Fund? Do commenters believe there are other circumstances in which the Exchange ought to consider halting trading in Exchange-Traded Fund Shares listed under the proposed rule?

3. What are commenters' views on whether the proposed rule change is sufficiently clear regarding Exchange members' obligations with respect to disclosures to Exchange-Traded Fund Share purchasers? More generally, what are commenters' views on whether the proposal provides sufficient clarity for members' obligations with respect to transactions in Exchange-Traded Fund Shares on the Exchange?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–81. 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

[30] 15 U.S.C. 78s(b)(2)(B).

[31] *Id.*

[32] 15 U.S.C. 78f(b)(5).

[33] 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).

[34] *See supra* note 6.

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–81 and should be submitted by March 12, 2020. Rebuttal comments should be submitted by March 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03319 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12) & 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88217; File No. SR–ISE–2020–02]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule in Options 7 at Section 3

February 14, 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 February 3, 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 its Pricing Schedule in Options 7 at Section 3, titled ''Regular Order Fees and Rebates'' and Section 4, titled ''Complex Order Fees and Rebates.''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange proposes to amend its Pricing Schedule at Options 7, Section 3, titled, ''Regular Order Fees and Rebates,'' to amend note 11. Specifically, the Exchange proposes to increase the current applicable Select Symbol Maker Fee when trading against Priority Customer Complex Orders that leg into the regular order book. In addition the Exchange proposes to add an incentive for Market Makers that qualify for Market Maker Plus in Select Symbols. The Exchange also proposes to amend Options 7, Section 4, titled ''Complex Order Fees and Rebates'' to amend note 1. Specifically, the Exchange proposes to limit a rebate applicable to Non-Select Symbols. Each change will be described below.

Options 7, Section 3 Regular Order Fees and Rebates

Today, the Exchange assesses a Maker Fee of $0.11 per contract in Select Symbols[3] for Market Maker,[4] Non-Nasdaq ISE Market Maker (FarMM),[5] Firm Proprietary[6]/Broker-Dealer[7] and Professional Customer[8] orders. Priority Customer[9] orders are not assessed a Select Symbol Maker Fee. Further, pursuant to Options 7, Section 3 at note 11, a $0.15 per contract fee applies, instead of the applicable fee or rebate, when trading against Priority Customer Complex Orders[10] that leg into the regular[11] order book for Market Maker and Non-Nasdaq ISE Market Maker (FarMM) orders.[12] Today, no Select Symbol Maker Fee is charged or rebate provided for Market Maker orders when trading against non-Priority Customer Complex Orders that leg into the regular order book.[13]

The Exchange proposes to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book. Specifically, the Exchange proposes to increase this fee from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders. With this proposal, all Non-Priority Customers will be assessed the same $0.25 per contract fee instead of the applicable fee trading against Priority Customer Complex Orders that leg into the regular

[3] ''Select Symbols'' are options overlying all symbols listed on the Nasdaq ISE that are in the Penny Pilot Program. *See* Options 7, Section 1.

[4] This fee applies to Market Maker orders sent to the Exchange by Electronic Access Members. Market Makers that qualify for Market Maker Plus will not pay this fee if they meet the applicable tier thresholds set forth in Options 7, Section. Market Makers will instead receive the rebates in Options 7, Section 3 based on the applicable tier for which they qualify. *See* notes 5 and 8 within Options 7, Section 3. Market Maker Plus for Select Symbols is not being amended. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[5] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* Options 7, Section 1.

[6] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* Options 7, Section 1.

[7] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* Options 7, Section 1.

[8] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1.

[9] 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)(37). Unless otherwise noted, when used in the Pricing Schedule the term ''Priority Customer'' includes ''Retail.'' A ''Retail'' order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Options 7, Section 1.

[10] A ''Complex Order'' is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Nasdaq ISE Options 3, Section 14, as well as Stock-Option Orders. *See* Options 7, Section 1.

[11] A ''Regular Order'' is an order that consists of only a single option series and is not submitted with a stock leg. *See* Options 7, Section 1.

[12] *See* note 11 of Options 7, Section 3.

[13] *See* note 10 within Options 7, Section 3.

order book, except for Market Makers that qualify for Market Maker Plus, which is explained below. Priority Customer orders will continue to not be assessed a Select Symbol Maker Fee.

The Exchange also proposes to add new rule text which provides that Market Makers that qualify for Market Maker Plus in Select Symbols will pay a $0.15 per contract fee in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book. Further, Market Makers that qualify for Market Maker Plus in Select Symbols will not pay this fee nor receive any rebate in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book. The Market Maker Plus program is designed to incentivize Market Makers to submit quotations into ISE at the National Nest Bid or National Best Offer (''NBBO''). The Exchange believes that these quotations at the NBBO will encourage Members to submit Priority Customer orders, including Priority Customer Complex Orders, into ISE in order to earn rebates. Further, all market participants may interact with the Priority Customer volume that is submitted to the Exchange.

The Exchange also proposes to make a non-substantive amendment to capitalize the term ''Complex Order'' in current note 11.

Options 7, Section 4, Complex Order Fees and Rebates

Currently, Options 7, Section 4 provides a fee structure for Complex Orders that provides rebates to Priority Customer Complex Orders in order to encourage Members to bring that order flow to the Exchange. Specifically, Priority Customer Complex Orders are provided rebates in Select Symbols and Non-Select Symbols [14] (other than NDX and MNX) based on Priority Customer average daily volume (''ADV'').[15] Options 7, Section 4 at note 1 currently states, ''Rebate provided per contract per leg if the order trades with non-Priority Customer orders in the Complex Order Book. Rebate provided per contract leg where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer complex order rebates will be provided if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.''

The Exchange proposes to amend the second and third sentences in note 1 of Options 7, Section 4 to state, ''Rebate provided per contract leg in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer complex order rebates will be provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.'' With this proposal, Select Symbols rebates are not being amended. The proposed amendments to the second and third sentences of note 1 of Options 7, Section 4, limit those statements to Select Symbols and thereby make them inapplicable to Non-Select Symbols.

The Exchange proposes to add a new sentence to the end of note 1 of Options 7, Section 4 with respect to Non-Select Symbols which states, ''No Priority Customer Complex Order rebates will be provided in Non-Select Symbols if any leg of the order trades with interest on the regular order book, irrespective of order size.'' With this proposal, Non-Select Symbols will continue to receive a rebate if the order trades with non-Priority Customer orders in the Complex Order book, however, no rebate will be paid if the order legs into the regular order book, regardless of size.

The Exchange also proposes to make a non-substantive amendment to capitalize the terms ''Complex Order'' in current note 1.

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 Sections 6(b)(4) and 6(b)(5) of the Act,[17] 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 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,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . ..'' [18]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [19]

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 options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.

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. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 3 Regular Order Fees and Rebates

The Exchange's proposal to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order

[14] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. See Options 7, Section 1.

[15] *See* tiered rebates within Options 7, Section 4.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

book from $0.15 to $0.25 per contract for Market Maker orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders is reasonable. With this proposal, all Non-Priority Customers will be assessed the same Select Symbol Maker Fee of $0.25 per contract, instead of the applicable fee when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. The Exchange believes that increasing this fee $0.15 to $0.25 per contract for Market Maker orders and Non-Nasdaq ISE Market Maker (FarMM) orders is reasonable because the Exchange pays high rebates to Priority Customer Complex Orders, including when those Complex Orders are less than 50 contracts in Select Symbols that leg into the regular order book. The Exchange believes that it is reasonable to increase the fees charged for all Market Maker and Non-Nasdaq ISE Market Maker (FarMM) orders that provide liquidity to Priority Customer Complex Orders that leg into the regular market as this will help offset potentially significant rebates paid on the other side of these trades for orders in Select Symbols of less than 50 contracts that leg into the regular order book. The Exchange also believes that it is reasonable to increase the fee from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders and thereby create a uniform fee for all Non-Priority Customer Select Symbol orders that trade against Priority Customer Complex Orders that leg into the regular order book. The Exchange notes that Priority Customers will continue to pay no Select Symbol Maker Fee.

The Exchange's proposal to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders is equitable and not unfairly discriminatory. With this proposal, all Non-Priority Customer will be assessed the same Select Symbol Maker Fee of $0.25 per contract, instead of the applicable Select Symbol Maker Fee when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. Today Priority Customers pay no Select Symbol Maker Fee. Priority Customer Complex Order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange's proposal to add new rule text, which provides that Market Makers that qualify for Market Maker Plus in Select Symbols will pay a $0.15 per contract fee in symbols for which they qualify for Market Maker Plus, when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book, and further will not pay the $0.25 per contract fee nor receive any rebate in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book is reasonable. The proposed reduction in fees for Market Makers that qualify for the Market Maker Plus program is designed to incentivize Market Makers to submit quotations into ISE at the NBBO. The Exchange believes that these quotations at the NBBO will encourage Members to submit Priority Customer orders, including Priority Customer Complex Orders, into ISE in order to earn rebates. All market participants benefit in that they may interact with the Priority Customer volume that is submitted to the Exchange.

The Exchange's proposal to add new rule text which provides that Market Makers that qualify for Market Maker Plus in Select Symbols will pay a $0.15 per contract fee in symbols for which they qualify for Market Maker Plus, when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book, and further will not pay the $0.25 per contract fee nor receive any rebate in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book is equitable and not unfairly discriminatory. Unlike other market participants, Market Makers have an obligation to maintain quotes [20] and provide liquidity in the regular market. Further, Market Makers that qualify for the Market Maker Plus program take on a heightened requirement to submit quotations at the NBBO. The Exchange is providing Market Makers the opportunity to reduce their Market Maker Select Symbol Maker Fee to incentivize these market participants to continue to provide liquidity on ISE.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second and third sentences in note 1 [21] of Options 7, Section 4 to apply those sentences to Select Symbols is reasonable in that it does not amend the current pricing for Select Symbols with respect to the Priority Customer Rebates. The Exchange will continue to pay a Select Symbol rebate where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. Also, the Exchange will continue to not provide a Priority Customer Complex Order rebate if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.

The Exchange's proposal to amend the second and third sentences in note 1 of Options 7, Section 4 to apply those sentences to Select Symbols is equitable and not unfairly discriminatory because the Exchange will continue to pay Select Symbol Priority Customer rebates to all market participants that qualify for those rebates, in a uniform manner.

The Exchange's proposal to amend Non-Select Symbols to not pay a Priority Customer Complex Order rebate if any leg of the order trades with interest on the regular order book, irrespective of order size, is reasonable. With this proposal, Non-Select Symbols will continue to receive a rebate if the order trades with non-Priority Customer orders in the Complex Order book, however no rebate will be paid if the order legs into the regular order book, regardless of size. The Exchange notes that while it is not proposing to pay a rebate for Non-Select Symbols if the order legs into the regular order book, regardless of size, it believes that ISE's pricing to leg orders into the regular order book remains competitive.

The Exchange's proposal to amend Non-Select Symbols to not pay a Priority Customer Complex Order rebate if any leg of the order trades with interest on the regular order book, irrespective of order size, is equitable and not unfairly discriminatory. The Exchange will not pay a Non-Select Symbol Priority Customer Complex Order rebate to any market participant

[20] *See* ISE, Options 2, Section 5.

[21] The Exchange's proposal would amend the second and third sentences of note 1 to provide, ''Rebate provided per contract leg in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer complex order rebates will be provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.''

if the order legs into the regular order book, regardless of size.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it 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 that have been exempted from compliance with the statutory standards applicable to 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.

Intramarket Competition

The proposed pricing amendments do not impose an intramarket burden on competition.

Options 7, Section 3 Regular Order Fees and Rebates

The Exchange's proposal to increase the Select Symbol Maker Fee for trading against Priority Customer Complex Orders that leg into the regular order book from $0.15 to $0.25 per contract for Market Maker Orders and Non-Nasdaq ISE Market Maker (FarMM) orders and from $0.11 to $0.25 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders does not impose an undue burden on competition. With this proposal, all Non-Priority Customer will be assessed the same $0.25 per contract fee, instead of the applicable Select Symbol Maker Fee, when trading against Priority Customer Complex Orders that leg into the regular order book, except for Market Makers that qualify for Market Maker Plus. Today Priority Customers pay no Select Symbol Maker Fee. Priority Customer Complex Order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which attracts Market Makers.

The Exchange's proposal to add new rule text which provides that Market Makers that qualify for Market Maker Plus in Select Symbols will pay a $0.15 per contract fee in symbols for which they qualify for Market Maker Plus, when trading against Priority Customer Complex Orders of less than 50 contracts in Select Symbols that leg into the regular order book, and further will not pay the $0.25 per contract fee nor receive any rebate in symbols for which they qualify for Market Maker Plus when trading against Priority Customer Complex Orders of 50 contracts or more in Select Symbols that leg into the regular order book does not impose an undue burden on competition. Unlike other market participants, Market Makers have an obligation to maintain quotes [22] and provide liquidity in the regular market. Further, Market Makers that qualify for the Market Maker Plus program take on a heightened requirement to submit quotations at the NBBO. The Exchange is providing Market Makers the opportunity to reduce their Market Maker Select Symbol Maker Fee to incentivize these market participants to continue to provide liquidity on ISE.

Options 7, Section 4, Complex Order Fees and Rebates

The Exchange's proposal to amend the second and third sentences in note 1 [23] of Options 7, Section 4 to apply those sentences to Select Symbols does not impose an undue burden on competition because the Exchange will continue to pay Select Symbol Priority Customer rebates to all market participants that qualify in a uniform manner.

The Exchange's proposal to amend Non-Select Symbols to not pay a Priority Customer Complex Order rebate if any leg of the order trades with interest on the regular order book, irrespective of order size, does not impose an undue burden on competition. The Exchange will not pay a Non-Select Symbol Priority Customer Complex Order rebate to any market participant if any leg of the order trades with interest on the regular order book.

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,[24] and Rule 19b–4(f)(2)[25] 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–2020–02 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–2020–02. 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

[22] *See* ISE, Options 2, Section 5.

[23] The Exchange's proposal would amend the second and third sentences of note 1 to provide, ''Rebate provided per contract leg in Select Symbols where the largest leg of the complex order is under fifty (50) contracts and trades with quotes and orders on the regular order book. No Priority Customer complex order rebates will be provided in Select Symbols if any leg of the order that trades with interest on the regular order book is fifty (50) contracts or more.''

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

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–2020–02 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03415 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88221; File No. SR–CboeBYX–2020–007]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

February 14, 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 February 4, 2020, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') 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 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 BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. 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/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no comment letters on the Initial Proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Initial Suspension Order'').[4] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5] On October 1, 2019, the Exchange re-filed its proposed rule change with additional information about the basis for the proposed fee change (''Second Proposal''). The Second Proposal was published in the **Federal Register** on October 15, 2019,[6] and the Commission received no comment letters on the Second Proposal. The Program again remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'').[7] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposal.[8] On November 27, 2019, the Exchange re-filed its proposed rule change a third time with one revision to the requirements for participating in the Program and additional information about the basis for the proposed fee change (''Third Proposal''). The Third Proposal was published in the **Federal Register** on December 16, 2019.[9] Today, the Exchange is withdrawing the Third Proposal, and replacing it with this proposed fee change as part of its ongoing efforts to continue to facilitate retail investor access to reasonably priced market data.

Current Fees

Today, the Exchange offers two top of book data feeds that provide real-time U.S. equity quote and trade information to investors. First, the Exchange offers the BYX Top Feed, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System. The fee for

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (August 20, 2019) (SR–CboeBYX–2019–012).

[4] *See* Securities Exchange Act Release No. 87166 (September 30, 2019), 84 FR 53197 (October 4, 2019) (SR–CboeBYX–2019–012).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 87305 (October 15, 2019), 84 FR 56210 (October 21, 2019) (SR–CboeBYX–2019–015).

[7] *See* Securities Exchange Act Release No. 87631 (November 26, 2019), 84 FR 66259 (December 3, 2019) (SR–CboeBYX–2019–015).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 87713 (December 10, 2019), 84 FR 68530 (December 16, 2019) (SR–CboeBYX–2019–023).

external distribution of BYX Top data is $1,000 per month, and external distributors are also liable for a fee of $1 per month for each Professional User, and $0.025 per month for each Non-Professional User.

Second, the Exchange offers the Cboe One Summary Feed, which offers similar information based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[10]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide either the BYX Top Feed or Cboe One Summary Feed (''BYX Equities Exchange Data'') to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing BYX Equities Exchange Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) At least 90% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving BYX Equities Exchange Data; and (3) Distributor distributes BYX Equities Exchange Data to no more than 5,000 Users.[11] [12]

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide BYX Equities Exchange Data to a limited number of subscribers. As explained later in this filing, distributors that provide BYX Equities Exchange Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Exchange's top of book products with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Exchange's top of book offerings as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution fees for access to the BYX Top Feed, and lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[13] First, the distribution fee charged for BYX Top would be lowered by 75% from the current $1,000 per month to $250 per month for distributors that meet the requirements of the Program. Second, the distribution fee charged to these distributors for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month. Finally, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access BYX Top or Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[14]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and

[10] The Exchange also offers an Enterprise license for the BYX Top and Cboe One Summary Feeds. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers. An Enterprise license is $10,000 per month for the BYX Top Feed, and $50,000 per month for the Cboe One Summary Feed.

[11] The Initial Proposal, Second Proposal, and Third Proposal would have allowed small retail brokers to participate in the Program if they distribute Cboe One Summary Feed Data to no more than 5,000 Non-Professional Users. The current proposal instead reflects a threshold of 5,000 Users—*i.e.,* including both Non-Professional and Professional Users.

[12] Distributors would have to meet these requirements for whichever product they would like to distribute pursuant to the Program. For example, a distributor that distributes Cboe One Summary Feed data pursuant to the Program, would be limited to distributing the Cboe One Summary Feed to no more than 5,000 Users.

[13] New external distributors of the BYX Top Feed or Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[14] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[15] The BYX Top Feed and Cboe One Summary Feed therefore compete with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[16]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, as was the Second Proposal, the Exchange believes that its experience in offering the Program while it has been in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange reduced the fees charged to small retail brokers pursuant to the Initial Proposal, Second Proposal, and Third Proposal, while each of those were in effect, it successfully onboarded three new customers due to the attractive pricing.[17] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[20] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[21] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. 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] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to two top of book data products: The BYX Top Feed and the Cboe One Summary Feed. The BYX Top Feed provides top of book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4% of U.S. equity market volume today.[23] The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data disseminated by other national securities exchanges.[24] It provides subscribers with consolidated

[15] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[16] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

[17] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78k–1.

[21] *See* 17 CFR 242.603.

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[23] *See https://markets.cboe.com/us/equities/market_share/.*

[24] *See e.g.,* supra note 14 (discussing Nasdaq Basic).

top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[25] Together, these products are purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BYX Top and Cboe One Summary Feeds benefit a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,[26] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded three new Distributors that have decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BYX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [27]

Today, the Exchange's top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up a significant majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having significantly more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors.

This understanding is confirmed by an analysis conducted by the Exchange on the user population of its retail broker clients that purchase market data from the Exchange and its affiliated exchanges. To perform its analysis, the

[25] *Id.*

[26] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

[27] *See* Regulation NMS Adopting Release, supra note 22, at 37503.

Exchange reviewed user populations for each broker dealer that it identified as primarily engaged in serving retail investors (*i.e.,* retail brokers), and for which the Exchange has reported usage broken down into Professional and Non-Professional Users.[28] This analysis showed that each retail broker identified currently provides market data from the Exchange or its affiliates to at least 90% Non-Professional Users, with the Professional/Non-Professional breakdown ranging from 90.9% Non-Professional Users on the low end to 100% Non-Professional Users on the high end. As a result of this analysis, the Exchange believes that a requirement that at least 90% of a broker-dealer's user population qualify as Non-Professional Users is appropriate to ensure that the benefits provided by the Program inure to the benefit of broker-dealers that primarily serve retail investors. Indeed, this belief is further supported by the Exchange's experience with the customers that currently participate in the Program, each of which are focused on providing trading services to ordinary investors.

As such, the Program would be broadly available to a wide range of retail brokers that either purchase BYX Equities Exchange Data today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are currently participating in the Program, a number of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[29] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. The Program is designed to ensure that small retail brokers have access to Exchange data at a modest cost, and therefore contains an eligibility cutoff based on the number of Users that would receive BYX Equities Exchange Data. The retail broker clients identified by the Exchange provide data from the Exchange or its affiliates to an average of more than 160,000 Non-Professional Users, with a small handful of large retail brokers operating pursuant to an Enterprise license accounting for about 95% of those Non-Professional Users.[30] Many retail broker clients, however, have significantly smaller Non-Professional User populations, with retail brokers that are not operating pursuant to an Enterprise license providing data from the Exchange or its affiliates to an average of 8,845 Non-Professional Users. The 5,000 User threshold would therefore ensure that the benefits of the Program flow to small retail brokers, as intended, and not larger firms that already benefit from the current fee structure.

Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide BYX Equities Exchange Data to more than 5,000 Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for firms with more than 1,200 Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Users.[31] Further, BYX Top Data, which is already subject to a lower distribution fee than Nasdaq Basic, would become even more cost effective. After 5,000 Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels, cheaper than the current Cboe One Summary fee.

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[28] Broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. As a result, the Exchange has excluded those firms from this portion of its analysis. That said, the Exchange believes those firms may have a similar Professional/Non-Professional breakdown to other retail brokers.

[29] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18–FY22_FINAL_0.pdf.*

[30] As explained, broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. *See* supra note 28. To perform this analysis, the Exchange therefore assumed that retail brokers qualifying for the enterprise cap had a similar breakdown of Professional/Non-Professional Users as retail brokers that reported this information.

[31] For purposes of illustration, the examples included in the table assume that the small retail broker provides Cboe One Summary Data solely to Non-Professional Users, which pursuant to the requirements of the Program must make up at least 90% of the Distributor's total subscriber population, and may, in practice, make up an even larger proportion of the user population.

	1,200			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$3,850.00	$3,850	0.00
BYX Top	1,200	$ 1,000.00	$ 250.00	$3,850	3600.00

	3,350			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$ 3,850.00	$6,000	2150.00
BYX Top	3,350	$ 1,000.00	$ 250.00	$6,000	5750.00

	7,500			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$ 3,850.00	$10,150	4150.00
BYX Top	7,500	$ 1,000.00	$ 250.00	$10,150	9900.00

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The Exchange also notes that the proposed fees for the Cboe One Summary Feed are designed in a manner that would allow a market data vendor to offer a similar competing product that includes data from the Exchange and its affiliated equities exchanges. Specifically, the Distribution fees proposed for the Cboe One Summary Feed are equivalent to the fees that would be charged to a small retail broker for access to the top of book feeds offered by the individual exchanges. In addition, Distributors of the Cboe One Summary Feed are liable for a Data Consolidation Fee that is designed to reflect the value of the consolidation of the data. Thus, the pricing for the Cboe One Summary Feed would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no pricing disadvantage relative to the exchanges. The examples below illustrate the fees that would be associated with the Cboe One Summary Feed compared with the fees that would be charged for a competing product that incorporates top of book information taken from the Exchange and its affiliated equities exchanges.[32]

Example 1: *Vendor Distributes Cboe One Summary Feed to Two Small Retail Brokers*

A vendor that distributes the Cboe One Summary Feed to one or more clients for further internal or external distribution would be liable for an External Distribution Fee of $5,000 per month and a Data Consolidation Fee of $1,000 per month.[33] In addition, each small retail broker that receives data from the vendor would be liable for its own Distribution Fees, which would be reduced to $3,500 per month pursuant to the Program, and Data Consolidation Fees, which would be reduced to $350 per month. These amounts would be paid directly by each small retail broker to the Exchange pursuant to a license agreement despite the fact that such clients are utilizing the services of a vendor to facilitate their access to the data.

Example 2: *Vendor Distributes Competing Product to Two Small Retail Brokers*

Similar to Example 1, a vendor that consolidates and distributes top of book data taken from the Exchange and its affiliated equities exchanges would be liable for External Distribution Fees of $5,000 per month—*i.e.,* $2,500 for BZX Top, $1,000 per month for BYX Top, and $1,500 for EDGX Top, and $0 per month for EDGA Top. Unlike Example 1, however, the vendor would be performing its own consolidation of the

[32] All Distributors that receive an uncontrolled data feed, including small retail brokers that qualify for the Program, would have to license directly with the Exchange, and would be responsible for paying any applicable fees, but would be able to access such market data through the services of a vendor.

[33] Typically, a vendor's business involves distributing market data to a wide range of customers, which would likely include a number of firms that do not qualify for the Program (*e.g.,* other vendors, larger broker-dealers, etc.). In both examples, the fees charged to the vendor would permit it to distribute to each of those downstream customers without paying additional fees for each customer.

data incorporated from the four top of book feeds, and would not be liable for the Data Consolidation Fee. Similarly, each of the small retail brokers would pay their own Distribution Fees to the Exchange, which would be reduced to $3,500 under the Program—*i.e.,* $2,500 per month for BZX Top, $250 per month for BYX Top, $750 per month for EDGX Top, and $0 per month for EDGA Top. Similar to the vendor, the small retail brokers would not pay any Data Consolidation Fee. As a result, a vendor could offer its own competing product at a price that is competitive with the Exchange's pricing.[34]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with the Act.

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) of the Act[35] and paragraph (f) of Rule 19b–4[36] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2020–007 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–CboeBYX–2020–007. 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–CboeBYX–2020–007 and should be submitted on or before March 12, 2020.

[34] The discounted Data Consolidation Fee should continue to allow a vendor that takes top of book feeds from the Exchange and its affiliated equities exchanges to offer a competing product at a similar cost. In this regard, the Exchange notes that Nasdaq similarly charges a $350 data consolidation fee for Nasdaq Last Sale Plus. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 139(e)(1).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03419 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88212; File No. SR–OC–2020–01]

Self-Regulatory Organizations; OneChicago, LLC; Notice of Filing of Proposed Rule Change Relating to OneChicago Rule 307 (Application of Rules and Jurisdiction)

February 14, 2020.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 11, 2020, OneChicago, LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on February 11, 2020.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

On February 6 [sic], 2020, OneChicago filed a rule change with the CFTC to amend Rule 307 (Application of Rules and Jurisdiction) consistent with language agreed upon with all the Designated Contract Markets (''DCMs'') in December 2019 through the Joint Compliance Committee.[3] All the DCMs are adopting substantially the same language.

The text of the proposed rule changes is attached as *Exhibit 4* to the filing submitted by the Exchange but is not attached to the published notice of the filing.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

OneChicago Rule 307(b) requires all parties who initiate or execute a transaction on or subject to the Rules of the Exchange directly or indirectly, consent to the jurisdiction of the Exchange and agree to comply with all the Rules of the Exchange. The language of OneChicago Rule 307 was developed by the Joint Compliance Committee and adopted by all DCMs in 2012 at the request of the CFTC to expand Exchange jurisdiction.[4]

OneChicago is proposing to update Rule 307 to reflect language agreed upon with the other DCMs through the Joint Compliance Committee in December 2019. The purpose of the additional language is to clarify the Exchange's jurisdiction over persons or entities that are paid a commission or fee in connection with transaction on or subject to the Rules of the Exchange. The additional language does not change the Exchange's jurisdiction, but merely clarifies the jurisdiction to eliminate any confusion.

The language specifies that persons or entities that are paid a commission or fee in connection with transactions executed on the Exchange are subject to the Rules of the Exchange. Often orders are routed through multiple different Broker Dealers or Futures Commission Merchants between the customer and the actual execution. This language clarifies that even if there is a third party involved in the order routing process who is not a customer of the ultimate execution firm, they are still subject to the Exchange's jurisdiction.

This amendment is to address concerns that some entities involving in the facilitating the order flow process may not be clearly encompassed in the current rule.

2. Statutory Basis

OneChicago believes that the proposed rule changes are consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) [6] in particular. The proposed rule changes further the objectives of Section 6(b)(5) because they designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons facilitating transactions, and will remove impediments to and help perfect the mechanism of a free and open market.

The Rule 307 amendment is consistent with the Act in that it clarifies and enhances the Exchange's jurisdiction, and allow it to gather more information and cooperation in its investigations and to take disciplinary action as appropriate in order to more accurately and fairly enforce Exchange Rules.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it would apply equally to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 will become operative on February 26, 2020.

At any time within 60 days of the date of effectiveness of the proposed rule

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] The Joint Compliance Committee (''JCC'') is a voluntary, cooperative organization comprised of members who are self-regulatory organizations registered under the Commodity Exchange Act (''CEA''). The JCC operates through its members to protect market integrity within and across the members' markets. It provides a forum to share information and ideas on regulatory topics of interest, as well as identify issues within the industry or elsewhere that may impact their markets, members or self-regulatory responsibilities.

[4] Rule 307 was adopted in response to CFTC Regulation 38.151(a) which states ''Jurisdiction. Prior to granting any member or market participant access to its markets, a designated contract market must require that the member or market participant consent to its jurisdiction.''

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–OC–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–OC–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–OC–2020–01, and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03412 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88189; SR–CboeBZX–2019–068]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the iShares California Short Maturity Muni Bond ETF Under Rule 14.11(i)

February 13, 2020.

On July 19, 2019, Cboe BZX Exchange, Inc. (''BZX'' 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 allow the listing and trading of shares of the iShares California Short Maturity Muni Bond ETF under BZX Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on August 7, 2019.[3] On September 19, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission extended the time 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 October 1, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced in its entirety the proposed rule change as originally submitted.[6] On October 30, 2019, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.[8] On January 30, 2020, pursuant to Section 19(b)(2) of the Act, the Commission extended the time period within which to approve or disapprove the proposed rule change as modified by Amendment No. 1.[9] The Commission has received no comment letters on the proposal.

On February 12, 2020, the Exchange withdrew the proposed rule change (SR–CboeBZX–2019–068), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03316 Filed 2–19–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86546 (August 1, 2019), 84 FR 38689.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87018, 84 FR 50501 (September 25, 2019).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2019-068/srcboebzx2019068-6362715-196411.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 87421, 84 FR 59669 (November 5, 2019).

[9] *See* Securities Exchange Act Release No. 88089, 85 FR 6587 (February 5, 2019). The Commission designated April 3, 2020 as the date by which it would either approve or disapprove the proposed rule change.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88220; File No. SR–CboeEDGA–2020–004]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program

February 14, 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 February 4, 2020, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of

the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the ''Program'') would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

The Exchange initially filed to introduce the Program on August 1, 2019 (''Initial Proposal'') to further ensure that retail investors served by smaller firms have cost effective access to its market data products, and as part of its ongoing efforts to improve the retail investor experience in the public markets. The Initial Proposal was published in the **Federal Register** on August 20, 2019,[3] and the Commission received no comment letters on the Initial Proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Initial Suspension Order'').[4] The Initial Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.[5] On October 1, 2019, the Exchange re-filed its proposed rule change with additional information about the basis for the proposed fee change (''Second Proposal''). The Second Proposal was published in the **Federal Register** on October 15, 2019,[6] and the Commission received no comment letters on the Second Proposal. The Program again remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the ''Second Suspension Order'').[7] The Second Suspension Order also instituted proceedings to determine whether to approve or disapprove the Second Proposal.[8] On November 27, 2019, the Exchange re-filed its proposed rule change a third time with one revision to the requirements for participating in the Program and additional information about the basis for the proposed fee change (''Third Proposal''). The Third Proposal was published in the **Federal Register** on December 16, 2019.[9] Today, the Exchange is withdrawing the Third Proposal, and replacing it with this proposed fee change as part of its ongoing efforts to continue to facilitate retail investor access to reasonably priced market data.

Current Fees

The Cboe One Summary Feed is a top of book data feed that provides real-time U.S. equity quote and trade information to investors based on equity orders submitted to the Exchange and its affiliated equities exchanges—*i.e.,* Cboe EDGX Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe BYX Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is $5,000 per month, and external distributors are also liable for a Data Consolidation Fee of $1,000 per month, and User fees equal to $10 per month for each Professional User, and $0.25 per month for each Non-Professional User.[10]

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide Cboe One Summary Feed Data to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that they meet the following criteria: (1) Distributor is a broker-dealer distributing Cboe One Summary Feed Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) At least 90% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving Cboe One Summary Feed Data; and (3) Distributor distributes Cboe One Summary Feed Data to no more than 5,000 Users.[11]

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide Cboe One Summary Feed Data to a limited number of subscribers. As explained later in this filing, distributors that provide Cboe One Summary Feed Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering

[3] *See* Securities Exchange Act Release No. 86676 (August 14, 2019), 84 FR 43218 (August 20, 2019) (SR–CboeEDGA–2019–013).

[4] *See* Securities Exchange Act Release No. 87165 (September 30, 2019), 84 FR 53205 (October 4, 2019) (SR–CboeEDGA–2019–013).

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 87294 (October 11, 2019), 84 FR 55638 (October 17, 2019) (SR–CboeEDGA–2019–015).

[7] *See* Securities Exchange Act Release No. 87634 (November 26, 2019), 84 FR 66257 (December 3, 2019) (SR–CboeEDGA–2019–015).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 87709 (December 10, 2019), 84 FR 68523 (December 16, 2019) (SR–CboeEDGA–2019–021).

[10] The Exchange also offers an Enterprise license for the Cboe One Summary Feed at a cost of $50,000 per month. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers.

[11] The Initial Proposal, Second Proposal, and Third Proposal would have allowed small retail brokers to participate in the Program if they distribute Cboe One Summary Feed Data to no more than 5,000 Non-Professional Users. The current proposal instead reflects a threshold of 5,000 Users—*i.e.,* including both Non-Professional and Professional Users.

similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Cboe One Summary Feed with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The Program would be exclusive to the Cboe One Summary Feed, which is a top of book offering, as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.[12] The distribution fee charged for the Cboe One Summary Feed would be lowered by 30% from the current $5,000 per month to $3,500 per month for distributors that meet the requirements of the Program. In addition, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current $1,000 per month to $350 per month. User fees for any Professional or Non-Professional Users that access Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.[13]

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.[14] The Cboe One Summary Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.[15]

The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option for small retail brokers. Although that filing was ultimately suspended by the Commission, as was the Second Proposal, the Exchange believes that its experience in offering the Program while it has been in effect reflect the competitive nature of the market for the creation and distribution of top of book data. Specifically, after the Exchange reduced the fees charged to small retail brokers pursuant to the Initial Proposal, Second Proposal, and Third Proposal, while each of those were in effect, it successfully onboarded three new customers due to the attractive pricing.[16] These customers are now able to offer high quality and cost effective data to their retail investor clients. The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in providing top of book data to retail investors. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead purchase such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[17] in general, and furthers the objectives of

[12] New external distributors of the Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

[13] By comparison, The Nasdaq Stock Market LLC (''Nasdaq'') charges a subscriber fee for Nasdaq Basic that adds up to $26 per month for Professional Subscribers and $1 per month for Non-Professional Subscribers (Tapes A, B, and C). *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[14] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[15] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

[16] *See e.g.,* Cboe Innovation Spotlight, ''dough—The commission-free online broker with premium content and insights,'' *available at https://markets.cboe.com/us/equities/market_data_products/spotlight/.*

[17] 15 U.S.C. 78f.

Section 6(b)(4),[18] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.[19] Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,[20] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21] The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to the Cboe One Summary Feed. The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data disseminated by other national securities exchanges.[22] It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.[23] The Cboe One Summary Feed is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the Cboe One Summary Feed benefits a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,[24] and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

Indeed, the Exchange has already successfully onboarded three new Distributors that have decided to purchase Cboe One Summary Data from the Exchange rather than purchasing top of book data from a competitor exchange. In addition, the Exchange is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges. Making the Exchange's top of book data available at a lower cost, ultimately serves the interests of retail investors that rely on the public markets. The Exchange understands that the Commission is interested in ensuring that retail investors are appropriately served in the U.S. equities market. The Exchange agrees that it is important to ensure that our markets continue to serve the needs of ordinary investors, and the Program is consistent with this goal.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from EDGA and its affiliated equities exchanges to their retail investor clients.

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78k–1.

[20] *See* 17 CFR 242.603.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See e.g.,* supra note 13 (discussing Nasdaq Basic).

[23] *Id.*

[24] *See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [25]

Today, the Cboe One Summary Feed is among the most competitively priced top of book offerings in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange's data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange's lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up a significant majority of the distributor's total subscriber population. While there is no ''exact science'' to choosing one eligibility threshold compared to another, the Exchange believes that having significantly more Non-Professional Data Users than Professional Data User across a firm's entire business, *i.e.,* not limited exclusively to Data Users that are provided access to the Exchange's data products, is indicative of a broker-dealer that is primarily and actively engaged in the business of serving retail investors.

This understanding is confirmed by an analysis conducted by the Exchange on the user population of its retail broker clients that purchase market data from the Exchange and its affiliated exchanges. To perform its analysis, the Exchange reviewed user populations for each broker dealer that it identified as primarily engaged in serving retail investors (*i.e.,* retail brokers), and for which the Exchange has reported usage broken down into Professional and Non-Professional Users.[26] This analysis showed that each retail broker identified currently provides market data from the Exchange or its affiliates to at least 90% Non-Professional Users, with the Professional/Non-Professional breakdown ranging from 90.9% Non-Professional Users on the low end to 100% Non-Professional Users on the high end. As a result of this analysis, the Exchange believes that a requirement that at least 90% of a broker-dealer's user population qualify as Non-Professional Users is appropriate to ensure that the benefits provided by the Program inure to the benefit of broker-dealers that primarily serve retail investors. Indeed, this belief is further supported by the Exchange's experience with the customers that currently participate in the Program, each of which are focused on providing trading services to ordinary investors.

As such, the Program would be broadly available to a wide range of retail brokers that either purchase the Cboe One Summary Feed today, or that may choose to switch from competing products due to the potential cost savings. In addition to the subscribers that are currently participating in the Program, a number of distributors that currently purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018–2022 touts ''focus on the long-term interests of our Main Street investors'' as the Commission's number one strategic goal.[27] The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. The Program is designed to ensure that small retail brokers have access to Exchange data at a modest cost, and therefore contains an eligibility cutoff based on the number of Users that would receive Cboe One Summary Feed Data. The retail broker clients identified by the Exchange provide data from the Exchange or its affiliates to an average of more than 160,000 Non-Professional Users, with a small handful of large retail brokers operating pursuant to an Enterprise license accounting for about 95% of those Non-Professional Users.[28] Many retail broker clients, however, have significantly smaller Non-Professional User populations, with retail brokers that are not operating pursuant to an Enterprise license providing data from

[25] *See* Regulation NMS Adopting Release, supra note 21, at 37503.

[26] Broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. As a result, the Exchange has excluded those firms from this portion of its analysis. That said, the Exchange believes those firms may have a similar Professional/Non-Professional breakdown to other retail brokers.

[27] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.*

[28] As explained, broker dealers with an Enterprise license are required to report total user populations but not whether each user is a Professional or Non-Professional User. *See* supra note 26. To perform this analysis, the Exchange therefore assumed that retail brokers qualifying for the enterprise cap had a similar breakdown of Professional/Non-Professional Users as retail brokers that reported this information.

the Exchange or its affiliates to an average of 8,845 Non-Professional Users. The 5,000 User threshold would therefore ensure that the benefits of the Program flow to small retail brokers, as intended, and not larger firms that already benefit from the current fee structure.

Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide Cboe One Summary Feed Data to more than 5,000 Users already enjoy cost savings compared to competitor products. The Program would therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

The table below illustrates the impact of the proposed pricing on firms that qualify for the Program, both compared to the Exchange's current pricing, and compared to the fees charged for a competitor product, *i.e.,* Nasdaq Basic. As shown, Cboe One Summary Feed Data provided pursuant to the Program would be cheaper than Nasdaq Basic for firms with more than 1,200 Users, and the benefits of the pricing structure would continue to scale up to firms with 5,000 Users.[29] After 5,000 Users the firm would no longer be eligible for the Small Retail Broker Distribution Program but would already enjoy significant cost savings compared to Nasdaq Basic under the current pricing structure. The Exchange therefore believes that the Program would allow the Exchange to better compete with competitors for smaller firms that currently pay a lower fee under, for example, the Nasdaq Basic pricing model, while also ensuring that larger firms continue to receive attractive pricing that is already cheaper than top of book data offered by the main competitor product. The Exchange believes this supplemental information further validates its assessment that the proposed fee reduction is reasonable, equitable, and not unfairly discriminatory. Without the proposed fee reduction, small retail brokers that would otherwise qualify for the reduced fees proposed would be subject to either higher fees for accessing Exchange top of book data, or may switch to competitor offerings that are also less cost effective, but at current fees levels, cheaper than the current Cboe One Summary fee.

[29] For purposes of illustration, the examples included in the table assume that the small retail broker provides Cboe One Summary Data solely to Non-Professional Users, which pursuant to the requirements of the Program must make up at least 90% of the Distributor's total subscriber population, and may, in practice, make up an even larger proportion of the user population.

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	1,200			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	1,200	$ 6,000.00	$3,850.00	$3,850	0.00
EDGA Top	1,200	$ 30.00	$ 30.00	$3,850	3820.00

	3,350			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	3,350	$ 6,000.00	$ 3,850.00	$6,000	2150.00
EDGA Top	3,350	$ 83.75	$ 83.75	$6,000	5916.25

	7,500			Nasdaq Basic	Difference vs. Nasdaq Basic
Product	Non-Professional User Qty	Standard Model Total Fee	SRBP Total Fee	Total Fee	Total Fee
Cboe One Summary	7,500	$ 6,000.00	$ 3,850.00	$10,150	4150.00
EDGA Top	7,500	$ 187.50	$ 187.50	$10,150	9962.50

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The Exchange also notes that the proposed fees for the Cboe One Summary Feed are designed in a manner that would allow a market data vendor to offer a similar competing product that includes data from the Exchange and its affiliated equities exchanges. Specifically, the Distribution fees proposed for the Cboe One Summary Feed are equivalent to the fees that would be charged to a small retail broker for access to the top of book feeds offered by the individual exchanges. In addition, Distributors of the Cboe One Summary Feed are liable for a Data Consolidation Fee that is designed to reflect the value of the consolidation of the data. Thus, the pricing for the Cboe One Summary Feed would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no pricing disadvantage relative to the exchanges. The examples below illustrate the fees that would be associated with the Cboe One Summary Feed compared with the fees that would be charged for a competing product that incorporates top of book information taken from the Exchange and its affiliated equities exchanges.[30]

Example 1: *Vendor Distributes Cboe One Summary Feed to Two Small Retail Brokers*

A vendor that distributes the Cboe One Summary Feed to one or more clients for further internal or external distribution would be liable for an External Distribution Fee of $5,000 per month and a Data Consolidation Fee of $1,000 per month.[31] In addition, each small retail broker that receives data from the vendor would be liable for its own Distribution Fees, which would be reduced to $3,500 per month pursuant to the Program, and Data Consolidation Fees, which would be reduced to $350 per month. These amounts would be paid directly by each small retail broker to the Exchange pursuant to a license agreement despite the fact that such clients are utilizing the services of a vendor to facilitate their access to the data.

Example 2: Vendor Distributes Competing Product to Two Small Retail Brokers

Similar to Example 1, a vendor that consolidates and distributes top of book data taken from the Exchange and its affiliated equities exchanges would be liable for External Distribution Fees of $5,000 per month—*i.e.,* $2,500 for BZX

[30] All Distributors that receive an uncontrolled data feed, including small retail brokers that qualify for the Program, would have to license directly with the Exchange, and would be responsible for paying any applicable fees, but would be able to access such market data through the services of a vendor.

[31] Typically, a vendor's business involves distributing market data to a wide range of customers, which would likely include a number of firms that do not qualify for the Program (*e.g.,* other vendors, larger broker-dealers, etc.). In both examples, the fees charged to the vendor would permit it to distribute to each of those downstream customers without paying additional fees for each customer.

Top, $1,000 per month for BYX Top, and $1,500 for EDGX Top, and $0 per month for EDGA Top. Unlike Example 1, however, the vendor would be performing its own consolidation of the data incorporated from the four top of book feeds, and would not be liable for the Data Consolidation Fee. Similarly, each of the small retail brokers would pay their own Distribution Fees to the Exchange, which would be reduced to $3,500 under the Program—*i.e.,* $2,500 per month for BZX Top, $250 per month for BYX Top, $750 per month for EDGX Top, and $0 per month for EDGA Top. Similar to the vendor, the small retail brokers would not pay any Data Consolidation Fee. As a result, a vendor could offer its own competing product at a price that is competitive with the Exchange's pricing.[32]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with the Act.

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) of the Act[33] and paragraph (f) of Rule 19b–4[34] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2020–004 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–CboeEDGA–2020–004. 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

[32] The discounted Data Consolidation Fee should continue to allow a vendor that takes top of book feeds from the Exchange and its affiliated equities exchanges to offer a competing product at a similar cost. In this regard, the Exchange notes that Nasdaq similarly charges a $350 data consolidation fee for Nasdaq Last Sale Plus. *See* Nasdaq Rules, Equity 7, Pricing Schedule, Section 139(e)(1).

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2020–004 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03418 Filed 2–19–20; 8:45 am]

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[35] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11037]

Notice of Public Meeting Concerning the Use of Digital Sequence Information of Genetic Resources

ACTION: Notice of public meeting.

SUMMARY: In order to inform U.S. Government policy and international engagement, the U.S. Department of State (DOS) invites submission of comments from the public, academia, industry, and other stakeholders for an ongoing process under the Convention on Biological Diversity concerning the use of ''digital sequence information (DSI) on genetic resources,'' also known as genetic sequence data (GSD). The Department will hold a public meeting and information session to discuss these issues, on March 12, 2020.

DATES: A meeting is planned on Thursday, March 12, 2020. The meeting will begin at 10:00 p.m. EST and last for up to two hours. Electronic comments are due on or before April 30, 2020.

ADDRESSES: The meeting will be held at the U.S. State Department's Harry S. Truman Building, 2201 C Street NW, Room 1498, Washington, DC 20520. Please use the 21st Street entrance, and plan to arrive at least twenty minutes prior to the start of the meeting to allow for ID verification and escorting requirements. One electronic submission per person by the April 30 deadline is welcome, with no more than 10 pages of single-spaced text including relevant examples, with no more than one page per example. Submissions should be made via the internet at *www.regulations.gov* and entering docket number [DOS–2020–0005]. Note that relevant comments submitted to *regulations.gov* will be posted without editing and will be available to the public; therefore, business-confidential information should be clearly identified as such and submitted by email. The public is required to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments should be directed to Patrick Reilly (202) 647–4827, *ReillyPK2@state.gov*.

SUPPLEMENTARY INFORMATION: The Secretariat of the Convention on Biological Diversity (CBD) released three studies on ''Digital Sequence Information on Genetic Resources'' (*https://www.cbd.int/dsi-gr/2019-2020/studies/*) that examine scope, present use, traceability, access, and current benefit-sharing schemes. These studies were commissioned to inform decisions by the Parties to the CBD and the Nagoya Protocol at the 2020 Conference of Parties to the CBD and the Conference of Parties serving as the Meeting of the Parties to the Nagoya Protocol.

During the public meeting and information session, the State Department will provide a brief overview of the ongoing discussions regarding DSI on genetic resources in the context of the CBD and the Nagoya Protocol and will listen to your comments, concerns, and questions about this issue. The information obtained from these meetings will help the U.S. Government prepare for U.S. participation in international meetings U.S. participation in upcoming CBD and Nagoya Protocol meetings. Documents and other information related to the CBD and Nagoya Protocol can be found at this website: *www.cbd.int.*

We seek comments on the CBD studies cited above, and also request information on practices regarding the collection, management and use of DSI or GSD; and regarding experiences with access and benefit-sharing approaches or requirements related to DSI/GSD. We welcome specific examples of the actual, and potential, impacts that could occur if tracking and benefit sharing for the utilization of DSI were required by domestic legislation, and encouraged under the Nagoya Protocol or other international ABS instruments, such as the International Treaty for Plant Genetic Resources for Food and Agriculture and the Pandemic Influenza Preparedness Framework. We are, likewise, interested in effects on research collaborations, international sample sharing, academic and commercial research, pandemic and epidemic preparedness and response, food security, and other aspects. We would also welcome views on what organizations can do to effectively protect the scientific process in the context of national-level ABS approaches potentially requiring tracking and benefit sharing for the utilization of DSI/GSD.

We also welcome examples of:

(1) Issues and/or examples related to the items described above or other items that could affect the scientific process;

(2) Monetary or non-monetary benefits that are facilitated by international sharing of DSI or GSD;

(3) Non-ABS challenges and barriers to sharing DSI or GSD that have significant implications for global research efforts that might merit additional attention or analysis.

Representatives from the Department of State will review written submissions and share them, as appropriate, with other Federal Agencies to inform U.S. Government policy and our international engagements on these issues. U.S. officials may contact individuals making submissions for further information or clarification.

Status: The meeting will be open to the public. Persons wishing to attend in person should submit their full name and organization to Patrick Reilly at *ReillyPK2@state.gov* and copy *RSVP-ECW@state.gov* at least three days prior to the meeting. Persons who need special accommodations should also contact Mr. Reilly at *ReillyPK2@state.gov* or (202) 647–4827 and copy *RSVP-ECW@state.gov* at least seven days before the meeting. Requests made after that time will be considered but might not be possible to accommodate. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and E.O. 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/wp-content/uploads/2019/05/Security-Records-STATE-36.pdf* for additional information.

Catherine J. Karr-Colque,

Acting Director, Office of Conservation and Water, Department of State.

[FR Doc. 2020–03423 Filed 2–19–20; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36381]

Toledo Industrial Railroad LLC—Operation Exemption—Line in Lucas County, Ohio

Toledo Industrial Railroad LLC (TIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 5,500 feet of existing railroad trackage inside an existing transloading facility (the Line). The transloading facility is operated by TIR's affiliate, Midwest Terminals of Toledo, Inc. (Midwest Terminals). The Line is located in Toledo, Lucas County, Ohio. TIR states that there are no mileposts on the Line.

The verified notice states that currently the Line is operated by Midwest Terminals as private track. TIR states that it will enter into an operating license that will give TIR control of the Line and the other tracks within the transloading facility. Under the proposed transaction, TIR will operate as a terminal switching common carrier, operating the Line as common carrier line and the other tracks in the facility as excepted yard tracks and side tracks.

TIR certifies that, as a result of the proposed transaction, its projected revenues will not exceed $5 million annually and will not exceed those that would qualify it as a Class III carrier. TIR states that the proposed transaction would not impose any interchange commitment.

The proposed transaction may be consummated on or after March 5, 2020, the effective date of the exemption (30 days after the verified notice was filed).[1]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 27, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36381, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on TIR's representative, Eric M. Hocky, Esq., Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to TIR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: February 13, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–03358 Filed 2–19–20; 8:45 am]

BILLING CODE 4915–01–P

[1] TIR initially submitted the verified notice on January 22, 2020. On February 4, 2020, TIR filed a supplement to clarify the length of the Line. In light of that supplement, February 4, 2020 is deemed the filing date of the verified notice.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September of 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and makes amendments to certain notes in the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the $200 billion action, to August 7, 2020. The amendments announced in this notice are retroactive to the date the original exclusions were published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Benjamin Allen, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), and 85 FR 6674 (February 5, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the Trade Representative established a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $200 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular

product and/or a comparable product is available from sources in the United States and/or third countries.

- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation. The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative would periodically announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September 2019, October 2019, November 2019, December 2019, January 2020, and February 2020. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, 84 FR 69012, 85 FR 549, and 85 FR 6674. The Office of the United States Trade Representative regularly updates the status of each pending request on the USTR Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set forth in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set forth in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set forth in the Annex, the exclusions are reflected in one 10-digit HTSUS subheading, which cover 6 requests, and 46 specially prepared product descriptions, which cover 61 exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions found in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(7) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex. Paragraph B of the Annex contains amendments reflecting technical corrections to the specially prepared product descriptions in certain notes to the HTSUS, specifically U.S. note 20(ll)(68), published at 84 FR 57803 (October 28, 2019), U.S. note 20(mm)(6), published at 84 FR 61674 (November 13, 2019), and U.S. note 20(nn)(30), published at 84 FR 65882 (November 29, 2019).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.40 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1-General'', respectively:

Heading/subheading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.40	Articles the product of China, as provided for in U.S. note 20(ss) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading''.		

2. By inserting the following new U.S. note 20(ss) to subchapter III of chapter 99 in numerical sequence:

''(ss) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03, and by which particular products classified in heading 9903.88.04 and provided for in U.S. note 20(g) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.04. See 83 FR 47974 (September 21, 2018) and 84 FR 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 or in heading 9903.88.04 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

(1) 6505.00.8015

(2) Titanium dioxide (CAS No. 13463–67–7) (described in statistical reporting number 2823.00.0000)

(3) D-Ribose (CAS No. 50–69–1) (described in statistical reporting number 2940.00.6000)

(4) Mechanical articles for motor vehicles, of vulcanized rubber other than hard rubber, each comprising a guide or a stopper for a sunroof or sunshade and weighing not more than 4 g (described in statistical reporting number 4016.99.6010)

(5) Stuff sacks with outer surface of textiles of man-made fibers, each measuring 77.5 cm or more but not over 127.7 cm in circumference, cylindrical in shape with a single compartment, a drawstring closure at one end and a strap at the other end of the sack (described in statistical reporting number 4202.92.3131)

(6) Covers, of leather, designed for use with telecommunication devices (described in statistical reporting number 4205.00.8000)
(7) Two-layer wood flooring consisting of a non-coniferous wood veneer measuring at least 0.6 mm but not more than 1.2 mm in thickness laminated to a single-layer base of fiberboard, each board measuring at least 9 cm but not more than 21 cm in width, at least 35 cm but not more than 1.9 m in length and at least 5 mm but not more than 12 mm in thickness (described in statistical reporting number 4412.99.5105)
(8) Desk accessories of medium density fiberboard, painted or stained, including but not limited to desk organizers, letter trays, business card holders, incline files, pencil cups, note holders, corner shelves, monitor risers, magazine holders, book ends and storage caddies, each weighing at least 0.06 kg but not more than 5.5 kg, measuring at least 10 cm but not more than 35 cm in length, at least 4 cm but not more than 43 cm in width and at least 4.5 cm or more but not more than 30 cm in height (described in statistical reporting number 4420.90.8000)
(9) Fabrics wholly of cotton, unbleached, plain weave, weighing not more than 100 g/m², of numbers 43 to 68 (''cheesecloth''), 3-layer folded and crimped, less than 28 cm wide after folding and crimping, compliant with standards of Aerospace Management Services (AMS) (described in statistical reporting number 5208.11.4090)
(10) Fabrics wholly of cotton, bleached, plain weave, weighing not more than 100 g/m², of numbers 43 to 68 (''cheesecloth''), compliant with standards of Aerospace Management Services (AMS) (described in statistical reporting number 5208.21.4090)
(11) Woven fabrics of synthetic filament yarn, dyed, weighing more than 280 g/m² but not more than 420 g/m² (described in statistical reporting number 5407.92.2090)
(12) Sheeting fabrics containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with cotton, such artificial staple fibers derived from wood, printed (described in statistical reporting number 5516.44.0022)
(13) Non-woven fabrics of polyethylene terephthalate (PET), in sheets measuring not more than 160 cm by 250 cm, weighing more than 1,800 g/m² but not more than 3,000 g/m² (described in statistical reporting number 5603.94.9090)
(14) Fabrics wholly of polyester, warp knit, bonded to a plain weave backing fabric, measuring not more than 141 cm in width, weighing over 271 g/m², of a kind used to upholster furniture (described in statistical reporting number 6001.92.0010)
(15) Knitted or crocheted fabrics of artificial staple fibers derived from bamboo (described in statistical reporting number 6003.40.6000)
(16) Fabrics wholly of polyester, warp knit, printed, bonded to a woven backing wholly of polyester, weighing not less than 290 g/m² but not more than 500 g/m², of a kind used to upholster furniture (described in statistical reporting number 6005.39.0080)
(17) Portable outdoor cookers, each consisting of a burner and stand made from steel and cast iron, two or more pots with fitted strainer baskets, a rack suitable for supporting and lifting out large food items and an adjustable pressure regulator/hose combination for connecting the burner to a portable container of LP, put up for retail sale (described in statistical reporting number 7321.11.1060)
(18) Sewer hose supports constructed of flat strips of aluminum measuring 0.3 cm in thickness and riveted together to extend and retract accordion-style, each not exceeding 4.6 m when extended and weighing not more than 1.5 kg (described in statistical reporting number 7616.99.5150)
(19) Clamp edge components of aluminum, with injection molded clamp heads and levers, measuring not less than 60 cm but not more than 127 cm in length, with extensions to 254 cm in length (described in statistical reporting number 7616.99.5190)
(20) Shovels of aluminum, each of adjustable length measuring not less than 65 cm but not more than 85 cm, weighing less than 1 kg (described in statistical reporting number 8201.10.0000)
(21) Automotive polishing attachments specially designed for use with a hand-held drill, each attachment including a 9.5 mm steel drive shaft, internal gear assembly, transverse hand brace and rotating disk components (described in statistical reporting number 8207.90.7585)
(22) Articulating video monitor wall mounting assemblies of steel and aluminum, each weighing not less than 4 kg but not more than 7 kg (described in statistical reporting number 8302.50.0000)
(23) Fuel filters for internal combustion engines, each consisting of a cylindrical case of plastics with an internal mesh filter measuring not more than 8 cm in length and not more than 5.5 cm in diameter (described in statistical reporting number 8421.23.0000)
(24) Digital electronic scales (other than counting scales or retail scales) having a maximum weighing capacity not exceeding 30 kg (described in statistical reporting number 8423.81.0040)
(25) Jacks of steel with zinc coating for supporting the tongues of trailers, each measuring not less than 60 cm in retracted condition and not less than 85 cm in extended condition, with a maximum width of 17 cm and a maximum load capacity of 455 kg (described in statistical reporting number 8425.49.0000)
(26) Lottery ticket vending terminals, each terminal including a touchscreen monitor, barcode scanner, Wi-fi/Ethernet/Bluetooth connectivities, six USB ports, two LAN ports and two serial ports (described in statistical reporting number 8470.90.0190)
(27) Hand-operated flat-back gate valves of cast iron, designed for use with irrigation canals, diversion ditches and the like (described in statistical reporting number 8481.80.3010)
(28) Hand-operated spigot-back gate valves of cast iron, for irrigation canals, diversion ditches and the like (described in statistical reporting number 8481.80.3010)
(29) AC motors, single phase, each of an output exceeding 74.6 W but not exceeding 335 W, measuring not more than 13 cm in diameter and not more than 13 cm in height and with a shaft measuring not more than 39 cm in length (described in statistical reporting number 8501.40.4040)
(30) 48 V rectifiers for telecommunications wireline and wireless apparatus, each with output of not less than 2,400 W but not more than 3,000 W, measuring not more than 45 mm by 105 mm by 330 mm, weighing not more than 2 kg (described in statistical reporting number 8504.40.8500)
(31) 48 V rectifiers for telecommunications wireline and wireless apparatus, each with output of not less than 4,000 W but not more than 4,600 W, measuring not more than 165 mm by 95 mm by 305 mm, weighing not more than

4 kg (described in statistical reporting number 8504.40.8500)

(32) 48 V rectifiers for telecommunications wireline and wireless apparatus, each with output of not more than 1,200 W output, measuring not more than 50 mm by 90 mm by 260 mm, weighing not more than 1 kg (described in statistical reporting number 8504.40.8500)

(33) Power supplies for cable networks, that convert 120 V/60 Hz AC input to either 63 V AC or 87 V AC output, each measuring not more than 200 mm by 425 mm by 270 mm and weighing not more than 27.5 kg, containing printed circuit board assemblies, a transformer, and an oil filled capacitor (described in statistical reporting number 8504.40.8500)

(34) Power supplies for cable networks, that converts 120 V/60 Hz AC or 230 V/50 Hz AC input to 63 V AC or 87 V AC output, each measuring not more than 220 mm by 244 mm by 200 mm and weighing not more than 12 kg (described in statistical reporting number 8504.40.8500)

(35) Power supplies for fiber optic communications equipment, that convert 120–240 V AC to 12 V DC, each measuring no more than 170 mm by 200 mm by 115 mm and having four LED indicators (described in statistical reporting number 8504.40.8500)

(36) Quad output power modules with cut-outs on one side for air flow, each containing a printed circuit board and 4 LED indicators, with external dimensions measuring not more than 361 mm by 125 mm by 75 mm, each weighing not more than 1 kg (described in statistical reporting number 8504.40.8500)

(37) Power supplies with a power output exceeding 150 W but not exceeding 180 W, 120 V, each measuring no more than 90 mm by 395 mm by 625 mm (described in statistical reporting number 8504.40.9530)

(38) Power supplies, each with 120 V AC input and output, measuring not more than 485 mm by 385 mm by 260 mm, weighing not more than 15 kg, to provide not more than 660 W of power in an uninterruptible manner in the event that a normal source of power fails (described in statistical reporting number 8504.40.9540)

(39) Power supplies, each with 120 V AC input and output, measuring not more than 530 mm by 355 mm by 205 mm, weighing not more than 20 kg, to provide not more than 2,000 W of power in an uninterruptible manner in the event that a normal source of power fails (described in statistical reporting number 8504.40.9540)

(40) Electrical inverters (other than rectifiers, power supplies for automatic data processing equipment or for telecommunications apparatus), each measuring not more than 190 mm by 160 mm by 255 mm, weighing not more than 2.5 kg (described in statistical reporting number 8504.40.9570)

(41) Tags for acousto-magnetic security systems (described in statistical reporting number 8531.90.9001)

(42) Cable lugs of copper, for a voltage not exceeding 1,000 V, each measuring at least 12 mm but not more than 155 mm in length (described in statistical reporting number 8536.69.8000)

(43) Printed circuit board assemblies, for a voltage not exceeding 1,000 V, each measuring 3 mm by 169 mm by 137.5 mm, presented with four relays mounted down the center of the assembly and fitted with connectors (described in statistical reporting number 8537.10.9150)

(44) Electric conductors for a voltage not exceeding 300 V, insulated with polyvinyl chloride (PVC), each fitted with connectors, measuring not less than 200 mm and not more than 1.2 m in length (described in statistical reporting number 8544.42.9090)

(45) Toddler beds of wood, with bars to keep toddler from falling out (described in statistical reporting number 9403.50.9042)

(46) Fireplace mantels or surrounds of wood (described in statistical reporting number 9403.60.8081)

(47) Parts of office furniture, each consisting of a modular table base and support of base metals, with electric height adjustment mechanism, weighing not more than 40 kg (described in statistical reporting number 9403.90.8041)''

3. By amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

a. By deleting the word ''or'' where it appears after the phrase ''U.S. note 20(pp) to subchapter III of chapter 99;''; and

b. By inserting the phrase ''; or (9) heading 9903.88.40 and U.S. note 20(ss) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(qq) to subchapter III of chapter 99''.

4. By amending U.S. note 20(f) to subchapter III of chapter 99;

a. By deleting the word ''or'' where it appears after the phrase ''U.S. note 20(pp) to subchapter III of chapter 99;''; and

b. By inserting the phrase ''; or (9) heading 9903.88.40 and U.S. note 20(ss) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(qq) to subchapter III of chapter 99''.

5. By amending the first sentence of U.S. note 20(g) to subchapter III of chapter 99:

a. By deleting ''or'' where it appears after ''U.S. note 20(pp) to subchapter III of chapter 99''; and

b. By inserting ''; or (6) heading 9903.88.40 and U.S. note 20(qq) to subchapter III of chapter 99'' after ''U.S. note 20(qq) to subchapter III of chapter 99''.

6. By amending the Article Description of heading 9903.88.03:

a. By deleting ''9903.88.37 or'' and inserting ''9903.88.37'' in lieu thereof; and

b. By inserting ''or 9903.88.40,'' after ''9903.88.38,''.

7. By amending the Article Description of heading 9903.88.04:

a. By deleting ''9903.88.37 or'' and inserting ''9903.88.37,'' in lieu thereof; and

b. By inserting ''or 9903.88.40,'' after ''9903.88.38,''.

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

a. U.S. note 20(ll)(68) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''$0.50 each but not over $0.60 each'' and inserting ''$0.40 each but not over $0.80'' in lieu thereof.

b. U.S. note 20(mm)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''and cat leashes, collars, harnesses, retractable leashes,'' and inserting ''leads, collars, harnesses, retractable leads,'' in lieu thereof, and by deleting ''cables, stakes and aerials of iron or steel of various sizes, such cables, stakes and aerials presented in a form to be sold individually or in sets'' and inserting ''cables and aerials, of iron or steel'' in lieu thereof.

c. U.S. note 20(nn)(30) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''a charging pad and USB port designed for the charging of electronic devices'' and inserting ''a charging pad or USB port designed for

the charging of electronic devices'' in lieu thereof.

[FR Doc. 2020–03377 Filed 2–19–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0659]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 18, 2019. The FAA's Fuel Tank Flammability Safety rule requires manufacturers to report to the FAA every 6 months on the reliability of the fuel tank flammability reduction systems of their fleet. The data is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by March 23, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael E. Dostert by email at: *Mike.Dostert@faa.gov*; phone: 206–231–3168.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 19, 2019 (84 FR 49174). There were no comments. Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately nine design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 1,800 hours.

Issued in Des Moines, Washington, on February 14, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch.

[FR Doc. 2020–03406 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Hennepin and Ramsey Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 1 Environmental Impact Statement (EIS) will be prepared for a proposed freeway corridor improvement project on Interstate 94 (I–94) from the I–35W/Trunk Highway (TH) 55 interchange to the I–94/I–35E interchange in Hennepin and Ramsey Counties in east-central Minnesota.

FOR FURTHER INFORMATION CONTACT: Anna Varney, Senior Transportation Engineer, Federal Highway Administration, 380 Jackson Street, Suite 500, Saint Paul, MN 55101, Telephone (651) 291–6117, or Nicole Peterson, Project Manager, Minnesota Department of Transportation (Metro District) MnDOT Rethinking I–94 Project Office 1821 University Ave #N—181 Saint Paul, MN 55104, Telephone (651) 234–7658.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (MnDOT) will prepare a Tier 1 EIS for proposed improvements in the I–94 corridor between the I–35W/TH 55 interchange and the I–94/I–35E interchange, approximately eight miles. The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including the No-Build Alternative.

The preliminary purpose of this project as identified by FHWA and MnDOT is to address infrastructure needs; highway safety issues; accommodate existing and projected traffic volumes; and improve person throughput. Opportunities to address the bicycle/pedestrian experience crossing I–94, physical infrastructure condition, and stormwater management will also be part of the Tier I EIS. There will be opportunities for public and agency involvement in further defining the Purpose and Need of the project.

The FHWA and MnDOT have decided to prepare a Tiered EIS to analyze the project on a broad scale and identify a preferred alternative for the I–94 mainline and will identify areas for access modifications/changes at existing interchanges and overpass locations. Footprinting will be used to identify potential impact areas around these locations. The Tier 1 EIS will evaluate the social, economic, and environmental impacts for a range of alternatives within the existing I–94 corridor. A program of projects will be identified for future Tier 2 environmental documents.

Subsequent Tier 2 environmental documents will be prepared with a greater degree of engineering detail for specific improvements in the corridor. The alternative analysis in the Tier 2 documents will include, but is not limited to, the alternatives that have been developed as part of Tier 1 EIS.

Because the project is combining Minnesota Environmental Policy Act (MEPA) and Federal National Environmental Policy Act (NEPA) processes, the first document to be produced as part of the efforts will include a Scoping Document/Draft Scoping Decision Document. The Scoping Document/Draft Scoping Decision Document (SD/DSDD) is anticipated to be published in early 2021. A press release will be published to inform the public of the document's availability. Copies of the SD/DSDD will be published on a MnDOT website as well as distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the Tier 1 EIS. A 30-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public hearing will be held during the comment period. A public notice will give the date, time, and place of the meeting. The Scoping Decision Document will be published after the public comment period has closed on the SD/DSDD.

A Tier 1 Draft Environmental Impact Statement (DEIS) will be prepared based on the outcome of and closely following the scoping process. The Tier 1 DEIS will be available for agency and public review and comment. A public hearing will be held following completion of the Tier 1 DEIS. A public notice will give the date, time, and location of the public hearing. Coordination has been initiated and will continue with appropriate Federal, State, regional, and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. The Tier 1 DEIS will be prepared in accordance with 23 U.S.C. 139, 23 CFR 771 and 40 CFR parts 1500–1508. Completion of the DEIS is anticipated in 2022, and the combined final EIS and Record of Decision (ROD) in 2023.

Public involvement is a critical component of the National Environmental Policy Act (NEPA). All environmental documents will be made available for review by Federal and State resource agencies and the public. Invitations have been issued to Federal, State and local agencies to engage in the development of the Tier 1 EIS as either Cooperating or Participating Agencies. Cooperating Agencies are anticipated to be the following: US Environmental Protection Agency, US Federal Railroad Administration, and US Federal Transit Administration. Participating Agencies are anticipated to be the following: Cities of Minneapolis and Saint Paul, Hennepin and Ramsey Counties, Metropolitan Council and Metro Transit, Minnesota Department of Natural Resources, Minnesota Indian Affairs Council, Minnesota Pollution Control Agency, Minnesota Department of Health, Minnesota Department of Commerce, Board of Water and Soil Resources, Office of the State Archaeologist, State Historic Preservation Office, Capitol Region Watershed District, Mississippi Watershed Management Organization, Capitol Area Architectural and Planning Board, and Minneapolis Park and Recreation Board.

Specific efforts to encourage involvement and solicit comments from minority and low-income populations in the project study area is also a critical component of the Tier 1 EIS. A public website will be maintained for the EIS to provide information about the project. To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and Tier 1 EIS process should be directed to the FHWA at the address provided above.

Projects receiving Federal funds must comply with Title VI of the Civil Rights Act, and Executive Order 12898 ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this project. It is also Federal policy to identify and address any disproportionately high and adverse effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law.

This project is utilizing a National Environmental Policy Act (NEPA)/404 merger process to seek concurrence by multiple Federal agencies on the project's purpose and need, range of alternatives to be considered, range of alternatives to be evaluated in detail, and selection of a preferred alternative. In addition to the Federal Highway Administration as the lead Federal agency for this NEPA effort, the NEPA/404 merger process includes the following Federal agencies: United States Army Corps of Engineers, the United States Environmental Protection Agency.

(Catalog of Federal domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program).

Issued on: February 13, 2020.

Wendall L. Meyer,

Division Administrator, Federal Highway Administration.

[FR Doc. 2020–03407 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the State Route 9 (SR–9) Saratoga Creek Bridge Project at Post Mile 4.85, west of the City of Saratoga, Santa Clara County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 20, 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 Caltrans: Brian Gassner, Environmental Branch Chief, Office of Environmental Analysis, California Department of Transportation—District 4, 111 Grand Avenue, Oakland, California. Office hours: Monday through Friday 8:00am–4:30pm, Pacific Standard time, telephone (510) 286–6025 or email *brian.gassner@dot.ca.gov.* For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency

actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Seismic and structural improvements to Saratoga Creek Bridge, located at Post Mile (PM) 4.85 along SR–9, west of the City of Saratoga, in Santa Clara County. The project proposes to construct a new bridge while maintaining much of the original outer structure. The purpose of the project is to maintain safe and stable connectivity on SR–9 between the City of Saratoga in Santa Clara County and the community of Felton in Santa Cruz County. The actions taken by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) for the project, approved on January 28, 2020, and in other documents in the Caltrans' project records. The FEA, FONSI and other project records are available by contacting Caltrans at the address provided above. The Caltrans Final EIR/EA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-4/d4-projects/d4-santa-clara-sr9-saratoga-creek-bridge,* or viewed at the Saratoga Public Library or Saratoga City Hall. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act 16 U.S.C. 703–712].
4. *Wetlands and Water Resources:* Clean Water Act (Section 404 and Section 401) [33 U.S.C. 1251–1377]; Safe Drinking water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Historic Sites Act of 1935 [16 U.S.C. 461–467].
6. *Section 4(f):* Department of Transportation Act of 1966 [49 U.S.C. 303]; Federal-Aid Highway Act of 1968 [23 U.S.C. 138].
7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)].
8. *Health:* Resource Conservation and Recovery Act [42 U.S.C. 6901 *et seq.*]; Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 *et seq.*]; Atomic Energy Act [42 U.S.C. 2011–2259]; Toxic Substance Control Act [15 U.S.C. 2601–2629]; Community Environmental Response Facilitation Act; Occupational Safety and Health Act [29 U.S.C. 651]; Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136].
9. *Executive Orders:* E.O. 12088 Federal Compliance with Pollution Control Standards; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13112 Invasive Species; E.O. 11988 Floodplain Management

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Tashia J. Clemons,

Director, Planning and Environment, Federal Highway Administration, California Division.

[FR Doc. 2020–03420 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0385; FMCSA–2014–0387; FMCSA–2017–0058]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 34 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on December 26, 2019. The exemptions expire on December 26, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0385* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2017-0058* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On December 30, 2019, FMCSA published a notice announcing its decision to renew exemptions for 34 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 72117). The public comment period ended on January 29, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000

Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding. The commenter stated that the exemption is a good idea but that it is a little bit too much power for the Federal government to intervene. They went on to state that because the driver's license is issued under State regulation that the Federal government should not intervene with these drivers. During the application process, it was determined that these applicants are interstate CMV drivers subject to the FMCSRs. Therefore, it is appropriate for FMCSA to determine their eligibility to receive a Federal hearing exemption.

IV. Conclusion

Based upon its evaluation of the 34 renewal exemption applications and comment received, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of December 26, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (84 FR 72117):

Mario Alvarado (CA)
Kasseth Andrews (MA)
Randy Bailey (NJ)
Ivan Batista (NJ)
Joseph Bence (OH)
Daryl A. Broker (MN)
Justin Brooks (WA)
Christa Butner (NC)
William Darnell (AZ)
Travis K. Davisson (IA)
Sean M. Dearsman (OH)
Mitchell R. Estill (MO)
Lucius Fowler (IL)
Buddy Gann (IN)
Teela Gilmore (GA)
John Grebenc (MN)
Clint Homom (IL)
Paul Hoover (PA)
Amy Ivins (NE)
Thomas Jensen (IA)
Charles J. Jernigan, Jr. (SC)
James M. Johnson (MN)
Wayne A. Kramas (WI)
Daniel Krytosek (MN)
Nicholas Kulasa (IL)
Aaron S. Leader (AZ)
John R. Martikainen (CT)
James E. Redmond (IL)
Dustin Sargent (TX)
Michael Singleton (TX)
Marshall Smith (TX)
Michael Swetnam (TX)
Courtney D. Turner (VA)
Edward J. Zozaya (AZ)

The drivers were included in docket number FMCSA–2014–0385, FMCSA–2014–0387, or FMCSA–2017–0058. Christa Butner was previously published under the name Christa Coppley. Their exemptions are applicable as of December 26, 2019, and will expire on December 26, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: February 11, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–03351 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0107; FMCSA–2013–0109; FMCSA–2017–0253]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for four individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before March 23, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0107, Docket No. FMCSA–2013–0109, or Docket No. FMCSA–2017–0253 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2013-0107* or *http://www.regulations.gov/docket?D=FMCSA-2013-0109* or *http://www.regulations.gov/docket?D=FMCSA-2017-0253.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0107; FMCSA–2013–0109; or FMCSA–2017–0253), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing

address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2013-0107* or *http://www.regulations.gov/docket?D=FMCSA-2013-0109* or *http://www.regulations.gov/docket?D=FMCSA-2017-0253.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2013-0107* or *http://www.regulations.gov/docket?D=FMCSA-2013-0109* or *http://www.regulations.gov/docket?D=FMCSA-2017-0253* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria[1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The four individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the four applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The four drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of February and are discussed below.

As of February 14, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: John Johnson (WI) and George Webb (MA).

The drivers were included in docket numbers FMCSA–2013–0107 and FMCSA–2013–0109. Their exemptions are applicable as of February 14, 2020, and will expire on February 14, 2022.

As of February 19, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: Anthony Kornuszko (PA) and Jeffrey Mills (NC).

The drivers were included in docket number FMCSA–2017–0253. Their exemptions are applicable as of February 19, 2020, and will expire on February 19, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the four exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: February 11, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–03345 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2019–0206]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eight individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on February 3, 2020. The exemptions expire on February 3, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0206* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On December 10, 2019, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84 FR 69817). The public comment period ended on January 21, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the December 19, 2019, **Federal Register** notice (84 FR 69817) and will not be repeated in this notice.

These eight applicants have been seizure-free over a range of eight years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Daniel Bretz Jr. (PA)
Frank Corino (NJ)
Darlene Michael (MO)
Sonja Morgan (NC)
Pagagrong Newsome (CA)
Matthew Scarlata (NY)
Jeffrey Totten (KS)
Michael Vitch (MS)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: February 11, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–03348 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0111]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 17 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on January 21, 2020. The exemptions expire on January 21, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0111* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On December 19, 2019, FMCSA published a notice announcing receipt of applications from 17 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 69820). The public comment period ended on January 21, 2020, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000

Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding. An anonymous commenter stated that they want the drivers of CMVs to be as safe as possible and that in their opinion, hearing is essential to the safe operation of an 80,000 lb. CMV. The commenter pointed out the need to hear sirens and noise associated with the vehicle to maintain an appropriate level of safety. FMCSA acknowledges the concerns of the commenter and considers each application for a hearing exemption on an individual basis and exempts only those drivers who do not pose a risk to public safety when granting the exemption achieves a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption. The Agency has considered the available current medical information and literature and is not aware of any data to support the contention that hard of hearing and deaf individuals are at an increased risk for a crash. FMCSA also reviewed a 2014 doctoral dissertation by Birgitta Thorslund from the Department of Behavioural Sciences and Learning at Linköping University, Sweden, entitled, ''Effects of Hearing Loss on Traffic Safety and Mobility.'' Dr. Thorslund concluded that ''drivers with (hearing loss) cannot be considered an increased traffic safety risk . . . .'' In fact, Dr. Thorslund noted, drivers with hearing loss are more likely to be more cautious and adopt coping strategies such as reducing speed, ''using a more comprehensive visual search behavior,'' and avoiding distracting activities. In addition, the commenter did not provide any evidence to support her opinion that FMCSA should no longer grant hearing exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 17 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Bart Beasom (PA)
David Billingsley (IN)
Stephen Daniels (KS)
Paul Ditimi (CT)
Herman Fleck (PA)
John Freeman (MA)
Nicholas Green (FL)
Richard Hall (KY)
John Malm (IL)
Mark Merrow (MI)
Joyann Nipper (IA)
Jeffry Patterson (OH)
William Ranson (AR)
Michael Steffen (IN)
Justin Stephen (SC)
Michelle Trott (TN)
Sherrie Willey (WA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: February 11, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–03350 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0019]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on January 30, 2020. The exemptions expire on January 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0019* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On December 30, 2019, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 72114). The public comment period ended on January 29, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the December 30, 2019, **Federal Register** notice (84 FR 72114) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 11 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, corneal scar, macular scar, optic nerve hypoplasia, optic neuropathy, prosthesis, and retinal vein occlusion. In most cases, their eye conditions did not develop recently. Six of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that developed their vision conditions as adults have had them for a range of 4 to 35 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 6 to 64 years. In the past 3 years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Brian K. Boyd (TX)
Gary E. Collins (GA)
Anthony A. DeCarlo (NC)
Darrel G. Jenkins (KY)
Travis London (NC)
Vincent M. Najera (CA)
Jameson A. Otto (CA)
Gerardo A. Padron (FL)
Charles J. Rowsey (NC)
Kenneth C. Stump (FL)
Jose M. Vasquez (NY)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: February 10, 2020.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–03349 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0037]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OLD SCHOOL (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 23, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0037 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0037 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0037, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OLD SCHOOL is:

—*Intended Commercial Use of Vessel:* ''It is my intention to operate bird and wildlife watching tours in the rivers bordering Lake Maurepas, Louisiana.''
—*Geographic Region Including Base of Operations:* ''Louisiana, Florida, Alabama, Mississippi, and Texas'' (Base of Operations: Springfield, LA)
—*Vessel Length And Type:* 38′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0037 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0037 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 13, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2020–03264 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0035]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel THIRSTY (Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 23, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0035 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0035 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0035, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THIRSTY is:

—*Intended Commercial Use of Vessel:* ''limited charter''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Miami Beach, FL)
—*Vessel Length and Type:* 55′ motor vessel

The complete application is available for review identified in the DOT docket as MARAD–2020–0035 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0035 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

Dated: February 13, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–03267 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0021]

Request for Comments of a Previously Approved Information Collection: Maritime Administration Jones Act Vessel Availability Determinations

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 15, 2019.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, (202) 366–0760, Office of Cargo and Commercial Sealift, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Maritime Administration (MarAd) Jones Act Vessel Availability Determinations.

OMB Control Number: 2133–0545.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: Pursuant to 46 U.S.C. 501(b), the Maritime Administrator is required to make determinations of the availability of qualified United States flag capacity to carry coastwise cargo in connection with all requests for waivers of the Jones Act (46 U.S.C. 55102). This information collection supports that mission.

Respondents: Respondents include but are not limited to coastwise qualified vessel owners, operators, charterers, brokers and representatives.

Affected Public: Business or other for profit.

Total Estimated Number of Responses: 85.

Frequency of Collection: Annually.

Estimated Time per Respondent: .5 hours.

Total Estimated Number of Annual Burden Hours: 127.5.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93)

* * *

Dated: February 14, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–03344 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0039]

Request for Comments of a Previously Approved Information Collection: Generic Clearance of Customer Satisfaction Surveys

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 22, 2019.

DATES: Comments must be submitted on or before March 23, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Jackson, 202–366–0615, Office of Management and Administrative Services, Maritime Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance of Customer Satisfaction Surveys.

OMB Control Number: 2133–0546.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders

will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. The types of surveys to be included in this clearance include various types of customer surveys, listening sessions and focus groups. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Respondents: Individuals and Households, Busineses and Organizations, State, Local or Tribal Government.

Affected Public: Individuals and Households, Busineses and Organizations, State, Local or Tribal Government.

Total Estimated Number of Respondents: 5,900.

Total Number of Responses: 5,900.

Frequency of Collection: Once per Request.

Estimated Time per Respondent: 10–120 minutes.

Total Estimated Number of Annual Burden Hours: 1,758.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93)

* * * * *

Dated: February 13, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–03265 Filed 2–19–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act a meeting of the Geriatrics and Gerontology Advisory Committee will be held on April 1–2, 2020, at the Department of Veterans Affairs in Washington, DC. On April 1st, the session will be held at 810 Vermont Avenue NW, in room 630 and begin at 1:00 p.m. and end at 5:00 p.m. A VANTS line has been established: 1–800–767–1750, 17413#. On April 2nd, the session will be held at 810 Vermont Avenue NW, in room 730 and begin at 8:00 a.m. and end at 4:00 p.m. A VANTS line has been established: 1–800–767–1750, 34067#. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, updates on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

Although no time will be allocated at this meeting for receiving oral presentations from the public, interested parties should provide written comments for review by the Committee to Marianne Shaughnessy, CRNP, Ph.D., Designated Federal Officer, Geriatrics and Extended Care (10NC4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, or via email at *Marianne.Shaughnessy@va.gov.* Individuals who wish to attend the meeting should contact Ms. Shaughnessy at (202) 461–7217.

Dated: February 13, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–03273 Filed 2–19–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans Rural Health Advisory Committee will meet at Raymond G. Murphy VA Medical Center, 1501 San Pedro Drive SE, Albuquerque, New Mexico 87108, on April 15–16, 2020. Both meeting sessions will begin at 8:15 a.m. (EST) each day and adjourn at 5:45 p.m. (EST). The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of VA on rural health care issues affecting Veterans. The Committee examines programs and policies that impact the delivery of VA rural health care to Veterans and discusses ways to improve and enhance VA access to rural health care services for Veterans. The agenda will include updates from Department leadership, the Executive Director of the Office of the VA Office of Rural Health, and the Committee Chairman, as well as presentations on general rural health care access.

Public comments will be received at 5:00 p.m. on April 16, 2020. Interested parties should contact Ms. Judy Bowie, by email at *VRHAC@va.gov,* or by mail at 810 Vermont Avenue NW, (10P1R), Washington, DC 20420. Individuals wishing to speak are invited to submit a 1–2 page summary of their comment for inclusion in the official meeting record. Any member of the public seeking additional information should contact Ms. Bowie at the phone number or email address noted above.

Dated: February 13, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–03274 Filed 2–19–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Thursday,

No. 34 February 20, 2020

Part II

Environmental Protection Agency

40 CFR Parts 22, 124, and 257

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 124, and 257

[EPA–HQ–OLEM–2019–0361; FRL–10003–82–OLEM]

RIN 2050–AH07

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In December 2016, Congress passed, and the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act, amending section 4005 of the Resource Conservation and Recovery Act (RCRA). The WIIN Act, among other things, requires the Environmental Protection Agency (EPA or the Agency) to implement a federal coal combustion residuals (CCR) permit program in Indian country and, subject to the availability of appropriations specifically provided to carry out a program, to implement a federal CCR permit program in nonparticipating states. The Fiscal Year 2018 and 2019 Omnibus Appropriations Acts provided appropriations to EPA to develop and implement a federal permit program for the regulation of CCR in nonparticipating states. In this action, the Agency is proposing to establish a federal CCR permit program in accordance with the requirements of the WIIN Act.

DATES: *Comments.* Comments must be received on or before April 20, 2020. *Public Hearing:* The EPA will hold a virtual public hearing on April 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2019–0361. The EPA has previously established a docket for the April 17, 2015, CCR final rule under Docket ID No. EPA–HQ–RCRA–2009–0640. All documents in the docket are listed in the *https://www.regulations.gov* index. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0361, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

A virtual hearing will be held. The hearing will convene on April 15, 2020, at 9:00 a.m. (Eastern time zone) and will conclude at 6:00 p.m. (Eastern time zone). Please note that any details and updates made to any aspect of the hearing will be posted online at EPA's CCR website (*https://www.epa.gov/coalash*). While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. See Section I.B. below for more details regarding the virtual hearing.

FOR FURTHER INFORMATION CONTACT: If you have questions on the proposed requirements of the federal CCR permit program, contact Stacey Yonce, Office of Resource Conservation and Recovery, Environmental Protection Agency, 5304P, Washington, DC 20460; telephone number: (703) 308–8476; email address: *yonce.stacey@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

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I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0361, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

B. Participation in Public Hearing

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available at EPA's CCR website (*https://www.epa.gov/coalash*) or contact Michelle Long, Office of Resource Conservation and Recovery, Environmental Protection Agency, 5304P, Washington, DC 20460; telephone number: (703) 347–8953; email address: *long.michelle@epa.gov* to register to speak at the hearing. The last day to pre-register to speak at the hearing will be April 13, 2020. On April 14, 2020, the EPA will post a general agenda for the hearing at EPA's CCR website (*https://www.epa.gov/coalash*).

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than 3 minutes to accommodate all those wishing to provide testimony and have pre-registered. All comments and materials received at the public hearing will be placed in the docket for this rule, as well as a transcript from this hearing.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing is posted online EPA's CCR website (*https://www.epa.gov/coalash*). While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the service of a translator please pre-register for the hearing and describe your needs by April 1, 2020. If you require special accommodations such as audio description or closed captioning, please pre-register for the hearing and describe your needs by April 8, 2020. We may not be able to arrange accommodations without advanced notice. Commenters should notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section and indicate on the registration form of any such needs when they pre-register to speak.

II. General Information

A. Does this action apply to me?

This rule applies to all facilities in Indian country [1] and in nonparticipating states subject to requirements of 40 CFR part 257 subpart D (''subpart D''). This generally includes electric utilities and independent power producers generating coal combustion residuals (CCR) that fall within the North American Industry Classification System (NAICS) code 221112. The term ''nonparticipating state'' is defined in the Water Infrastructure Improvements for the Nation (WIIN) Act and excludes states that have approved CCR programs where the approval has not been withdrawn, or who have submitted evidence of a state CCR program to EPA and approval is pending. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.123 of this proposal, as well as § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is proposing to establish a federal CCR permit program in Indian country and in nonparticipating states. EPA is proposing to establish requirements and procedures to issue federal permits for disposal and other solid waste management of CCR in 40 CFR part 257 subpart E. The proposed permit requirements in subpart E include definitions, compliance deadlines, application requirements, content and duration, and modification requirements and procedures.

EPA is also proposing to rely on the general administrative procedures applicable to several EPA permit programs. These procedures, which are found in 40 CFR parts 22 and 124, apply to all other RCRA permits, as well as to certain EPA permits issued under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA). EPA is proposing to rely on these general procedures without substantive modification and is proposing only to modify provisions in parts 22 and 124 to the extent necessary to ensure they apply to the federal CCR permit program.

All the substantive and technical requirements currently applicable to CCR units would remain in 40 CFR part 257 subpart D. EPA is not proposing to amend or otherwise reopen any of the provisions in 40 CFR part 257 subpart D through this rulemaking. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to the technical requirements, and such comments will not be considered as part of the administrative record for this rulemaking. However, this is not intended to prevent commenters from identifying any inconsistencies between the existing regulations and the proposals in this notice.

[1] Indian Country is defined at 18 U.S.C. 1151: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

C. What is the Agency's authority for taking this action?

These regulations are established under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended, RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the WIIN Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

D. What are the incremental costs and benefits of this action?

This action is expected to result in annualized net costs amounting to between $0.09 million and $0.85 million per year when discounting at 7%. Further information on the economic effects of this action can be found in Unit VI of this preamble.

III. Background

A. CCR Regulatory Overview

In 2015, EPA published minimum criteria for CCR disposal and management as solid waste under subtitle D of RCRA titled, ''Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,'' (80 FR 21302, April 17, 2015). The rule established national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments (''CCR units'') and all lateral expansions of CCR units, as codified subpart D.[2] The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping, notification and internet posting requirements. Subpart D also requires that CCR units failing to meet certain criteria in the rule stop receiving waste and retrofit or close, in some circumstances.

Subtitle D of RCRA generally establishes a framework for federal, state, and local government cooperation in controlling the management of non-hazardous solid waste. Within this framework, the federal role has typically been to establish the overall regulatory direction, by providing minimum nationwide standards that will protect human health and the environment, and to provide technical assistance to states for planning and developing their own programs. Implementation or enforcement of federal criteria established under RCRA subtitle D, however, remained primarily a state and local function outside of Indian country. In Indian country, tribes can develop a subtitle D program under their own authorities.

The requirements established in subpart D were designed to be self-implementing, because states were not required to develop their own CCR programs and because EPA, at that time, had no role in direct implementation or enforcement authority. In subpart D, EPA developed regulatory requirements, with which facilities could comply without the need to interact with a regulatory authority. The protectiveness of the technical requirements was strengthened through additional requirements, such as certifications of compliance by a qualified professional engineer, state and public notifications, and required posting of relevant compliance information on a publicly accessible website maintained by the facility. Since subpart D was finalized, litigation and subsequent rulemakings have resulted in changes to its requirements. Some of those changes have been finalized[3] and others are still pending.

B. Water Infrastructure Improvements for the Nation Act

In December 2016, the WIIN Act was passed by Congress and signed by the President. The WIIN Act amended RCRA section 4005, creating a new subsection (d). It provided authority for EPA to review and approve programs submitted by states to permit CCR units, which would then operate in lieu of the federal requirements. 42 U.S.C. 6945(d)(1)(A). The WIIN Act requires EPA to implement a federal permit program in Indian country and nonparticipating states, that will require each CCR unit to achieve compliance with applicable criteria established in subpart D, or in successor regulations promulgated pursuant to sections 1008(a)(3) and 4004(a). 42 U.S.C. 6945(d)(2)(B), (5). In the case of nonparticipating states, this requirement is subject to the availability of appropriations specifically provided to carry out this requirement. 42 U.S.C. 6945(d)(2)(B). In fiscal years 2018 and 2019, Congress provided appropriations to EPA for the purpose of developing and implementing a federal permit program for the regulation of CCR under section 2301 of the WIIN Act. Public Law 115–141 and 116–6.

The WIIN Act defines ''nonparticipating state'' as a state (1) without an approved CCR program, (2) which has not submitted evidence of a CCR program for approval, (3) which has provided notice of intent to relinquish approval of a CCR program, or (4) for which EPA has withdrawn previously granted approval of a CCR program. 42 U.S.C. 6945(d)(2)(A). The WIIN Act does not provide detailed requirements for a federal CCR permitting program and delegated significant discretion to EPA to craft a federal permitting approach appropriate to implement subpart D. The WIIN Act expressly provides that facilities are to continue to comply with applicable provisions of subpart D until a permit (issued either by an approved state or by EPA) is in effect. 42 U.S.C. 6945(d)(3), (6).

The legislation also authorized EPA to use information gathering and enforcement authorities in RCRA Sections 3007 and 3008 to enforce subpart D or permit provisions, in nonparticipating and in states with approved CCR programs, subject to certain conditions. 42 U.S.C. 6945(d)(4).

States may submit a program to EPA for approval and, once the state program is approved, permits or other prior approvals[4] issued pursuant to the approved state permit program operate in lieu of the federal requirements. 42 U.S.C. 6945(d)(1)(A). To be approved, a state program must require each CCR unit to achieve compliance with subpart D (or successor regulations) or alternative State criteria that EPA determines are ''at least as protective as'' subpart D (or successor regulations). State permitting programs may be approved in whole or in part. 42 U.S.C. 6945(d)(1)(B).

C. Approach To Developing This Proposal

The WIIN Act requires the Administrator to ''implement a permit program,'' to require compliance with criteria established by regulation under RCRA sections 1008(a)(3) and 4004(a), but otherwise provides few requirements on the content of the permit program and no direction on the specific procedures to be used to implement the program. This is different than, for example, section 3005 of RCRA and sections 402 and 404 of the CWA, each of which provide greater specificity.

The WIIN Act authorized the use of subtitle C enforcement authorities in sections 3007 and 3008 of RCRA to

[2] Unless otherwise specified, all references to parts 2, 22, 71, 122, 124, 144, and 257 in this preamble are to Title 40 of the Code of Federal Regulations (CFR).

[3] Partial vacatur ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on June 14, 2016, and August 21, 2018, known as the USWAG decision.

[4] See 42 U.S.C. 6945(d)(1)(A), ''Each State may submit to the Administrator, in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law . . .''

enforce the established criteria as well as federal CCR permits. However, Congress did not expressly reference the permitting provisions in subtitle C, strongly suggesting that Congress did not preclude EPA from considering regulatory approaches of other permit programs as well.

In the absence of more explicit Congressional direction, EPA has chosen to rely on its collective experience implementing the existing regulations under the various permit programs across the Agency to develop this proposal. As discussed below, EPA has incorporated elements from permit programs established under the CWA, RCRA, SDWA, or CAA, where the elements seemed well-suited to implement the requirements in subpart D or to particular circumstances associated with CCR units. Finally, several elements are common across EPA permit programs; EPA considers that these common elements also fall squarely within the parameters of what Congress considered to be ''a permit program.''

D. Other EPA Permit Programs

The Agency has experience implementing and overseeing federal environmental permitting programs.[5] EPA has modeled many of these proposals on provisions in environmental permit programs developed under other statutory authorities. In developing this proposal, EPA considered experience gained in the RCRA Subtitle C hazardous waste permitting program, CAA Title V permitting program, SDWA Underground Injection Control (UIC) permitting for Class VI wells, and CWA National Pollutant Discharge Elimination System (NPDES) permitting. EPA identified a variety of approaches, considering best practices and lessons learned, that have been incorporated into this proposed federal CCR permitting program, which is streamlined, efficient, and effective at requiring each CCR unit to achieve compliance with the requirements of subpart D.

1. RCRA Hazardous Waste Permitting

EPA relied on provisions in the hazardous waste permitting program, codified at part 270, in a number of different ways in developing this proposal. First, in select instances in which the part 270 requirements were equally relevant or applicable to CCR facilities, EPA is proposing to adopt the provision nearly verbatim. This includes the proposed provisions at § 257.122, which were taken directly from § 270.3. These provisions list federal laws, such as the Endangered Species Act, that may apply to any EPA-issued permit under RCRA. Similarly, many of the standard permit terms and conditions proposed in § 257.140 are found in § 270.30.

More commonly, EPA modeled its proposals on aspects or particular wording of part 270 that seemed well-suited to the current circumstance, with modifications to address differences in statutory authority or in the nature of the CCR units or facilities. Modifications were generally considered appropriate where the part 270 regulations reflect statutory provisions applicable exclusively to permitted hazardous waste facilities; the most significant of these for purposes of part 257 are ''facility-wide'' corrective action under sections 3004(u) and (v), the land disposal restrictions (LDRs) in sections 3004(d), (m) and 3005(j), and the 10-year permit term in section 3005(c)(3). Because there are no analogous requirements in RCRA section 4005(d) or in part 257, EPA is not proposing to include any provisions in part 270 designed to implement those requirements. For example, § 257.125 largely mirrors § 270.4, but omits the exceptions in § 270.4(a)(i) through (iii) that reflect the LDR requirements, the provision in § 3006(c)(4), and particular ''interim status'' requirements. Similarly, EPA relied heavily on § 270.1 in drafting the proposals in §§ 257.120 and 257.122 that would establish the basic parameters of the CCR permit program.

Modifications were also considered appropriate to reflect the more homogenous nature of CCR facilities. In comparison to many hazardous waste management facilities, CCR facilities handle fewer types of waste with a limited range of constituents, and typically involve a more limited range of waste management activities. One example of this is the permit modification proposals. Reflecting the more limited range of activities, EPA is proposing to establish two categories of permit modifications along with two sets of streamlined procedures that permittees are to use to request modifications, rather than the three classes of permit modifications under part 270. In essence, EPA modeled its proposals for major and minor modifications largely on class I and class III procedures under § 270.42. However, many of the elements of § 270.42 were retained: For example, EPA is proposing that CCR permittees would have a duty to report all relevant changes in the physical facility, and all other changes that may result in noncompliance. EPA is also proposing to establish a non-exclusive list of specific modifications as major or minor.

In yet other cases, EPA simply modeled the general approach in this proposed rule after an approach in part 270. For example, EPA is proposing to use a permit by rule approach for new CCR landfills (including lateral expansions of a CCR landfill) in § 257.128; this is modeled after the permit by rule provisions found in § 270.60. Although all of the requirements differ, the permit by rule is employed in both cases as an approach to meet the requirement to have a permit for a regulated unit or facility that does not require any site-specific operational flexibility and can comply with underlying requirements without site-specific tailoring. Similarly, in § 257.124, EPA is proposing tiered deadlines for the submittal of permit applications by classes of facilities, which is one of the general elements in the comparable provisions in § 270.10(e).

All told, EPA relied on part 270 to some extent in developing the following sections in this proposal: §§ 257.120, 257.122–257.125, 257.128, 257.133, 257.140, 257.141, and 257.150–257.153.

2. CAA Title V Permitting

In the development of this rulemaking, EPA also examined the federal CAA Title V (40 CFR part 71) permitting provisions to identify permitting approaches that may be appropriate for federal CCR permits. Although statutory authorities for enforcement are different in RCRA and the CAA, fundamental enforcement activities, such as information gathering and gaining access for facility inspections, are similar in all environmental programs. Some standard permit conditions EPA is proposing in § 257.140 are reflected in standard conditions required in § 71.6.

EPA also considered the permit modification procedures found in Title

[5] The hazardous waste permitting regulations were initially published in 1980 in the Consolidated Permit Regulations, (45 FR 33290, May 19, 1980) along with regulations for SDWA Underground Injection Control, CWA National Pollutant Discharge Elimination System (NPDES), CWA Section 404 Dredge or Fill Programs, and CAA Prevention of Significant Deterioration permits. On April 1, 1983, EPA published the Environmental Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs, and CAA Prevention of Significant Deterioration in the **Federal Register** (48 FR 14146, April 1, 1983). These regulations deconsolidated the Consolidated Permit Regulations but did not make any substantive changes to any of the affected sections. The relevant sections to this proposed rule are the creation of parts 124 and 270.

V. The part 71 regulations establish three categories of permit modifications: Administrative permit amendments, minor modifications, and major modifications. Administrative permit amendments in § 71.7(d) are those needed to accommodate changes that would otherwise violate terms and conditions of the permit. These include typographical errors, change in information of any person identified in the permit, an increase in monitoring or reporting frequency, change in ownership, and a few other administrative changes. Minor permit modifications in § 71.7(e)(1) do not violate any applicable requirement; are not significant changes to monitoring, reporting, or recordkeeping requirements in the permit; do not require a case-by-case determination for the permit, and do not establish or change a permit term or condition for which there is no corresponding underlying applicable requirement. To obtain a minor permit modification, the permittee must submit an application for a permit modification, which describes the change and any applicable requirements that may change, as well as submit forms to notify affected states and certification from a responsible official. Minor modifications do not require public participation under the part 71 regulations. In turn, the permitting authority can either issue the permit modification as proposed, deny the permit modification application, determine the requested modification does not meet minor permit modification criteria and should be reviewed, or revise the draft permit modification.

All changes that are not minor modifications qualify as major modifications under the part 71 regulations. Major modifications include changes to monitoring permit terms or conditions and relaxation of reporting or recordkeeping permit terms and conditions. Major modifications follow procedures such as: Applications, public participation, review by affected states, and review by EPA. The Agency relied on some of these requirements and procedures to develop its proposals for modifications to RCRA CCR permits.

3. SDWA UIC Permitting

In the part 144 regulations for SDWA UIC permits, § 144.36, Class VI wells are issued permits for the operating life of the facility and the post-injection site care period. Similar to this provision, EPA is proposing to issue federal RCRA CCR permits without an expiration date and to require the permit be maintained through the active life of the CCR unit, during the post-closure care period, and until any required corrective action is completed. This approach ensures permit coverage for as long as the permittee is subject to the substantive, underlying requirements.

Other provisions in the part 144 regulations are also reflected in this proposal. Causes for modification in the UIC program include alterations, information, and new regulations, which are all proposed as causes to modify a RCRA CCR permit. If cause exists, in the UIC program, the Director must determine if the change meets the minor modification criteria in § 144.41, or if it is outside the scope of those criteria and is considered major. Another example of similarity between the UIC permit program and this proposal is that minor modifications do not require a draft permit or public review, but major modifications must follow procedures in part 124.

4. CWA NPDES Permitting

Additionally, EPA reviewed the part 122 regulations for CWA NPDES permits, particularly for information and processes for issuing general permits. In the NPDES program, individual or general permits may be issued. An individual permit is written to reflect site-specific conditions of a single discharger based on information submitted by that discharger in a permit application and is unique to that discharger. An NPDES general permit is issued to a category of facilities with similar operations, but no one in particular. Multiple dischargers may obtain coverage under that general permit after it is issued, consistent with the permit eligibility and authorization provisions. This is similar to the approach proposed in § 257.127 for the federal CCR program to establish procedures to issue general permits.

The benefits of CCR general permits are expected to be similar to the benefits of NPDES general permits, resulting in clarity and efficiency. CCR general permit applicants would know their permit requirements before applying for coverage under that permit. Furthermore, obtaining coverage under a general permit is expected to be quicker than for an individual permit, with coverage under a general permit occurring within 45 days. General permits would allow the Agency to provide timely permit coverage for a potentially large number of similar CCR units subject to the same requirements of subpart D.

IV. What is EPA proposing?

EPA is proposing to create a new subpart E in part 257, which would establish the general requirements and many of the procedures that EPA would use to issue federal CCR permits. As discussed in more detail throughout this preamble, many of the proposals are similar to EPA's existing regulations in part 270, which establish the general requirements applicable to RCRA hazardous waste permits. EPA has also modeled some of its proposals on regulations in environmental permit programs developed under other statutory authorities, such as the CWA NPDES, SDWA UIC, and CAA Title V programs.

EPA is also proposing to rely on the general, administrative procedures applicable to EPA environmental permit programs found in parts 22 and 124 without substantive modification. These procedures apply to RCRA hazardous waste permits, as well as to EPA permits issued under other statutory authorities. EPA is proposing only to modify those provisions in parts 22 and 124 to the extent necessary to ensure they apply to the federal CCR permit program.

With the exception identified in Unit IV.C.3.b of this preamble, EPA is not proposing to amend or otherwise reopen any of the requirements applicable to CCR units in subpart D. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to subpart D requirements, and such comments will not be considered as part of the administrative record for this rulemaking. However, this is not intended to prevent commenters from identifying any inconsistencies between the existing regulations and the proposals in this notice.

A. Part 22 Amendments

40 CFR part 22 contains the Consolidated Rules of Practice. These are procedural rules for the administrative assessment of civil penalties, issuance of compliance or corrective action orders, and the revocation, termination or suspension of permits, under most environmental statutes. In this action, EPA is proposing to amend only the provision in part 22 related to termination of a permit.

In § 124.5(d)(2), there is a reference to ''. . . Such termination of NPDES and RCRA permits shall be subject to the procedures of part 22 of this chapter.'' EPA is proposing a Termination of a Permit provision in part 257 and is proposing to amend § 22.44 to add a reference to § 257.153 into the regulatory text.

B. Proposal To Use the Part 124 Procedures for Decision-Making for Individual CCR Permits

Part 124 establishes the procedural requirements for issuing, modifying, revoking and reissuing, denying, and terminating EPA-issued permits under several federal programs, including under RCRA for hazardous waste management facilities. Part 124 also establishes procedures applicable to certain state-administered permit programs. This Unit of the preamble first describes generally how part 124 works and then presents the Agency's proposal to follow the decision-making procedures in part 124, subpart A, when issuing individual federal CCR permits under part 257, subpart E. This overview is presented solely for the reader's convenience. EPA is proposing only to modify provisions in part 124 to the extent necessary to ensure they apply to the federal CCR permit program. EPA is not proposing to amend or otherwise reopen any of the substantive obligations in these regulations. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to these requirements, and such comments will not be considered as part of the administrative record for this rulemaking.

1. Overview of Part 124, Subpart A

Subpart A of part 124 (Subpart A) is codified in §§ 124.1 through 124.21 and contains general procedural requirements applicable to several EPA permit programs, including RCRA permits issued under the hazardous waste program. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearing on draft permits. Subpart A also includes requirements for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of a final permit decision.

Under the procedures of part 124, a facility must apply for a permit based on the requirements of a federal program (*e.g.,* part 270 for RCRA hazardous waste management facilities). EPA [6] reviews the application and notifies the permit applicant when the application is complete as required under § 124.3. EPA then decides whether to issue a notice of intent to deny the application or to prepare a draft permit as specified under § 124.6. Either of these decisions would be supported by a statement of basis required by § 124.7 or a fact sheet required by § 124.8 that becomes part of the official administrative record for the permit as specified under § 124.9.

Decisions to revoke and reissue, to terminate a permit, and some decisions to modify a permit would also follow the above procedures. See generally § 124.5. EPA may commence any of these actions on its own initiative or may act in response to a request submitted by any interested person that meet the requirements of § 124.5(a). Denials of such requests for modification, revocation and reissuance, or termination, unlike denials of applications, are not subject to public comment or public hearings. § 124.5(b). If EPA decides to deny the request, a notice briefly stating the reasons for the denial is sent to the requester. Such a notice is not accompanied by a statement of basis or a fact sheet. In addition, an administrative record is not assembled pursuant to § 124.9. Denials of requests for modification, revocation and reissuance, or termination cannot be formally appealed to the Administrator under the appeal procedures specified in under § 124.19; however, such an action can be informally appealed under the procedures specified in § 124.5(b).

All draft permits prepared under §§ 124.5 and 124.6 are subject to public notice pursuant to § 124.10, public comment under § 124.11, and, in suitable cases, public hearings pursuant to § 124.12. These processes allow any interested person to bring forward comments or questions concerning the draft permit or its supporting materials. After the close of the comment period, including any public hearing, EPA issues a final decision on the permit following the procedures under § 124.15. The final permit decision is accompanied by a response to all significant comments in accordance with § 124.17 which, together with additional supporting material, completes the final administrative record. See, § 124.18.

Whenever commenters on a draft permit ask that changes be made, the final permit will not become effective until 30 days after notice is served under § 124.15(a). This 30-day gap between the date of issuance and the effective date of a final permit allows for time to appeal a decision on a permit. If no such comments are received, the final permit is issued and effective the same day.

2. Proposal To Apply Procedural Requirements of Part 124 When Issuing CCR Permits

The Agency is proposing to apply the existing decision-making procedures in part 124 subpart A without modification, when issuing federal CCR permits. These procedures are common to several EPA permit programs, and EPA considers them to be generally applicable. By contrast, EPA is not proposing to adopt any of the requirements in subparts B, C, D, or G of part 124 as part of the federal CCR permitting program because these subparts contain procedures specific to individual federal programs, *i.e.,* RCRA hazardous waste management facilities, CAA prevention of significant deterioration (PSD) permits, and SDWA UIC permits.[7]

Some requirements in subpart A as currently written would apply to the federal CCR permit program without modification. For example, § 124.3(e) allows for site visits by the Agency when determined necessary during the processing of a permit application; this provision applies to all federal permitting programs covered by subpart A (*i.e.,* this provision is not limited to certain federal permitting programs). In this proposal, EPA intends for provisions that are not currently limited to another federal permitting program to apply to the federal RCRA CCR permitting program. Put another way, unless the provision is explicitly written to limit applicability only to other federal permitting programs or the provision is proposed to be exempt from applying to federal CCR permits, such part 124 requirements would apply to the federal RCRA CCR permitting program. For other requirements in subpart A, EPA is proposing to revise a provision to make clear whether the requirement would apply to the federal CCR permit program.

EPA is proposing: (1) New and revising several existing definitions to cover the CCR permit program; (2) amendments to particular requirements in subpart A to make clear whether the provision would apply to the federal CCR permitting program (*e.g.,* the addition of references or citations to specific provisions in the proposed CCR permit program regulations). Many of the proposed amendments to subpart A would simply make explicit whether a given requirement would be applicable to RCRA CCR permits. These proposed

[6] This background discussion assumes that the facility is obtaining an EPA-issued permit and therefore it uses the term ''Regional Administrator.'' Alternatively, in instances where the state has an approved program, the State Director would have the authority to issue the permit. As discussed elsewhere in this Unit, the agency is proposing to revise the current definition of ''Regional Administrator'' in subpart A for RCRA CCR permits.

[7] Subparts E and F of part 124 are currently reserved and contain no requirements.

amendments are discussed in this preamble and are presented in the proposed regulatory text. Furthermore, these proposed revisions do not change substantively the decision-making procedures of part 124, nor are they intended to. In proposing these minor revisions, EPA is not soliciting comments on and will not respond to comments on the existing regulatory provisions which underlie the revisions as they apply to other federal permitting programs.

a. Definitions

In addition to amending the introductory text of § 124.2(a), EPA is proposing to add three new definitions and revise five current definitions in this section. When used in §§ 124.1 through 124.21 as proposed, these new and revised definitions would allow for the proper interpretation and understanding of how the existing decision-making procedures of subpart A would apply to the federal RCRA CCR permitting program. The Agency is proposing to amend the introductory text of § 124.2(a) by adding a reference to § 257.121 in the first sentence. Section 257.121 is a new section containing proposed definitions under the regulations for the federal RCRA CCR permit program. Adding this new reference to § 257.121 will allow these key definitions to apply within subpart A without the need to recodify them in subpart A.

The Agency is proposing to add several new definitions to § 124.2(a) of subpart A.

RCRA CCR general permit. EPA is proposing this term to mean a RCRA CCR permit containing terms and conditions to ensure compliance with requirements of subpart D applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits in the CCR program would be issued in accordance with the proposed provision under § 257.127. This definition is needed to identify those provisions of subpart A applicable to general permits that may apply to CCR general permits.

RCRA CCR permit. This term would mean a permit issued pursuant to section 4005(d) of RCRA (42 U.S.C. 6945(d)). Section 4005(d) is the new section of RCRA established by the WIIN Act of 2016 that provides EPA with the authority to establish a federal CCR permit program. EPA is proposing to add this term to subpart A to identify those provisions that would only apply within the federal CCR permitting program. Put another way, the use of this term would help distinguish between types of RCRA permits. For example, this term would not apply to permits for RCRA hazardous waste management facilities because section 4005(d) does not apply to these facilities.

RCRA permit. The Agency is proposing that this term means a permit issued pursuant to any section of RCRA. This term would apply to CCR permits as well permits for hazardous waste management facilities. EPA is proposing to add this term (and *RCRA CCR permit*) to facilitate proper interpretation of the subpart A provisions.

In addition, EPA is proposing to revise several existing definitions in § 124.2(a) of subpart A. The Agency is proposing these revisions to incorporate the concept of CCR permits into the existing definitions. EPA is not proposing to revise or reopen the existing definitions as they apply to other federal permitting programs covered by subpart A. Accordingly, the Agency will not respond to any comments on these definitions as they apply to other federal permitting programs.

Director and *Regional Administrator.* EPA is proposing to revise the term *Regional Administrator* to indicate that this term includes the Administrator within the context of the CCR permitting program if the Administrator has not issued a delegation of authority to the Regional Administrator. Because of the proposed change to the definition of *Regional Administrator,* the Agency is proposing to revise the current definition of *Director* by adding the Administrator to the list of persons included in the definition. These proposed changes are necessary to properly interpret the requirements of subpart A that would include the CCR permitting program.

Facility. While this term is already defined in subpart A for other federal permitting programs, the Agency is proposing to revise the definition in subpart A to make clear that, for purposes of only the federal CCR permitting program, the definition of *facility* as codified in § 257.53 applies to CCR permits.

Permit. The Agency is proposing to revise this definition to simply incorporate the concept of RCRA CCR permits into the existing definition. This would be accomplished by adding a reference to part 257 to the first sentence and including citations to § 257.127 for RCRA CCR general permits and § 257.128 for CCR permit by rule to the second sentence. These proposed changes are necessary to properly interpret the requirements of subpart A that would include the CCR permitting program.

RCRA. The Agency is proposing to revise the current definition of *RCRA* in subpart A by adding a reference to Public Law 114–322 to the definition. This public law is the WIIN Act of 2016 that provides EPA with the authority to establish a federal CCR permit program. When used in subpart A as proposed, the term *RCRA* would apply to the CCR permitting program as well as other permitting programs under RCRA (*e.g.,* hazardous waste management facilities). EPA is proposing to revise this term to facilitate proper interpretation of the subpart A provisions that would include a permitting program for CCR units.

b. Other Revisions to Subpart A

EPA is proposing several minor revisions to certain provisions of subpart A to harmonize it with the proposed CCR permit program requirements. Many of the proposed revisions to subpart A simply make clear whether a given requirement would be applicable to federal CCR permits issued by EPA. One example of these minor proposed changes includes adding references or regulatory citations to the new proposed federal CCR permitting provisions. Another example would be those subpart A provisions that are affected by use of the new definitions. Any provision of subpart A that would be amended is presented in the regulatory text accompanying this action. In addition, the Agency has placed a memorandum in the docket that shows each of these amendments in redline and strikeout format.

C. Addition of Part 257 Subpart E

EPA is proposing to create a new subpart E to part 257 to contain federal CCR permit program regulations.

1. General Information

a. Program Overview

EPA is proposing in § 257.120 to provide a general overview of the federal RCRA CCR permit program. Paragraph (a)(1) specifies that these regulations have been established to implement the mandate pursuant to section 4005(d) of RCRA, and paragraph (a)(2) specifies that subpart E would contain requirements for permit applications, content, modifications, revocation and reissuance, and termination. Consistent with RCRA 4005(d)(2)(B), EPA is proposing at § 257.120(a)(3) that the requirements in subpart D will be the basis of the permit content.

EPA is proposing at § 257.120(b) to require owners and operators of CCR units that are located in

nonparticipating states and in Indian country, and that are subject to requirements in subpart D, to obtain a federal CCR permit. EPA intends this to mean that permits are mandatory for all CCR units in these locations. This would also mean that once a permit has been issued or a permit application has been finally adjudicated, a facility could no longer operate the permitted CCR units under the self-implementing program. Further, compliance with the applicable requirements in subpart D alone would no longer mean that a CCR unit (or regulated entity) would be in compliance with the requirements of RCRA subtitle D.

This proposal is based on both legal and practical considerations. First, EPA considers this to flow directly from the requirement in RCRA section 4005(d)(2)(B) for EPA ''to implement a permit program *to require each* [CCR] unit . . . to achieve compliance with applicable criteria established by the Administrator.'' Second, any other approach would effectively deprive the permit of any real legal or practical effect. An individual CCR permit will be the result of an adjudication that will clarify how the subpart D requirements apply to the specific facility operations and site conditions at issue to ensure that the statutory protectiveness standard in section 4004(a) of RCRA has been met. If the facility could at any time return to alternative compliance approaches it had previously developed under the self-implementing criteria, the permit effectively would become unenforceable. Moreover, if the record created through the permit process showed that particular permit conditions were necessary to meet the statutory standard, EPA would have no basis to allow the facility to operate without those conditions. It is implausible that this is the outcome Congress intended.

EPA is proposing that subpart E would apply jointly and severally to both owners and operators of a CCR unit that dispose of or otherwise engage in solid waste management of CCR. This reflects the joint and several liability established under subpart D for each of these entities. Therefore, this proposed rule would also require owners and operators of CCR units subject to requirements in subpart D, located in nonparticipating states and in Indian country, to obtain a federal CCR permit.

At § 257.120(b)(2), EPA is proposing to codify the statutory requirement that the owner and operator of a CCR unit must continue to comply with all applicable requirements of subpart D until a CCR permit is in effect. Consistent with RCRA section 4005(d)(6), once a permit has become effective for a CCR unit, compliance with the permit terms will constitute compliance with subpart D for enforcement purposes. This permit shield provision is discussed further in Unit IV.C.1.f of this preamble.

EPA is proposing at § 257.120(b)(3) that, before a permit is issued, submittal of a complete and timely permit application in accordance with the requirements in §§ 257.124, 257.130, and 257.131 serves as compliance with the requirement to obtain a permit, unless and until EPA takes final action on the application (*i.e.,* to issue or deny a permit). This proposal is based on the rationale that once the owner and operator have submitted a timely and complete permit application, the action is out of their hands until the Administrator acts on the application. The owner and operator should not be deemed out of compliance if they have done everything possible to obtain a permit and are awaiting action by EPA. This does not affect the applicant's obligation to continue to comply with all applicable requirements in subpart D.

EPA is proposing at § 257.120(b)(4) that any CCR unit located in a nonparticipating state or in Indian country must have a permit during each stage of operation listed in § 257.123(a). The requirement to obtain and maintain a permit would apply throughout all stages of operation during which solid waste management of CCR occurs at the facility, including the active life of the CCR unit (*i.e.,* during active placement of waste in the unit and until closure activities are completed), the post-closure care period and until completion of all corrective action. This corresponds with the statutory mandate that a permit program require each CCR unit to achieve compliance with the requirements in subpart D. As these requirements apply at all stages of operation, it is likewise necessary to require the CCR unit to have a permit throughout all stages of operation.

After the Administrator has issued a permit, the permittee must continue to have a permit. Any CCR unit without either a permit or a timely, complete permit application in accordance with proposed §§ 257.124, 257.130 and 257.131 will be considered an ''open dump,'' as defined in 42 U.S.C. 6903(14), irrespective of the unit's compliance with the requirements of subpart D and may no longer receive waste. This flows from the prohibitions on open dumps and ''open dumping'' in RCRA §§ 4004(a) and 4005(a).

EPA is proposing three permitting approaches at § 257.120(b)(5). These are a general permit (see § 257.127 and Unit IV.C.1.h of this preamble), a permit by rule (see § 257.128 and Unit IV.C.1.i), or an individual permit. In most cases, EPA intends to issue a single individual permit to each regulated facility, which implements all applicable requirements of subpart D for all CCR units at the facility. However, in some cases, a single federal CCR permit for all CCR units at a facility may not be feasible. This could occur, for example, in situations where one CCR unit is eligible for the permit by rule or a general permit, but the other CCR units at the facility require an individual CCR permit. This could also occur in instances where a state program is approved to operate in lieu of the federal program to issue permits for only some of the requirements in subpart D (*i.e.,* a partial state program approval) and other subpart D requirements must be implemented through a federal CCR permit. Thus, a single individual permit would be issued to a facility only when feasible. The default approach for a CCR permit is an individual permit, but if there is a CCR unit that meets the eligibility criteria for a permit by rule or general permit, then those approaches would satisfy the requirement to obtain a permit for those CCR units that meet the respective eligibility criteria.

Additionally, EPA is proposing at § 257.120(b)(6) that the Administrator may issue or deny a permit for one or more CCR units at a facility without simultaneously issuing or denying a permit to all the CCR units at the facility. The status of any CCR unit for which a permit has not been issued or denied would not be affected by the issuance or denial of a permit to any other CCR unit at the facility, even if multiple units were included in the same permit application. The compliance status of each unit should normally be evaluated individually.

EPA is proposing at § 257.120(b)(7) that CCR permits issued by EPA will not have an expiration date. This provision is discussed in detail in Unit IV.C.1.g of this preamble. Permit terms will remain in effect until modified, revoked and reissued, or terminated. EPA is proposing at § 257.132 that a permittee must review and resubmit each permit application, or each notice of intent to be covered by the permit by rule, no less frequently than every 10 years. This is intended to ensure that EPA will have current information about operations at each permitted facility, which would alternatively be gained through a permit renewal process if permits had an expiration date.

EPA is proposing in § 257.120(b)(8) that a federal CCR permit may be modified, revoked and reissued, or terminated for cause by the Administrator as set forth in §§ 257.150 through 257.153. This provision and the rationale for it are described in Units IV.C.4.a and IV.C.4.d of this preamble.

b. Definitions

EPA is proposing to establish the following definitions at § 257.121.

i. Applicable Requirement

EPA is proposing to create a definition of ''applicable requirement'' to establish criteria for CCR permit content. For the Administrator to issue federal CCR permits consistent with RCRA section 4005(d), to require each CCR unit to achieve compliance with applicable criteria established in subpart D, the permit must contain those requirements. Therefore, EPA is proposing to define applicable requirement as a requirement in subpart D to which the permittee is subject. A definition of this term provides clarity regarding requirements in this proposal pertaining to applicability, application requirements, content, modification application requirements, and schedules of compliance, in a manner consistent with the statutory language of RCRA section 4005(d).

ii. Completion of All Corrective Action

EPA is proposing to define the term ''completion of all corrective action'' as completion of activities required by § 257.95(g) through (i), § 257.96, § 257.97, and § 257.98(a) and (b) in accordance with the requirements of § 257.98(c) through (f). Because permits must require permittees to achieve compliance with applicable criteria established in subpart D, EPA is proposing that the term ''completion of all corrective action'' correspond to all required corrective action activities in subpart D. This definition is for use in subpart E only and is not intended to modify any provision in subpart D.

iii. General Permit

For clarity, EPA is proposing to define the term ''general permit'' in a manner consistent with how the term is used in other federal permitting programs. General permit regulations in other federal permit programs provide for issuance to categories of facilities or processes based on criteria relevant to the specific program (*e.g.,* the definition of general permit in the NPDES program in § 122.2 includes geographic area as a criterion for categorization.) The definition of general permit is necessarily different in this proposal than in other permit programs, in that it contains language unique to the RCRA 4005(d) for a federal CCR permit program and references subpart D. The categorization of CCR units eligible to be covered by a general permit would be based on criteria defined by operating parameters unique to CCR units, such as wet or dry operation (*i.e.,* landfills or surface impoundments) and which determine applicability of requirements of subpart D. General permits would be issued to a category of CCR units, which would be defined in the general permit itself and would contain all subpart D requirements applicable to that category of units.

iv. Individual Permit

EPA is proposing a definition of the term ''individual permit,'' to distinguish permits issued for CCR units at a single facility from general permits or permit by rule. An individual permit can be tailored to the site-specific conditions at the facility (*i.e.,* by establishing unique terms and conditions to require compliance with the applicable requirements of subpart D, based on site-specific approaches, which may be proposed in the permit application or otherwise developed in the permit writing process).

v. Owner and Operator

EPA is proposing to adopt the definition of ''owner or operator'' that is consistent with part 270. A permitting program, by definition, regulates interaction between applicants and permitting authorities, and legal obligations and procedures governing those interactions. Therefore, EPA is proposing to align this definition more closely with part 270 than with subpart D. Because this proposal utilizes approaches and provisions from existing federal permitting programs, using the definition from the federal RCRA hazardous waste permitting program seems more appropriate.

vi. Permit by Rule

EPA is proposing a definition of the term ''permit by rule,'' consistent with how the term is used in other federal permitting programs. The permit by rule is a permitting approach, which is established in § 257.128. Compliance with the permit by rule procedures and requirements satisfies the requirement in § 257.123(a) to have a CCR permit as long as the conditions in § 257.128(a) are met. No subsequent or facility-specific permit is issued.

vii. Responsible Official

EPA is proposing to use a definition of ''responsible official'' that is based on the definition of that term found in § 71.2, which is similar to the definition found in § 270.11, to describe the appropriate signatories to permit applications and reports. This language is standard across environmental programs and defines the level of responsibility, within various organizational structures, from which EPA will accept formal communications and certifications for permitting and compliance purposes. The organizational structures included in the definition are: Corporations, partnerships (a partner may be a corporation), sole proprietorship, and municipalities. Because the appropriate level of responsibility at an organization for legal purposes is not dependent upon the details of a particular environmental program, EPA believes there is no basis to define this level of responsibility differently in this proposal.

c. Considerations Under Federal Law

When issuing federal permits, EPA may be subject to obligations under other federal laws that may impact the permits. If any of these laws is applicable to issuance of a particular permit, then its procedures must be followed. Furthermore, these laws may require EPA to include certain conditions in the CCR permit or to deny a CCR permit. The five federal laws relevant to the issuance of CCR permits are proposed at § 257.122: *The Wild Scenic Rivers Act, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act and the Fish and Wildlife Coordination Act.* These same federal laws are also included in part 270 and part 144 permitting regulations. These laws are included in this proposed regulation because they impose obligations on EPA's permit issuance process; other federal laws may impose requirements on a permitted facility that are not listed here. The public, the Corps of Engineers, the Fish and Wildlife Service, the National Marine Fisheries Service, and other interested Federal agencies, all have the opportunity to comment on any draft CCR permit. EPA seeks comment on whether the list of Federal laws is appropriate or whether any should be added or removed.

d. Applicability

RCRA section 4005(d) provides that the Administrator is to administer a permit program to require each CCR unit located in nonparticipating states or in Indian country to achieve compliance with applicable requirements established by the

Administrator under part 257 (subpart D). See 42 U.S.C. 6945(d)(2)(B) and (d)(5). Therefore, EPA is proposing that the applicability criteria of the CCR permit program would mirror the applicability criteria found in § 257.50. Owners and operators not subject to the requirements of subpart D would not be subject to requirements of this proposal.

EPA is proposing at § 257.123(a)(1) to require all owners and operators of CCR units (*i.e.,* CCR landfills and CCR surface impoundments, including any lateral expansions of such units) who are subject to the requirements of subpart D to submit a CCR permit application. This requirement would apply whenever the CCR unit is subject to requirements of subpart D, including throughout the active life, post-closure care period, and until completion of all corrective action. Depending on the stage of operation of the CCR unit, only a portion of these requirements may remain applicable, for example if the CCR unit is undergoing closure or is in post-closure care. Any CCR unit subject to any requirements in subpart D would require a permit for any of these stages of operation. These requirements would apply to CCR units and associated solid waste management activities located offsite of an electric utility or independent power producer, as long as the CCR unit is subject to requirements of subpart D. To comply with the requirement to obtain a CCR permit, the owner and operator of a CCR unit must jointly (when they are separate entities) submit a complete and timely permit application in accordance with §§ 257.124, 257.130, 257.131 and any subsequent **Federal Register** notice or other notification establishing a deadline for a CCR permit application.

EPA is proposing at § 257.123(a)(2) that the owner and operator of a CCR unit and associated solid waste management activities need not apply for a federal CCR permit if it is subject to requirements of a Participating State CCR Permit Program, or a State CCR Program that has been submitted to EPA and approval is pending, as EPA only has the authority to issue permits in nonparticipating states and Indian country. RCRA section 4005(d) provides that states may submit a CCR permit program, or other system of prior approval, to the Administrator for approval to operate in lieu of the federal program. See Unit III.B of this preamble. In addition to state CCR permit program approval in whole, state CCR permit programs may be approved by the Administrator in part. A partial program approval would result in a state CCR permit program that operates in lieu of the federal program for only a subset of subpart D requirements. For example, if a state submits for approval a CCR permit program that only regulates certain types of CCR units (*e.g.,* landfills) or does not require compliance with all elements of the CCR regulations (*i.e.,* does not contain requirements for structural stability), EPA could grant a ''partial approval'' that would approve the state's permit program to operate in lieu of only certain provisions in the federal CCR program. For any subpart D requirements not covered by the approved state program, the state is considered a nonparticipating state and the owner and operator of such CCR units would be required to apply for and obtain a federal CCR permit.

EPA is proposing at § 257.123(a)(3) that the owner and operator could meet this obligation by submitting an application (or in one case, a notification) for any of the following three kinds of CCR permits. The first is an individual permit. An individual permit would be issued to one or more CCR units at the same facility and would contain terms and conditions tailored to the site-specific circumstances at the facility, such as controls and procedures to achieve compliance with applicable requirements of subpart D. In the second approach, the owner and operator may apply for coverage under a general permit. EPA is proposing at § 257.127 to establish provisions under which EPA may issue one or more general permits. The Administrator could issue a general permit for a category of similar CCR units, which would contain all requirements of subpart D applicable to that category of CCR units and associated solid waste management operations. See Unit IV.C.1.h of this preamble for more discussion on general permits. The third is compliance with the terms of the permit by rule proposed in § 257.128. See Unit IV.C.1.i for more discussion on the permit by rule. This approach would only be available to new landfills or lateral expansions that meet the eligibility criteria and other requirements proposed in § 257.128. If the owner and operator do not meet the criteria for, or choose not to pursue, a general permit or permit by rule for a CCR unit, they must apply for an individual permit. EPA expects most CCR units subject to this program would be issued an individual CCR permit.

The permit by rule and general permit approaches are proposed to streamline the CCR permit program. EPA believes they would result in more timely permitting actions that meet the statutory mandate to issue permits requiring each CCR unit to comply with applicable requirements in subpart D. The permit by rule or general permit approaches are protective alternatives that will allow the Administrator to focus on issuance of permits to those units whose greater risks, or more complicated operations or site conditions, warrant the level of oversight associated with an individual permit. These streamlined approaches would be available only to certain CCR units with less complex operations or site conditions and more straightforward requirements in subpart D. Both the permit by rule and the general permits would contain eligibility criteria to ensure that coverage is available only to CCR units appropriately regulated through these alternatives. Consistent with this proposal, states would be able, but not required, to incorporate general permits and permits by rule into their programs submitted for approval to the Administrator. This could be considered as an option for permitting CCR units when developing state programs.

A facility could utilize more than one permitting mechanism. For example, at a facility with multiple CCR units, each unit could operate under a different type of permit. Thus, one unit that is a new landfill and its associated solid waste management activities could operate under a permit by rule, while another CCR unit and its associated solid waste management activities may meet the eligibility criteria for a general permit established in accordance with § 257.127, and an individual permit could be issued for the remaining CCR units and their associated solid waste management activities at the facility.

As discussed in Unit IV.C.2.d of this preamble, if EPA receives a permit application that does not meet the requirements in §§ 257.130 through 257.131, the procedures in § 124.3 would apply without modification. However, EPA is proposing at § 257.123(b) that this would not affect the requirement for the owner and operator of a CCR unit to obtain a permit. If the Administrator determines an application is incomplete, the owner and operator must re-apply for a CCR permit. If the owner and operator fail to re-apply for a CCR permit, the CCR unit will be considered an open dump, subject to an enforcement action, and must cease placing waste in the unit. In such cases, the owner and operator would nevertheless be required to continue to conduct other required activities under subpart D, including, but not limited to fugitive dust control, groundwater monitoring, retrofit, closure, post-closure care, or corrective action. Any owner and operator that

does not continue to conduct these activities under subpart D would also be subject to enforcement action for open dumping under RCRA § 4005(a).

EPA expects that the deadline to re-apply for a permit will be established in the notification of the final adjudication of the original permit application (denial for incompleteness) and would be based on the scope of the missing information. Alternatively, EPA is considering establishing a single deadline in the regulation for an applicant to re-apply after a permit is denied based on an incomplete application. EPA is taking comment on these approaches and alternative approaches and timeframes for an applicant to remedy a permit denial based on an incomplete application.

EPA is not proposing to require entities who are exclusively engaged in the beneficial use of CCR, consistent with the requirements in § 257.53 to obtain a federal CCR permit. This exemption is proposed at § 257.123(c)(1). The beneficial use of CCR is not regulated under subpart D; therefore, EPA would have no basis to require entities who only engage in beneficial use to apply for and obtain a permit. If owners and operators of a CCR unit are subject to other requirements under subpart D and also engage in beneficial use of CCR, they would be required to apply for a CCR permit for only the regulated activities.

In addition to the exemptions from subpart D, EPA is proposing to adopt at § 257.123(c)(2) a provision similar to § 270.1(c)(3) that owners and operators are not required to obtain or modify CCR permits in order to conduct an immediate response. An immediate response is a response action taken when there is a release, or an imminent and substantial threat of a release, of CCR that poses a reasonable probability of adverse effects on health or the environment. EPA is proposing this exemption to avoid delays, due to permit applications or processing, in response activities necessary to address a health or public safety concern that is urgent or potentially urgent.

EPA is not proposing a definition of immediate response to give the Administrator and the facility flexibility to assess individual situations on a case-by-case basis and to coordinate with state, and local emergency responders. However, EPA envisions that immediate responses are those that are conducted as quickly as feasible. In evaluating whether an individual situation constitutes an immediate response, the Administrator and the facility should consider any indications of urgency with which the response is conducted to assess eligibility for this exemption. These indications could include, for example, conducting the response activities on a continuous basis (*i.e.,* 24-hour days, 7 days per week), short-term rental of equipment to increase the pace of the response, procurement of response contractors, or other levels of effort above and beyond staffing and resources used during normal operations. Once the immediate response is over, the owner and operator would be required to obtain or modify a permit as needed to conduct any long-term response actions or address any changes to the unit or operations resulting from the release or response.

e. Deadlines for Application Submissions

As previously stated, all owners and operators of a CCR unit in nonparticipating states and in Indian country must apply for and obtain a federal CCR permit in accordance with § 257.123(a). In determining when the owner and operator of a CCR unit should be required to submit a permit application to the Administrator, EPA considered many factors. To determine how to prioritize applications in a timely and orderly fashion, EPA analyzed the number of CCR units located in nonparticipating states and in Indian country based on information posted on each facility's publicly accessible CCR website in accordance with § 257.107, so that CCR permits for all regulated units may be issued as expeditiously as possible. EPA also looked at application deadlines established in other permitting programs, described in Unit III.C of this preamble, and how those programs prioritized application submittal.

To prioritize the processing of individual permit applications for existing CCR units, EPA is proposing at § 257.124(a)(1) and (2) to establish tiers of deadlines when permit applications must be sent to the Administrator. Tiering application deadlines for owners and operators of CCR units will help EPA review each permit application thoroughly and act on each permit application in a timely manner. Tiering applications may avoid a situation where EPA would receive a large number of applications at the same time. This could result in poor quality permits or in permit appeals that could have been avoided if EPA had sufficient time to review each application and draft permit content, or it could result in the need for facilities to update pending permit applications if information in them becomes out of date by the time EPA acts on them. In addition, tiering applications will allow EPA to address the highest priority CCR units first.

If a CCR facility has multiple CCR units and one or more of the CCR units at the facility triggers an application deadline, the permit application must include all CCR units at the facility that are not covered by a permit by rule or general permit. The compliance deadlines proposed at § 257.124(a) would require permit applications for either a general permit issued in accordance with § 257.127, the permit by rule proposed at § 257.128, or an individual permit. The compliance deadlines in the proposed rule would not prevent owners and operators from submitting applications early.

EPA is proposing at § 257.124(a)(1) that the first tier of permit applications would be due 18 months after the effective date of the final rule for several reasons. This timeframe would allow owners and operators sufficient time to prepare applications and document compliance strategies they wish to propose in their permit applications, with supporting documentation to justify these approaches. Eighteen months will also allow EPA sufficient time to develop any necessary implementation materials, such as permit applications and instructions or technical guidance documents, as well as an electronic system for federal CCR permitting. Finally, this time will also provide states with an opportunity to develop and submit for approval CCR State Permit Programs in light of the requirements that will be established in this federal permitting program. EPA considers this approach to be protective and otherwise consistent with RCRA 4005(d). Facilities must continue to comply with the rule during this time, and the statute contemplates that facilities will continue to operate during this period. Section 4005(d)(3) expressly provides that facilities must continue to comply with the federal rule until a state or federal permit is effective; this would be unnecessary if they had to stop operating.

To determine which CCR units should comprise the first tier of applications, EPA decided to prioritize the issuance of permits to CCR units that present higher acute risks. Accordingly, EPA looked to the hazard potential classification system for CCR surface impoundments. The hazard potential ratings refer to the potential for loss of life or damage if there is a dam or embankment failure. The ratings do not refer to the current structural stability of the dam or embankment. Subpart D requires owners and operators of CCR impoundments to conduct periodic hazard potential classification

assessments and rate the units as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. See §§ 257.73(a)(2) and 257.74(a)(2). The high hazard potential CCR surface impoundments are among the highest priority for EPA because the high hazard classification means a diked surface impoundment where failure or mis-operation of these surface impoundments will probably cause loss of human life. Each hazard potential classification assessment is required to be certified by a qualified professional engineer and contain documentation to provide the basis for the current hazard potential rating. The initial hazard potential assessment was required by October 19, 2016, for existing units and prior to the initial receipt of CCR in the unit for new units or lateral expansions. Several of these units are in states that EPA has been working with to develop a CCR State Permit Program, so EPA assumes that these units would be in Participating states and would consequently not be subject to federal CCR permitting requirements, by the time a final rule is effective. Therefore, the first proposed tier would include any CCR facility with at least one existing CCR surface impoundment, new CCR surface impoundment, or inactive CCR surface impoundment that is classified as high hazard potential under § 257.73(a)(2) or § 257.74(a)(2) and located in a nonparticipating state or in Indian country. Furthermore, all CCR units at such a facility would be required to be included in this initial permit application at this time, or to apply for a general permit or permit by rule. EPA considers this subset of CCR units to be the highest priority to submit a permit application and should therefore constitute the first tier.

EPA is also proposing to require owners and operators of CCR units in Indian country to submit applications in the first tier. RCRA provides no option other than a federal CCR permit for these CCR units, regardless of state program approval status or appropriations. EPA has no reason to delay submittal of applications for these CCR units. EPA is aware of three facilities in Indian country with CCR units that would be subject to this rule; this relatively small number of permits also would not delay issuance of other CCR permits to units with potentially higher risks.

EPA is not proposing to define subsequent tiers of applications at this time. EPA is proposing at § 257.124(a)(2) that the Administrator will notify owners and operators of CCR facilities by a notice in the **Federal Register** at least 180 days before the application submission is required. This timeframe is similar to the requirement established in the RCRA hazardous waste permitting program at § 270.1(b) for part B applications. The proposed CCR permit application requirements, described in Unit IV.C.2 of this preamble, will not include a part A and part B, as was done in part 270, because submission of a separate part A would serve no useful purpose. As noted, Congress has already effectively granted currently operating units the equivalent of interim status in RCRA 4005(d)(3) by requiring compliance with subpart D until a permit is in effect. The CCR units that would be covered by subsequent tiers must comply with subpart D until they are covered by an effective federal or Participating State CCR permit.

EPA believes that 180 days is sufficient time for the owner and operator to prepare the permit application. As described in Unit IV.C.2, the information required in the permit application will be information about the facility, information about the applicant, technical information about the CCR units at the facility, site conditions, plans, maps, drawings, and other documents. Since the CCR units are already subject to subpart D, most of the information required in the application has already been developed by the owner and operator in accordance with subpart D, and in many cases is posted on the facility's publicly accessible website.

EPA is considering several approaches to prioritizing the permit applications in subsequent tiers. Examples are provided here in no particular order:

- CCR units located in states that affirmatively declare to EPA that they do not intend to pursue program approval;
- CCR units located at specific facilities;
- CCR surface impoundments with significant hazard potential for structural stability;
- CCR surface impoundments that are in assessment of corrective measures or corrective action after an exceedance of a groundwater protection standard or after experiencing a release;
- CCR units that are undergoing closure;
- CCR units that are undergoing closure with CCR remaining in the unit;
- CCR units that are in the post-closure care period;
- CCR landfills;
- CCR landfills that are in assessment of corrective measures or corrective action after an exceedance of a groundwater protection standard or after experiencing a release;
- New CCR landfills or lateral expansions that are not covered by a permit by rule under § 257.128;
- CCR units that have not met the location restriction requirement for placement above the uppermost aquifer demonstration under § 257.60; or
- CCR units that have not met the location restriction requirement for wetlands (§ 257.61), fault areas (§ 257.62), seismic impact zones (§ 257.63), or unstable areas (§ 257.64).

EPA requests comment on approaches to prioritizing applications, including how many tiers of permit application deadlines there should be for this permitting program. In the development of this proposed rule, EPA has considered having two, three, or more tiers of permit application deadlines to space out the applications so that EPA may act on them in a timely manner. The number of tiers will depend on whether owners and operators choose to submit permit applications early, the number of CCR facilities that meet the different criteria, and the time needed for EPA review of permit applications and drafting of permits in this new program. EPA also solicits comment on the method of deciding which units must apply, and the timeframe, as there are many ways that CCR units can be prioritized based on the criteria listed above or using other methods.

EPA is proposing at § 257.124(a)(3) to establish deadlines for the submittal of a permit application for any CCR unit that becomes subject to the requirements of subpart D on or after the promulgation of the federal CCR permit program final rule. For CCR units that become subject to subpart D, and therefore this rule, after this rule is finalized, the deadlines to submit a permit application are phased in. For CCR units that become subject to federal permitting requirements after promulgation of the final permitting rule, but prior to 24 months after the effective date of the rule, permit applications would be due 24 months after the effective date of the final rule. This is six months after the first tier of applications under the prioritization approach discussed above, and this deadline reflects the fact that the first tier of applications would be the highest priority for EPA to act on. For CCR units that become subject to federal permitting requirements after that date, the owner and operator would submit a permit application for such a CCR unit no less than 180 days prior to becoming subject to the requirements of subpart D.

CCR units that become subject to federal permitting requirements after

this rule is finalized would include units that are constructed before promulgation of the final federal CCR permit program rule but that initially receive waste after that date. It would also include new CCR units that begin construction after the final federal CCR permit program promulgation date. EPA believes that 180 days is a sufficient, but not excessive, amount of time before receipt of waste is expected to begin for an owner and operator to submit a permit application. If the new CCR unit is a CCR surface impoundment, or if for any reason the owner and operator choose not to apply for a permit by rule for a new CCR landfill or lateral expansion in accordance with § 257.128, they will need to apply for an individual permit following the requirements of §§ 257.130 and 257.131. If the owner and operator submitted a permit application to the Administrator at least 180 days before becoming subject to the requirements of subpart D, this would fulfill the requirement to obtain a permit, and after 180 days they may begin to operate the unit in compliance with applicable requirements of subpart D, even if a permit has not been issued by the Administrator. EPA considers this approach to be protective as facilities must comply with the rule until a permit is in effect, which will be sufficient in the interim. Consistent with EPA's interest in prioritizing the issuance of permits based on risk, EPA intends to initially focus on issuing permits for existing units, which generally pose higher risks than newly-constructed units.

CCR units that become subject to federal permitting after this rule is finalized would also include CCR units (located in nonparticipating states or in Indian country) that ceased receipt of CCR before the effective date of subpart D, October 19, 2015, but begin receiving waste in the CCR unit again. For example, consider a CCR landfill (''Landfill A'') that contained CCR before 2015 and then ceased receipt of waste. If Landfill A becomes subject to the requirements of subpart D because it begins receipt of CCR again, the proposed provisions in § 257.124(a)(3) would require the owner and operator of Landfill A to apply for a CCR permit no less than 180 days before becoming subject to the requirements of subpart D. This requirement would ensure that all CCR units meeting the applicability criteria proposed at § 257.123(a) would be required to obtain a federal CCR permit.

EPA is also proposing at § 257.124(a)(4) that requests for coverage under a general permit or Notification of Intent (NOI) to be covered by the permit by rule are due at the same time applications for individual permits. If the new CCR unit is a CCR landfill and it meets the criteria for a permit by rule under § 257.128, the obligation to apply for a CCR permit may be met by submitting an NOI to be covered by the permit by rule. Submittal of the NOI would be required on or before the deadline for other CCR units at a facility to apply for an individual permit or submit a request for coverage under a general permit, as specified in § 257.124(a)(1) through (3). This proposal would give the owner and operator of a new landfill sufficient time to obtain coverage under a permit by rule by the date a permit application for other CCR units at the facility would be required, or to obtain coverage under a general permit.

In the course of developing this proposed rulemaking, EPA also considered requiring all permit applications to be submitted with the same deadline. EPA decided not to propose that all applications be submitted at the same time due to concerns about the potential for a backlog of permit applications, as discussed previously in this Unit. If, after receiving comments, the Agency decides that all applications should be required by the same date (*e.g.,* 24 months after the promulgation of the final CCR permitting regulation), EPA would prioritize issuance of the permits using one or a combination of the approaches discussed above.

f. Effect of a Permit

EPA is proposing at § 257.125(a) that compliance with the terms and conditions of an issued and effective CCR permit would constitute compliance with the requirements of subpart D for the CCR units and operations covered by the permit. This provision, known as a ''permit shield,'' would implement sections 4005(d)(3) and 4005(d)(6) of RCRA. Section 4005(d)(3) provides that the applicable criteria in subpart D apply to each CCR unit unless a permit issued under an approved state program or a federal CCR permit is in effect for the unit. Section 4005(d)(6) provides that a CCR unit shall be considered a sanitary landfill for purposes of RCRA only if it is operating in accordance with the requirements of a CCR permit, issued by a state with an approved program or by EPA, or in accordance with the applicable criteria in subpart D.

The wording of proposed § 257.125(a) is generally similar to permit shield provisions in other federal permit programs, such as §§ 270.4(a)(1) and 71.6(f). Consistent with those provisions, the proposed permit shield provision expressly provides that compliance wth a permit shields the permittee from any claim in an enforcement proceeding (including a citizen suit proceeding brought pursuant to RCRA section 7002) that the permittee was or is not in compliance with any subpart D requirement not specified in the permit.

The proposed permit shield provision does not prevent EPA from modifying the permit to make changes or incorporate additional requirements on its own initiative. EPA is also proposing in § 257.150(a)(5) that it may initiate a modification to correct any error in a permit. EPA is proposing to include an express statement to this effect in § 257.125(a) to avoid any confusion about the relationship between these two regulatory provisions and about the effect of the provisions in RCRA sections 4005(d)(5) and (6).

Establishing these regulatory provisions to implement the statutory permit shield provision would generally provide certainty regarding a permittee's legal obligations under subpart D and reaffirms that the permit will provide a clear determination of the actions that the permittee must take to be in compliance with those requirements. A permit shield would not apply prior to the effective date of a permit or any permit modification, even for those modifications that do not require prior approval. Under the express wording of RCRA 4005(d)(6) a permit shield is only available through compliance with requirements in an effective permit. In § 257.125(b) and (c), language is proposed to clarify that issuance of a CCR permit does not convey any property rights of any sort, nor any exclusive privilege, and that a CCR permit does not authorize injury, invasion of private rights, or violations of local or state law. EPA is also proposing to specify that a CCR permit does not authorize violations of federal laws not explicitly considered and addressed in the permitting action. These provisions are consistent with other EPA permit programs under RCRA, the CWA, and the CAA, which provide neither property rights, nor any other special privilege under State or Federal law. Further, there is no indication on the face of RCRA 4005(d) that Congress intended to grant CCR permittees any greater rights or privileges than were provided to permittees under these other federal permit programs. The language that EPA has proposed here is generally consistent with the comparable regulatory provisions in other federal

permitting programs (see §§ 270.4(b), 270.4(c), 71.6(a)(6)(iv)).

g. Duration of a Permit

EPA considered durations of permits in other federal permitting programs when evaluating whether to establish a specific term or limited duration for federal CCR permits (*e.g.,* to require that all permits expire after a specific time). For example, CAA Title V permits expire five years after the date of issuance, in accordance with § 71.6(a)(11). Under RCRA § 3005(c)(3) hazardous waste permits are effective for a fixed term not to exceed ten years. By contrast, permits issued in the UIC program for Class VI carbon dioxide geologic sequestration wells do not expire and are issued for the operating life of the facility and the post-injection site care period. See § 144.36(a). Federal permitting programs have various and unique statutory mandates, which may determine the effective permit term in any given program. Congress did not direct EPA to issue CCR permits for a particular term.

EPA is proposing at § 257.126 that RCRA CCR permits would be issued without expiration and would remain in effect throughout the active life of the CCR unit, the post-closure care period, until completion of all corrective action, and until the permit is terminated. A permittee could request termination of the permit in accordance with the requirements proposed in § 257.153 when all applicable requirements of subpart D have been satisfied. EPA is proposing to adopt this approach because it best ensures sustained regulatory oversight of the facility throughout the full cycle of solid waste management activities regulated under subpart D, as well as until completion of all corrective action and post-closure care. EPA is proposing other mechanisms to ensure the permit is periodically updated as necessary to accurately reflect current operations and regulatory requirements.

To require a CCR unit to achieve compliance with subpart D, a CCR permit must be effective and enforceable. Permitting programs that issue permits with expiration dates often face challenges issuing timely permit renewals. While there are mechanisms to allow for enforcement of an expired permit, such as administrative continuance, these mechanisms can frequently result in a very similar outcome to the proposed approach of issuing CCR permits with no expiration date. The benefit of the proposed approach is that permitting actions will occur only when needed, to address changes at a facility or in applicable requirements,

Based on EPA's experience issuing permits under part 270, permit expiration can also result in situations in which the permit has expired before the cleanup or other post-closure activities have been completed. In practice, it can be difficult to ensure permittees submit timely and complete applications before the expiration date, once active waste management has ceased and only corrective action or post-closure activities remain. Although EPA has authority to issue an order to compel compliance, these situations highlight potential challenges of expired permits.

In general, permit expiration serves several important functions. It provides a mechanism for regular review of the existing permit and its terms and conditions, and for incorporation of any new information and, if necessary, new conditions into the permit through a public process. It also helps to ensure sufficient opportunities for public participation during the life of the CCR unit. The Agency believes the proposal to issue federal CCR permits without an expiration will also provide these same functions, albeit through other mechanisms, as discussed below.

If a permit is issued with an expiration date, renewal must occur at that time, even if no changes have occurred at a facility or if a permit had been recently modified and was up-to-date. EPA could not identify one timeframe for the expiration of all CCR permits that would anticipate a single time for a permitting action that would capture all changes in operations or underlying requirements at a particular CCR unit or facility. Re-issuance of a CCR permit at a specified frequency in addition to the proposed modification requirements would not reasonably be expected to improve the permit or provide valuable opportunity for oversight or public participation. Renewing CCR permits without changes could divert facility resources or Agency resources away from higher priority permitting actions, such as applying for and issuing major modifications or ensuring that minor modification procedures are being implemented properly.

EPA believes that the goal of ensuring that permits continue to require compliance with all applicable requirements of subpart D and accurately reflect current operations is best accomplished through appropriate modification requirements and periodic permit application reviews. The proposed modification requirements in §§ 257.150 through 257.152 are intended to address all situations where changes to a permit are needed. Additionally, if a permit remains unmodified for ten years, the Agency is proposing to require permittees to review and resubmit CCR permit applications by that date to ensure that the Administrator has current information about the CCR units. See proposed § 257.132 and Unit IV.C.2.c of this preamble. These requirements provide mechanisms for timely incorporation of any new information or requirements into the permit, or corrections to errors or omissions that might render the permit at odds with regulatory or statutory requirements. Combined with the ability of citizens to petition EPA to modify a permit (see Unit IV.C.4.a of this preamble and the existing procedures in § 124.6), these mechanisms provide sufficient opportunities for public participation throughout the life of the CCR unit.

In sum, the Agency believes the proposed approach to issue federal CCR permits without expiration will result in permits that are effective and enforceable and provide appropriate mechanisms to require permits be kept up-to-date, while ensuring adequate transparency and public engagement.

h. General Permit Provisions

EPA is proposing at § 257.127 to establish procedures for issuance of one or more general permits, as an alternative to individual permits. The EPA is proposing that the Administrator could issue a general CCR permit to an identified category of CCR units involving the same, or substantially similar, operations, which are all subject to the same applicable requirements of subpart D and would require the same permit terms and conditions to achieve compliance with subpart D. See proposed § 257.127(a). A general permit would be issued when, in the opinion of the Administrator, it would be more appropriate to regulate those units under a general CCR permit than under individual CCR permits. A general CCR permit would be proposed in the **Federal Register** and finalized in accordance with the applicable requirements of part 124. Once a general permit is final, it would be available for eligible CCR units to seek coverage to satisfy the requirement to obtain a federal CCR permit.

Each general permit would be written for a defined category of CCR units (*e.g.,* a surface impoundment closing with waste in place, undergoing corrective action implementing a pump and treat system). EPA is proposing at § 257.127(b) that each general permit would identify criteria indicating which

CCR units are eligible for coverage. The general permit would contain all requirements necessary to achieve compliance with the requirements of subpart D applicable to those CCR units, and it would contain eligibility criteria limiting its availability only to those CCR units, as well as procedures to obtain coverage under the general CCR permit.

Requirements in a general permit would also include liner design criteria, unit design criteria, structural stability requirements, location restrictions, inspections, groundwater monitoring, and posting information to a publicly accessible CCR website. A general permit could contain limitations not specifically found in subpart D, but which would be necessary for the general permit to require compliance with subpart D for each CCR unit covered by it. These terms and conditions could include operating limitations necessary to ensure the completeness and appropriateness of the terms and conditions in the general CCR permit. For example, if a general permit was issued for a category of CCR units that includes existing surface impoundments but excludes CCR units subject to the requirements § 257.73(c) through (e), the general CCR permit would not contain terms and conditions requiring compliance with § 257.73(c) through (e) (*i.e.,* a compiled history of construction, periodic structural stability assessments, or periodic safety factor assessments). Such a general permit would instead contain limitations, derived from the applicability criteria in § 257.73(b), on the height (20 feet) or storage area and height (20 acre-feet and 5 feet) of CCR units covered by it. By including eligibility criteria in the general permit, which would limit its availability to CCR units operating at a height no greater than 20 feet, or a storage area no greater than 20 acre-feet and a height no greater than 5 feet, the general permit in this example would satisfy the statutory mandate to require compliance with subpart D, even though it would not include terms incorporating requirements in § 257.73(c) through (e).

In addition to requirements in subpart D and operational limitations inherent to ensuring appropriateness of the terms and conditions, general permits would also include requirements regarding: Criteria for eligibility to be covered by the general permit, procedures to apply for coverage under the general permit, monitoring, reporting and notifications, and posting information to a publicly accessible CCR website. EPA intends that a general permit will proscribe clearly what types of CCR units are eligible for coverage and will require compliance with those criteria. A general permit would contain clear procedures, with deadlines, for an owner and operator of a CCR unit to follow if, after obtaining coverage under the general permit, the CCR unit becomes ineligible for the general permit and must satisfy the requirement to have a CCR permit through another mechanism.

EPA is proposing that coverage under a general permit would be optional. Even if a CCR unit is eligible for coverage under a general permit, the owner and operator could elect to apply for an individual permit instead. To obtain coverage under a general permit, an owner and operator must submit a request to be covered, in accordance with procedures provided in the general permit, and coverage would be effective 45 days after receipt of a complete and accurate request, in the absence of any objection from the Administrator. EPA intends that a request for coverage under a general permit will require more detailed information than an NOI for coverage under the permit by rule, but less than what would be required in an application for an individual CCR permit. Once a request for coverage has been submitted in accordance with the requirements in § 257.127(c) and the general permit, the permittee need take no further action to obtain a permit, provided the CCR unit meets the eligibility criteria.

If the Administrator determines the CCR unit does not meet the eligibility criteria established in the general permit, the Administrator would notify the owner or operator in writing that an NOI or individual permit application is required, and will include a brief statement of the reasons for this decision and a deadline for the owner and operator to submit an NOI or individual permit application, and a statement that on the effective date of the individual CCR permit the general permit as it applies to the individual permittee shall automatically terminate. The determination that a permittee must apply for an individual permit would not be subject to judicial review as it is not a final permitting action. If an owner and operator requests coverage under a general permit for which a CCR unit is not eligible, they would be potentially subject to enforcement action for failure to apply for and obtain a CCR permit. The owner and operator would be required to comply with all applicable requirements of subpart D until an effective federal or Participating state CCR permit has been issued.

EPA believes general permits may be an appropriate permitting mechanism in this program because the permitting universe has a limited number of types of CCR units, the waste management practices are relatively common among CCR units, and compliance monitoring and notification provisions are already generally established in subpart D. It is also possible that, as the corrective action portion of the program matures, there could be certain commonly used cleanup approaches, due to the limited number of regulated constituents, which are primarily the same chemical class (metals). The relative uniformity of CCR units and the focused regulatory requirements may make general permits an efficient and effective permitting approach for CCR units. If there are categories of CCR units with similar permitting needs, issuance of general permits could result in improved clarity about applicable regulatory requirements through quicker permitting of CCR units with enforceable and effective CCR permits.

In exchange, a general permit would not be tailored to site-specific conditions and would not provide the specificity an individual permit could provide. Instead, it would be somewhat tailored to a category of CCR units (*e.g.,* a general permit only available to certain types of surface impoundments would not contain subpart D requirements that are only applicable to landfills). A general permit would be issued without site-specific considerations and could not be modified for an individual permittee.

EPA is proposing that only the following procedures in part 124 would apply to the issuance of a general permit: §§ 124.6–124.14. By contrast, requests for coverage under a general permit would not be subject to any of the part 124 procedures for applications because they are not applications for permits. The part 124 procedures applicable to the denial, termination, and modification of permits would not apply either to the issuance of a general permit or to the process of requesting coverage under a general permit; instead EPA is proposing routes for revocation or termination of coverage.

EPA is requesting comment on the appropriate use of general permits, including categories of CCR units for which general permits may be appropriate, requirements for content in the streamlined application, whether public comment on individual applications for a general permit is appropriate, and whether EPA should be required to issue a determination that coverage under a general permit is appropriate for a particular CCR unit.

i. Permit by Rule

A permit by rule is proposed in § 257.128, which would deem the owner and operator of a new landfill or lateral expansion of a landfill to have a CCR permit as long as certain conditions are met. No subsequent or facility-specific permit would be issued and the owner and operator of a CCR unit eligible for the permit by rule would not be required to submit an application for EPA to review in order to qualify. However, a notification requirement is included in the proposed permit by rule, to allow EPA to track the universe of CCR units regulated under the federal CCR permitting program for purposes of program oversight and enforcement.

The proposed permit by rule would only be available to new CCR landfills (which includes lateral expansions of CCR landfills) that meet the criteria in § 257.128 (*e.g.,* the CCR unit must be in compliance with the applicable technical requirements of subpart D). The proposed permit by rule would only be available to new CCR landfills that meet the design criteria at § 257.70(a) or (b). A new CCR landfill constructed with an alternate composite liner, as provided at § 257.70(c), would not be eligible for the permit by rule. See proposed § 257.128(a)(1)(vi). In addition, groundwater monitoring of the uppermost aquifer must show no detections of constituents in Appendix IV at a statistically significant level above a groundwater protection standard, which would trigger corrective action requirements. See proposed § 257.128(a)(1)(vi). There must also be no non-groundwater releases from the CCR unit; the proposal would require the owner and operator to apply for a general permit or individual CCR permit if a leak or release is detected. See proposed § 257.128(a)(10) and § 257.128(b). Similarly, EPA is proposing that, no less than 180 days prior to initiating closure of any unit covered by the permit by rule, the owner and operator must apply for either a general or individual permit. See proposed § 257.128(a)(4) and § 257.128(b). If a CCR unit is designed or operated in any way that deviates from the criteria in § 257.128(a), it would no longer be eligible for the permit by rule and the owner and operator would be required to apply for an individual or general CCR permit within 60 days of becoming ineligible; *e.g.,* if an owner or operator completes a statistical analysis and identifies a statistically significant increase in the monitoring data above a groundwater protection standard for any constituent in Appendix IV. These restrictions on eligibility for the permit by rule are necessary to ensure that compliance with the requirements of the permit by rule will result in compliance with applicable requirements in subpart D. Additionally, EPA believes that the subpart D requirements which would be applicable when any of these conditions are not met are more appropriately addressed by a general or individual CCR permit.

EPA is proposing the permit by rule for new CCR landfills based on the risks these types of units present and the nature of the technical requirements. EPA's 2014/2015 risk assessment [8] shows that CCR landfills meeting the liner requirements in subpart D present significantly lower risks than the other types of units regulated under subpart D, generally by an order of magnitude. Furthermore, the proposed criteria in § 257.128 are designed to ensure that these units continue to operate safely. This provision is limited to units constructed with a composite liner and a leachate collection and removal system that meet the requirements in § 257.70(a), (b) and (d). The unit must also comply with all location restrictions standards.

The design and operating standards applicable to the new CCR landfills eligible for the permit by rule at § 257.70(a), (b), and (d) through (g) are generally both less extensive and more prescriptive than for other CCR units. Consequently, these units have few options for compliance and operational practices are not expected to vary widely to account for site specific conditions; the requirements should therefore be relatively uniform. To ensure this remains the case, EPA is proposing to restrict eligibility for permit by rule in § 257.128 to units that have not initiated corrective action or closure. The compliance options for closure can vary substantially in response to site conditions, and EPA therefore considers that these activities warrant the oversight and ability to more precisely tailor the requirements that comes from an individual permit. Newly constructed landfills are expected to operate for a significant time before either closure of the unit or corrective action becomes necessary. If the owner and operator is operating a CCR unit in accordance with the permit by rule and a change occurs that makes the unit ineligible for the permit by rule, EPA is proposing at § 257.128(b) a requirement to apply for an individual or general permit within 60 days of the change, *e.g.,* within 60 days of completing statistical analysis that identifies a statistically significant increase above a groundwater protection standard for any Appendix IV constituent. An application for an individual or general permit would also be required no less than 180 days prior to initiating closure.

Because the requirements in subpart D applicable to the CCR units meeting the proposed criteria in § 257.128(a) are fairly straightforward, EPA does not believe issuance of an individual CCR permit would add significant value as far as clarifying applicable requirements, Agency review of an application, or public comment. The permit by rule would require compliance with applicable requirements of subpart D until a more complex determination of applicable requirements and appropriate compliance strategies is needed, such as when the unit begins closure.

The permit by rule would allow the Agency to focus on issuing individual CCR permits to other facilities and CCR units facing complex applicability issues and compliance strategies. Individual CCR permits remain appropriate in these circumstances, where the permit issuance process may provide more value in terms of clarification to the permittee, the Agency, and the public regarding applicable requirements and acceptable compliance approaches. EPA is requesting comments on this approach, and whether there are other categories of units that could be appropriately permitted by rule.

j. Transfer of Permit Program Administration

EPA anticipates that after federal CCR permit applications have been submitted, or possibly after federal CCR permits have been issued, one or more states may obtain CCR State Permit Program approval and begin permitting CCR units in lieu of the federal program. Alternatively, after a state has been operating an approved CCR State Permit Program, the state could relinquish the program or EPA could withdraw the approval, and the CCR units in that state would need to be permitted by EPA under the federal program. These situations would require close coordination between the state and EPA to clarify permittee compliance obligations, as well as each agency's responsibilities, during such a transition.

RCRA § 4005(d)(2)(B) provides authority to implement a federal CCR permit program only in Indian country

[8] US EPA, ''Human and Ecological Risk Assessment of Coal Combustion Residuals'', December 2014. This document is available at *www.regulations.gov* as docket item EPA–HQ–RCRA–2009–0640–11993.

and in nonparticipating states. EPA is proposing at § 257.129 procedures to transition between federal and state CCR permit programs when approvals of state CCR permit programs are issued or withdrawn. Because each state has its own regulatory procedures (usually established by statute and/or regulation) EPA anticipates that the procedures necessary to transfer administration of a permit program between a state and EPA will necessarily vary. Based on its specific circumstances, a state might prefer, for example, to revoke and reissue all permits immediately, or the state might prefer to have EPA continue to administer a small subset of permits for some period of time (*e.g.,* where the facility is in the final stages of corrective action). To allow for this, EPA is not proposing to establish uniform procedures for transferring documents and responsibilities associated with CCR permit program administration. Instead, the procedure to be used would be specified in the proposed and final notices announcing the change in CCR State Permit Program approval status. Further details could be specified in a Memorandum of Agreement (MOA), a letter, or a **Federal Register** notice.

If a program is being transferred to EPA from a state and the application deadlines established in § 257.124 and subsequent **Federal Register** notices have passed, alternative deadlines will need to be established for CCR units previously regulated by the state to apply for a federal permit. EPA is proposing language that would require these alternative compliance deadlines to be proposed and finalized in a **Federal Register** notice.

EPA envisions that during a transition period when administration of a CCR permitting program is being transferred between EPA and a state, any CCR permits that have been issued by one agency would remain in effect until a new CCR permit issued by the agency receiving the program is effective. Details about this and other issues would be clarified in a notice provided by EPA, or in a MOA between EPA and the state agency.

2. Permit Applications

EPA is proposing at § 257.130 to require the owner and operator of one or more CCR units subject to subpart D meeting the applicability criteria in § 257.123(a) to submit a timely and complete application for a federal CCR permit. The deadlines for the submission of applications would be established as proposed in § 257.124, and requirements for content of an application are proposed in § 257.131. An application would be considered timely and complete when it meets the requirements proposed in § 257.124, § 257.130, and § 257.131 and when the applicant(s) submit any supplemental information requested by the Administrator that is necessary to establish permit conditions to require compliance with subpart D, including to assess the applicability of subpart D.

a. Permit Application Requirements

EPA is proposing at § 257.130(a)(1) that a CCR permit application must contain information about each CCR unit at the facility, as well as operations beyond the CCR units related to the solid waste management of CCR. All portions of the CCR permit application relevant to the CCR units must be completed, except as discussed in the next two paragraphs. While subpart D primarily regulates CCR units, solid waste management activities which occur beyond the unit boundary may be subject to requirements in subpart D (*e.g.,* fugitive dust control along roadways that are used to transport CCR beyond the unit). Information about solid waste management activities could also be necessary for the Administrator to establish permit conditions to ensure compliance with the requirements, or determine applicability, of subpart D. One example of this is where non-CCR waste streams are managed in CCR units. A CCR permit application could require information about those waste streams, such as volumes or water content.

There may be cases where there are multiple CCR units at a facility subject to federal CCR permit requirements, and one or more has already met this requirement through the permit by rule provision in § 257.128, or through coverage obtained in a general permit issued in accordance with § 257.127. In these cases, EPA is proposing at § 257.130(a)(2) that detailed information about the CCR unit(s) that have already satisfied the federal permitting requirements would not be required in a permit application for the remaining CCR units at the facility in order for that permit application to be complete. However, EPA may request some limited information on these units, for identification purposes or as needed to assess applicability and draft permit terms for other CCR units at the facility, in the application.

There may also be cases where one or more CCR units at a facility are subject to federal CCR permitting requirements and one or more other CCR units at the facility are not. This could happen if the state is partially nonparticipating (*i.e.,* a partially-approved state program). In these cases, only detailed information about CCR units or related solid waste management activities subject to regulation under the federal CCR permit program would need to be included in the federal CCR permit application. EPA may request identification of state-regulated CCR units or related solid waste management activities at the facility in the permit application, but the content requirements in § 257.131 would not apply to these CCR units, which are excluded from the federal CCR permitting requirements by RCRA section 4005(d)(2)(B).

As discussed in Unit IV.B.2 of this preamble, EPA is proposing to rely on the existing procedural requirements in part 124 for CCR permits. This would include the provisions at § 124.3 requiring EPA to determine that the applicant(s) has fully complied with the CCR permit application requirements before beginning to process an application. Consistent with § 124.3(c) EPA would review the application for completeness, and if the application is found to be incomplete, EPA will notify the applicant(s) in writing and will list the information necessary to make the application complete. In practice, EPA has frequently informally requested additional information from the applicant or provided an opportunity to supplement their application prior to triggering a formal notification that an application is incomplete. EPA generally expects to adopt a similar practice for CCR permit applications.

The requirement at § 257.130(a) for both the owner and the operator to submit the permit application, and to be joint permittees, reflects the joint and several liability established under subpart D for the owner and operator. In addition, based on EPA's experience implementing the part 270 regulations, it is important that both the owner and operator be permittees. When the facility or unit owner is not the operator, he or she may be removed from daily activities. A requirement to certify the permit application ensures that the owner has at least some familiarity with the facility operations for which he or she will be liable. It also ensures that the owner is aware of and acknowledges this potential liability.

EPA recognizes some owners may believe this transparency is unnecessary and may be willing to accept joint and several liability for submittals and permit applications signed and certified solely by the operator. EPA is proposing an option in § 257.130(a)(2) to allow the owner to defer to the operator's signature and certification of posted documents, submittals and applications, while remaining a permittee and accepting joint and several liability for

those submittals and compliance with the federal CCR permit, as modified. EPA believes this acknowledgment of liability, and the issuance of all federal CCR permits to both owners and operators, would result in permits which are as effective and enforceable as they would be if an owner signed and certified each posted document, submittal, or application individually. After a permit is issued, the owner would remain a permittee, subject to civil or criminal enforcement, as appropriate, for any violations of the permit conditions or these regulations. With respect to transparency about the requirements, each permit or permit modification would be issued to both permittees, and the owners would be aware of requirements in the permits. Owners would have the right to comment on any draft permit or appeal any final permit if he or she did not believe the permit conditions were in accordance with regulatory or statutory requirements. EPA is requesting comment on this approach.

EPA is proposing at § 257.130(b) that an application is complete when the Administrator receives the information required by §§ 257.130 and 257.131, including any supplemental information requested during review of the application, about all CCR units and related solid waste management operations at the facility, and the application is completed to the Administrator's satisfaction. For example, the Administrator could determine an application to be incomplete under these provisions where portions of the permit application are not sufficiently detailed to allow the Administrator to determine the specific requirements in subpart D that apply to the facility or to draft the terms and conditions necessary to require compliance with the regulatory requirements or the statutory standard. The breadth of this requirement corresponds to the statutory mandate that federal CCR permits must require each CCR unit to achieve compliance with the requirements of subpart D; EPA must be able to require sufficient information to issue permits that meet those standards.

The proposed standard for completeness would include any supplemental information requested by the Administrator during the review of the application (*i.e.,* before the application is determined to be complete). After the application is determined to be complete, consistent with § 124.3(c), EPA may request additional information from the applicant(s) but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

Any notice of incompleteness or request for supplemental information issued pursuant to this process would clearly state the information that is missing and provide a deadline for submittal, to avoid delays in permit issuance. If the applicants fail to respond to a notice of incompleteness or to correct the identified application deficiencies, EPA may deny the permit and initiate enforcement action under RCRA section 3008. See § 124.3(d).

EPA is proposing at § 257.130(c) to require the applicant(s) to submit any information determined to be missing from or inaccurate in the permit application to the Administrator as soon as the applicant becomes aware of the missing, new or corrected information. This requirement would apply even without a request from the Administrator. As operations continue after the application is submitted, changes to the facility or operations may occur or new information may become available through monitoring that would result in a different CCR permit application than the application previously submitted. Proposed § 257.130(c) would also require submittal of inadvertently omitted information and revisions to incorrect information, as soon as the applicant becomes aware of it. EPA believes this requirement comports with RCRA section 4005(d). In order to correctly determine applicability and appropriate permit terms EPA must have correct, up-to-date information about the CCR units and facility operation. Consistent with the requirements of subpart D (which apply to both owners and operators), and with the proposal to require both operators and owners to obtain a permit, EPA is proposing that this requirement would apply independently to the owner and operator where they are not the same person, and that either would be required to submit corrected or updated information when it becomes available.

EPA is proposing in § 257.130(d) to allow CBI claims in a federal CCR permit application for any information that is not required to be made publicly available under part 257. An applicant would be required to claim information in the permit application as CBI at the time of submittal. The applicant would be required to provide supporting documentation of the validity of the claim. If EPA determined the information to be CBI, it would be treated in accordance with requirements in part 2, which would limit public availability of the information. This proposed provision would ensure compliance with requirements in part 2 regarding proper treatment of CBI. EPA is not aware of any information that would be required in the permit application which would qualify as CBI and is requesting comments on this provision and on inclusion of CBI procedures in the proposal. The Agency specifically requests comments providing examples of information to be required in a CCR permit application that might be claimed as CBI.

All CCR permit applications would require certification for truth, completeness and accuracy, based on reasonable inquiry, by a responsible official in accordance with proposed § 257.130(e). The language proposed to be required in the certification is similar to certification language required by other federal environmental permit programs in parts 71, 122 and 270. The level of responsibility held by a responsible official within various organizational structures is provided in the proposed definition of responsible official in § 257.121. EPA believes the proposed requirement for certification of the application is appropriate to fully implement the WIIN Act and issue CCR permits which require compliance with subpart D, in light of the permit shield provision. Certification by a responsible official of the truth, accuracy and completeness of the application, upon which the permit will be based, would ensure a level of care in preparation of the application. This certification demonstrating that a responsible official has taken adequate care in the preparation of the application can help to prevent any failure on the part of CCR unit owner and operator to meet the requirements of RCRA through error or omission, or by carelessness or deliberate act. The certification language also would provide the responsible official with clear notice of enforcement liability for any such lack of due care. See also proposed § 257.130(e)(1).

EPA is proposing in § 257.130(f) to require that records of data and information supporting the application for the federal CCR permit be maintained for the life of the permit. Because EPA is proposing that CCR permits be issued without an expiration date, the application for a CCR permit would also be a lifetime application, through the active life of the unit, post-closure care, and until completion of all corrective action. However, EPA anticipates the permit application will be revised as operations or regulations change, when inadvertently omitted, new or corrected information becomes available or when the applicant applies for a modification. EPA is proposing

that the permittee must maintain these records until the contents of the application change such that the records no longer support the application, or until the permittee no longer has compliance obligations in subpart D and the CCR permit is terminated. If the applicant revises or modifies the application, old records which no longer support the revised or modified application would no longer need to be maintained, unless they were subject to other recordkeeping requirements in this rule (*e.g.,* a groundwater well construction diagram). Because the application will be a living document and CCR permits will be issued with no expiration date, it is important that the applicant maintain all records and supporting documentation used to support the application for the permit.

b. Permit Application Contents

The proposed application requirements in § 257.131 envision the application would contain sufficient site-specific information that permit terms could be drafted to include all applicable requirements of subpart D and incorporate site-specific approaches to compliance, considering factors such as local geology, hydrogeology and ecology as well as the design, construction, operation, maintenance, and monitoring of the CCR unit. Applications would be required to contain information about the facility, the owner and operator, CCR unit(s), features surrounding the unit(s), and operating conditions at the unit(s). The proposed regulatory text describes types of information that would be required in each of these categories, with examples that are intended to be clarifying but not limiting. EPA is proposing specific language to require an applicant to provide site-specific plans and non-narrative information, such as maps, drawing, figures, or other visual information, as appropriate in any of the categories listed above. EPA intends to provide an electronic permit application form, as discussed in Unit V of this preamble.

EPA is proposing in § 257.131(a)(1) to require information about the facility in the CCR permit application. While subpart D primarily regulates CCR units, some requirements apply to property or operations beyond the boundaries for the CCR unit, such as fugitive dust control criteria or corrective action requirements; EPA may therefore request information directly related to those requirements. Information about the operating history of the facility may be necessary to determine applicability of requirements in subpart D to certain units (*e.g.,* the date when a CCR unit began receiving waste). In § 257.131(a)(1) the proposal describes types of information about the facility which would be required in the CCR permit application, including the facility's physical location and a description of the facility and its operations. This could include a description of the number of CCR disposal units at the facility, production rates, how CCR are handled at the facility (*e.g.,* dry handling, sluicing), and how the CCR are transported to the unit after generation. Information about what the facility produces in addition to electricity, if anything, and how long the facility has operated would also be required, in addition to identification of the publicly accessible CCR website the applicants intend to use to comply with information posting requirements. The application would also require an indication of whether an initial, revised, or modified permit is requested. EPA believes all this information is necessary to draft permit terms and conditions to require compliance with subpart D, including to assess applicability. To the extent the Administrator needs the information to issue a CCR permit that meets the requirements in RCRA section 4005(d), additional information about the facility not specifically listed may be requested in the CCR permit application.

EPA is proposing to require sufficient information about the applicant(s) to contact them during and after the process of issuing the permit in § 257.131(b). Information about the ownership status would be needed to issue the permit to the correct person(s) and to review the required certification by an appropriate responsible official. Information in other environmental permits held by the owner and operator is potentially relevant to the issuance of the CCR permit, such as state-issued permits for construction of the CCR unit, air permit requirements for fugitive dust control, or environmental permits related to other federal considerations (*e.g.,* scenic rivers). Additional information about the applicant(s) not specifically listed in § 257.131(b) may be requested by the Administrator, insofar as the Administrator needs the information to issue a CCR permit that meets the requirements in RCRA section 4005(d).

EPA is proposing at § 257.131(c) to require information about CCR unit(s) in a permit application. The CCR permit application would require sufficient information about each CCR unit at the facility to allow the Administrator to issue a permit to require compliance with, including to assess the applicability of, subpart D. EPA is proposing to require information in the application about the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit to be permitted (*e.g.,* design of liner, description of run-on/runoff controls, design of structural stability controls and monitoring procedures, construction and placement of groundwater monitoring wells, statistical methods used to evaluate groundwater data, procedures and methods used to take samples and ensure data quality, any remedial measures in place, any closure activities conducted, and type of monitoring conducted such as detection, assessment, or corrective action). The application must describe site-specific compliance approaches the applicants are proposing to use to meet applicable requirements. Some of this information may be provided in plans, maps, drawings or diagrams attached to the permit application.

EPA intends to use this information to assess applicability of requirements of subpart D, and to draft terms and conditions to require compliance with those applicable requirements. For example, information about the design of the liner in a CCR unit would allow the Administrator to draft a permit requiring compliance with a particular liner design requirement, where the applicant has selected one design alternative from multiple options. In another example, information about run-on and run-off controls used at a CCR landfill would allow the Administrator to draft permit terms and conditions requiring the permittee implement those controls, and monitoring their effectiveness, to meet these requirements in subpart D.

A substantial amount of the information that would be required by § 257.131(c) for each CCR unit in a permit application would already have been developed and posted on a publicly accessible CCR website in accordance with subpart D, which requires site-specific plans for compliance on issues like run-on and runoff control, fugitive dust control, groundwater monitoring, etc. These plans must contain maps, drawings, and other documents that would satisfy many of the proposed application requirements. EPA is requiring submittal of this information in the permit applications, rather than allowing applicants to refer the Administrator to download documents from the public websites, for several reasons. The nature of web posting allows potentially frequent changes or amendments to posted documents, and submittal of these documents ensures

that EPA is reviewing the version the applicant intends EPA to use in the permitting action. Additionally, the proposed requirement for the CCR permit application to be certified for truth, completeness and accuracy, consistent with other federal permitting programs, requires submittal of all supporting information in the application. EPA believes that electronic submittal of CCR permit applications will minimize any burden associated with submittal of materials that may be available on publicly accessible CCR websites, and that the minimal effort associated with electronic submittal of those documents is warranted by the benefits of receiving a certified application directly from the applicants.

EPA is proposing in § 257.131(d) and (e) that the CCR permit applications would be required to contain information about the natural conditions and features surrounding each CCR unit to be permitted. The applicants would be required to provide technical and other information about the geologic, hydrogeologic and ecologic characteristics and features of the area surrounding the CCR unit, including assessment of subsurface characteristics. At a minimum, this would include information about the locations of any floodplains, wetlands, endangered species, fault lines or unstable areas, measured and modeled groundwater elevations, subsurface lithology including any confining units, surface water features, soil and subsoil characteristics, groundwater well locations and uses and adjacent land uses. This information would be provided for the areas underlying and in proximity to the CCR unit. These features have the potential to impact every aspect of the CCR unit and the effectiveness of the compliance approaches to be incorporated in the CCR permit. These include impacts to the effectiveness of the liner, stability of the unit, operation of the unit and its control structures, the effectiveness of proposed monitoring approaches and well locations, determination of background concentration of regulated contaminants, the appropriateness of proposed closure procedures, considerations of other applicable federal requirements listed in proposed § 257.122, and the appropriateness or effectiveness of any corrective action remedy, including monitoring to assess the effectiveness of that remedy. The owner and operator must provide this information for all past, present, and planned CCR units to be included in the permit.

The information required in a CCR permit application in § 257.131(f) would include attachments, such as site-specific compliance plans required by subpart D, and visual representation of information, such as maps and drawings. This information is necessary to allow the permit writer to understand site conditions and evaluate applicability of requirements and compliance strategies proposed by the owner and operator and to draft terms and conditions that will ensure compliance with the requirements of subpart D. For example, potentiometric maps indicating groundwater flow direction are necessary for the permit writer to establish requirements in the permit pertaining to groundwater monitoring and site-specific background concentrations. The attachments required will depend upon the type of CCR unit—not all items listed would be required for all units. Similarly, additional documents not specifically listed may be needed in a permit application for certain units. For example, if a CCR unit is operating under the terms of a compliance order which requires an operating plan for a corrective action remedy, that plan should be included in the CCR permit application.

The listed examples of plans include those required by subpart D (*e.g.,* emergency action plan required by § 257.73, fugitive dust control plan required by § 257.80, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), assessment of corrective measures required by § 257.96, closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104). The examples of maps required in a CCR permit application include a site map; a topographic map; and a sufficient number of potentiometric maps, illustrating the direction of groundwater flow, to capture temporal and seasonal changes in flow direction. These examples are provided for clarity and are not intended to be limiting. Other maps may be required in the CCR permit application, depending on site-specific circumstances at the CCR unit. The standard for completeness regarding plans, maps, drawing, and other documents is the same as the standard proposed for all other application elements; the information must be sufficiently complete for the Administrator to issue a permit to require compliance with subpart D, including to assess the applicability of subpart D.

The proposal requires minimum elements to be included in each type of map so that multiple pieces of information may be viewed on the same page. Elements to be required in maps, drawings, and diagrams include minimum elements necessary for someone reading them to understand information in the permit application holistically, in the context of the requirements of subpart D. For example, when reviewing monitoring well data, it is helpful to have a map that indicates all the following: The location of the CCR units, the location of each groundwater monitoring well with its identification noted and the direction of groundwater flow. When evaluating a proposed schedule for conducting corrective action activities, for example, it would be helpful to have a map with the location of the CCR unit, the direction of groundwater flow, the location(s) of groundwater monitoring wells where detections above background or groundwater protection standards have occurred and the detections, and the location of any downgradient potable wells. These are simply examples of situations where a well-designed map or drawing will depict multiple pieces of information together to facilitate understanding of the situation at, around, and below the CCR unit. It may be appropriate to provide additional elements on these maps for some CCR units, depending on site-specific conditions. EPA believes that, generally, permit applicants have developed maps, drawings, and diagrams required by subpart D in a manner consistent with the requirements proposed here. To the extent that owners and operators of CCR units have not done so, EPA is proposing to require such appropriate representation of data in the CCR permit applications.

All information in the application must be presented in a manner that is organized and clearly labeled, so it can be understood by another person. EPA is proposing this requirement explicitly based on experience reviewing information posted on the publicly accessible CCR websites. In some instances, information posted on these websites has been disorganized and not labeled, making it difficult for a reader to identify, for example, the date and sampling location of posted groundwater sampling results, or the type of groundwater monitoring wells (*i.e.,* background or downgradient) depicted on a groundwater monitoring system map. To avoid delays in permit issuance associated with potentially lengthy review of unclear permit application materials and incompleteness determinations, and to minimize the potential for erroneous

permitting actions, EPA is proposing to establish this requirement for clarity and organization. EPA may implement this standard through incompleteness letters, incompleteness determinations, or ultimately permit denials, if a permit application contains such lack of clarity or disorganization that the Administrator cannot draft a permit and the applicants do not correct the application.

EPA is proposing to require information necessary to evaluate the appropriateness of compliance strategies proposed in the application. Such strategies may include, but are not limited to, establishing the minimum number of downgradient wells needed to characterize groundwater quality, design of a run-on control system, establishing background concentration of constituents in groundwater upgradient of the CCR unit, establishing buffer zones to protect wetlands or sensitive ecosystems, or delineating of the nature and extent of releases when assessing corrective action measures. One example of this would be sampling data used to calculate hydraulic conductivity of a liner designed to comply with § 257.70(c). The examples included in the proposed regulatory text are intended to be clarifying but not limiting, and EPA is proposing at § 257.131(a) that the standard of completeness for the application with respect to these materials be what is sufficient to support decisions by the Administrator to draft permit conditions to require compliance with, including to assess the applicability of, the requirements of subpart D.

One type of document required by subpart D that is not included in the application requirements listed in § 257.131(f) is third-party, or Professional Engineer (P.E.), certifications required by subpart D. An applicant may include these in the CCR permit application, but EPA is not proposing to require them. The P.E. certifications are based on information required in the permit application, which EPA will review in the process of writing the permit. Also, based on cursory review of some of the P.E. certifications posted on publicly accessible CCR websites, they may not contain any substantive information that would be helpful in drafting a permit. Finally, a review of a P.E. certification to determine whether it meets the requirements of subpart D would be a compliance assurance function, rather than a permitting function. For these reasons, P.E. certifications are not included in the proposed requirements for a CCR permit application.

EPA envisions that all applications for CCR permits would be submitted electronically (e-permitting). Discussion on e-permitting approaches is found below in Unit V of this preamble. EPA intends to provide an electronic CCR permit application form to owners and operators. EPA envisions that some of the information required in the application would be submitted by responding to questions on the electronic form in various formats (*e.g.,* typing in narrative responses, selection from a multiple-choice list, selecting true or false). Other information would need to be attached to the application electronically (*e.g.,* maps, drawings, diagrams, or site-specific plans describing compliance strategies). EPA intends to make the application a living document, to be updated and amended, and submitted and certified for truth and accuracy, throughout the life of the permit. EPA believes this approach may improve the accuracy of the permit application and the quality of federal CCR permits, while minimizing the regulatory burden to applicants by eliminating the need to re-submit information the Agency has already received in an application.

c. Periodic Review of Permit Applications

EPA is proposing that CCR permits would be issued without an expiration date, as discussed in Unit IV.C.1.g, and it is hypothetically possible that a CCR permit could be based on a permit application that is many years old. EPA does not believe this situation will occur frequently, based on EPA's proposal at § 257.151 to require owners and operators to seek to modify their permit whenever any of their solid waste management operations involving CCR no longer reflect the operations described in their permit or permit application and to require that the owner and operator update the entire application whenever any permit modification is sought. Consequently, EPA expects that most CCR permits would be modified throughout the life of the permit (*i.e.,* evergreen permits) and the CCR permit application would be modified by the permittee(s) at those times, providing EPA with current information about permitted activities.

To address potential situations where many years could pass with no changes to the permit or the application, and to ensure that CCR permits remain up-to-date, EPA is proposing at § 257.132 to require that each permit application be reviewed by the permittee no less frequently than every ten years after the date of permit issuance or the last modification. At the ten-year review, the permittee(s) would be required to review the permit application and either submit necessary revisions to the application to ensure that it continues to meet the CCR application requirements of §§ 257.130 and 257.131 or submit a statement that the application continues to meet those requirements and remains accurate and complete. Responsible officials for the owner and operator would be required to certify for truth, completeness, and accuracy either a statement that the permit application remains current or an amended permit application.

If the permittee determines during a periodic review that the permit application is no longer accurate or no longer meets the proposed application requirements under §§ 257.130 and 257.131, the Agency is proposing at § 257.132(c) that the permittee must take certain actions. First, the permittee would be required to revise the permit application to meet the proposed requirements in §§ 257.130 and 257.131 and accurately reflect current operations and changes that may have occurred since the previous application was submitted. If changes to the application warrant a modification to the CCR permit, the permittee would be required to apply for a permit modification according to the proposed procedures in § 257.152. The permit application would need to be certified for truth, accuracy and completeness by a responsible official in accordance with proposed requirements in § 257.130(e) and submitted to the Administrator.

A major modification would invoke the public participation requirements in part 124. For example, draft permits are subject to public notice, public comment, and in some cases, a public hearing. These procedures would allow the public to bring forward comments concerning any draft permit or its supporting materials prior to permit issuance.

EPA is proposing at § 257.132(d) that permittees complete periodic reviews of their most recent CCR permit application no later than ten years after the date of permit issuance or after any reissuance or modification of such permit, whichever date is later. For all subsequent permit application reviews, the review would need to be completed no later than ten years after the date of the submittal resulting from the previous permit application review or after the date such permit is reissued or modified, whichever date is later. If the permit is modified or otherwise issued with a new date, the ten-year review period would begin on that new date in the permit. For example, if the initial CCR permit was issued on October 20,

2022, the permittee would be required to complete the permit application review no later than October 20, 2032. Alternatively, if the initial CCR permit was issued on October 20, 2022, and the permit was modified on February 21, 2025, the permittee would be required to complete the periodic permit application review no later than February 21, 2035. In the second example, the permit modification during the third year after permit issuance would have the effect of resetting the ten-year period during which the application review must be conducted.

EPA anticipates that facilities with operating CCR units or that are in the midst of corrective action will seek to modify their permits at least once in any ten-year period; based on the proposal to reset the clock with every modification, it is therefore likely that the ten-year periodic review will never be triggered for most facilities. Instead, for these facilities, the equivalent of this review will occur in the context of each modification, based on EPA's proposal at § 257.151(b)(1) and (d)(1) to require a facility to update the entire application whenever any permit modification is sought. By contrast, the proposed ten-year review is intended to address those situations in which the permit has not been modified in the last decade—which are expected to be the exception and are most likely to be facilities with CCR units exclusively in post-closure, with no corrective action requirements.

For the CCR permitting program, EPA believes that an application review that occurs no less frequently than once every ten years will provide an appropriate level of review and attention to maintaining an updated CCR permit application. A ten-year timeframe is consistent with the effective term of a RCRA hazardous waste permit. See RCRA 3005 (c)(3). The ten-year application review requirement is a complement to, and does not replace, the requirements for permit modifications proposed in §§ 257.150 through 257.152 and the requirement to submit new or changed information in § 257.130(c). If the ten-year application review identifies a modification that has occurred at the CCR unit without a required permit modification, the permittee may be subject to enforcement for failure to comply with modification procedures in §§ 257.150 through 257.152.

As discussed in Unit IV.C.1.i of this preamble, EPA is proposing a permit by rule for certain CCR units. The Notification of Intent required by § 257.128 does not contain detailed information about the CCR unit, but a periodic review of the Notice of Intent would provide EPA with current information from the owner and operator about the eligibility of the CCR unit for the permit by rule. EPA believes that CCR units operating in accordance with the permit by rule may update the Notice of Intent infrequently if at all, and it is expected that a new landfill or lateral expansion of a landfill may operate for many years without detecting a groundwater contaminant in part 257 Appendix IV above a groundwater protection standard. A CCR unit operating in accordance with the permit by rule could reasonably be expected to do so for longer than 10 years. To ensure that all CCR permits are kept up-to-date, the Agency is proposing that CCR units operating under a permit by rule would be subject to the periodic permit application review requirements for the Notice of Intent.

EPA is proposing in § 257.127 procedures to issue one or more general permits applicable to categories of similar CCR units subject to the same requirements in subpart D. Because a general permit would be drafted to accommodate a narrow set of circumstances, the application for a general permit would be streamlined and less detailed than an application for an individual CCR permit. Until a general permit is established with its own eligibility criteria, the potential frequency with which a CCR unit might either meet those criteria and apply for the general permit or might cease to meet the eligibility criteria and submit an application for a different type of CCR permit is unknown. However, periodic review and recertification of the application submitted would provide the same value for a general permit application as it would for an individual permit application. EPA has identified no reason to exclude CCR units operating under a general permit from a requirement to review and resubmit an application no less frequently than every ten years. Consequently, EPA is proposing that CCR units operating under a general permit would be subject to the periodic application review requirements proposed at § 257.132.

d. Permit Denial

The proposed language in § 257.133 would establish the grounds for which EPA may deny an application for an individual CCR permit. Denial of a permit could have significant consequences, including the requirement that the facility cease receipt of waste into the CCR unit. Based on experience under other federal permitting programs, EPA expects that denial of a CCR permit would occur rarely; however, it is important to establish the circumstances under which EPA would exercise this authority, to ensure that permit applicants are fully apprised of the legal standards that will apply to their applications.

The grounds for denial of a permit application, which are set forth at proposed § 257.133(a), largely mirror those EPA is proposing to establish for termination of a permit in § 257.153. Specifically, EPA is proposing that any of the following would be grounds for denial: (1) Failure by the permittee in the application or during the permit issuance process to disclose fully all relevant facts; (2) Misrepresentation by the permittee of any relevant facts at any time; (3) A determination by the Administrator that the reasonable probability of adverse effects arising from disposal or other solid waste management of CCR can only be regulated to acceptable levels by permit denial; (4) The Administrator has received notification of an applicant's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128; and (5) EPA has transferred administration of the permit program to a state in accordance with § 257.129, and the state permit is in effect for each CCR unit at the facility. The latter two situations may be cases where a facility would prefer to withdraw its application. EPA considers that withdrawal of the application may be an equally appropriate mechanism to close out the federal action, but requests comment on whether there are competing considerations.

One ground that is unique to this section specifies that denial may be appropriate when an applicant fails to respond to an incompleteness determination with submittal of a complete permit application. This ground corresponds to the procedures under § 124.3 that are discussed in Unit IV.B.1 of this preamble.

The provisions proposed at § 257.133 would also specify that EPA may deny an application in whole or in part. As previously discussed, EPA is proposing to require a permit not only for disposal, but also to conduct all activities subject to requirements in subpart D (*e.g.,* monitoring, retrofit, closure, post-closure care and corrective action). The proposal at § 257.133(a) specifies that EPA may deny a CCR permit for certain activities (*e.g.,* to dispose of waste in a CCR unit), but issue a permit to conduct other activities at that unit (*e.g.,* closure, post-closure care, or corrective action).

Or, as a further example, EPA may deny a permit for waste disposal at one CCR unit at a facility but may permit disposal at a different CCR unit at the same facility. For the same reasons, EPA seeks public comment on its proposal that the Administrator may partially deny a permit for any of the enumerated grounds even if the application is incomplete; for example, EPA may deny a permit to operate one unit if information is lacking for that unit but grant the remainder of the application if the information is otherwise complete. See proposed § 257.133(b).

As noted earlier, EPA is proposing to rely on the existing procedures in part 124, which include procedures to deny a permit application (*e.g.,* procedures applicable to issuing a notice of intent to deny at § 124.6(b)). Under those procedures, the applicant may correct the deficiencies identified in a notice of intent to deny at any time by submitting a new (corrected) permit application. If the deficiencies are not corrected and a final decision to deny a permit is issued and becomes effective (see § 124.15(b)), the applicant would be subject to enforcement. Moreover, after a CCR permit is denied, the CCR unit(s) would be an open dump, and the owner and operator would be required to cease placing waste in the unit. See RCRA § 4005(a). The applicant would also remain subject to the applicable requirements of subpart D. Note that even after a denial has been issued, a revised application correcting the deficiency can be submitted.

If a permit application is denied, which is expected to occur rarely, the owner and operator would still be required to obtain a CCR permit for activities that remain subject to requirements in subpart D, such as closure. Additionally, an enforcement action may be taken to bring the facility into compliance with subpart D.

EPA believes a procedure to deny a permit is one of the necessary components of the authority delegated to EPA as part of the directive to implement a federal permit program. Without it, EPA would have no option other than to issue a CCR permit after an application is received, even in situations where that would be contrary to Congressional intent. For example, EPA lacks the authority to issue a permit that does not meet the statutory standard in RCRA sections 4005(d)(2)(B) and (d)(5). Furthermore, such a provision is consistent with other federal environmental permit programs implemented by EPA, which have the authority to deny an application for a permit on comparable grounds. See, *e.g.,* §§ 71.11 and 270.29.

3. Permit Content

a. Standard Conditions in All Permits

Proposed language at § 257.140 would establish standard terms and conditions, which would be included in each CCR permit. Many of these standard terms and conditions contain legal requirements inherent to permits and are consistent with standard terms utilized in other federal permitting programs. EPA is proposing standard terms and conditions to improve the efficiency and enforceability of CCR permits. These conditions could be either written expressly into a CCR permit or incorporated by specific references to paragraphs in § 257.140.

i. *Duty to Comply*—This standard permit term would require compliance with the permit terms and clarify that failure to comply may result in enforcement, revocation and reissuance, termination, or denial of a permit. While it is unlikely that EPA would terminate or deny a permit to remedy noncompliance without issuing a new CCR permit, EPA is proposing to preserve these options to maintain flexibility to resolve case-by-case situations as they arise, in the most appropriate manner. This term is standard in other federal permitting programs, including part 270.

ii. Duty to submit periodic review of application—This standard permit term would implement the requirement proposed in § 257.132 for the permittee to review the application submitted for the permit no less frequently than every ten years from the date of issuance. If no information in the application has changed, the permittee must submit a statement to that effect with a certification by a responsible official of truth, completeness and accuracy. If information in the application has changed, the permittee must modify the application and resubmit it. If a modification to the permit is needed, the permittee would be required to submit the updated information as part of an application for such a modification in accordance with § 257.152.

EPA is striving to develop an electronic CCR permit application system, which would allow the permittee to review the previous application and amend only the portions that require revision electronically. EPA intends to implement such a system to facilitate implementation of this proposed provision, by allowing the permittee to focus efforts only on information that must be updated.

Once a CCR permit is modified or reissued, it will have a new issuance date and the ten-year review period would begin anew. If a CCR permit is modified more frequently than every ten years, then the permittee would not have to conduct any periodic application reviews. However, the permittee would always be obligated to evaluate changes at the facility and changes in the regulatory requirements, and to apply for permit modifications as needed.

iii. Need to Halt or Reduce Activity Not a Defense—This standard term would clarify that the permittee may not use as a defense in an enforcement action that the only way to maintain compliance with the permit was to halt or reduce the permitted activity. This term is standard in other federal permitting programs, including part 270. It is also consistent with the underlying regulations in subpart D, as well as the prohibition against open dumps in RCRA section 4005.

iv. Requirement to mitigate impacts of noncompliance—This standard term would require a permittee to take steps to mitigate the impacts of noncompliance, should any occur, where the noncompliance results in a reasonable probability of adverse impacts to human health and the environment. This provision is similar to requirements in other federal permitting programs, including part 270. EPA believes it is consistent with RCRA § 4004(a) to require the facility to take appropriate actions after noncompliance to minimize impacts, particularly actions that may be most effective immediately after a catastrophic event such as a natural disaster. These actions could range in scope and complexity from providing immediate notification to a public water system about a release before it reaches a public water system intake, to cleaning up CCR released due to a dam failure.

v. New statutory requirements or regulations—This standard term would implement requirements proposed at § 257.151 that, if the underlying statutory or regulatory requirements become more stringent than the corresponding CCR permit conditions, the permittees must apply for a permit modification to reflect the updated requirements. This term is intended to ensure that the federal CCR permitting program will satisfy the statutory requirement for CCR permits to require CCR units to achieve compliance with applicable criteria established in subpart D.

This term would apply to changes in underlying requirements that result from a change in the statute, a change to subpart D, or a judicial order. This

term only requires action by the permittee if the permit is less protective than the underlying requirement after the change. If the permit is more stringent than the underlying requirement, then the permittees would not be required by this standard condition to apply for a modification to the permit to incorporate the change and could continue to comply with the more stringent permit conditions.

vi. Proper operation and maintenance—This proposed standard term would require that the permittee must at all times properly operate and maintain all CCR units, ancillary equipment and systems of treatment or control to achieve compliance with the conditions of the permit. The proposed language includes a variety of activities considered part of proper operation and maintenance: Performance, funding, staffing, training, and quality assurance. This proposal does not intend to create an independent technical requirement separate from subpart D, but rather to clarify that failure to properly operate or maintain equipment would not excuse failure to comply with requirements or standards in the permit. This would be required throughout the active life of the unit, the post-closure care period and until all corrective action is complete. Proper operation and maintenance would require the operation of back-up or auxiliary systems when needed to comply with the permit.

EPA believes this standard term is necessary to require the permittee to take reasonable actions to ensure that all controls, monitoring, and other requirements of the CCR permit are implemented as intended. While many permittees may already properly operate and maintain the CCR units, ancillary equipment, and treatment or control systems, failure to do so can result in malfunctions or catastrophic releases. This could also result in noncompliance with requirements in subpart D, or a reasonable probability of harm to health and the environment. EPA believes an independently enforceable requirement to properly operate and maintain this equipment is consistent with RCRA 4005(a) and may serve to prevent accidents or noncompliance before they happen. This term is required in other federal permitting programs, including part 270.

The Agency proposes to apply this requirement to both owners and operators of CCR units, consistent with their respective joint and several liability and responsibility for compliance. Where there are concerns that operators would have primary control over compliance with this proposed provision, owners may undertake efforts to ensure that operators comply with the proposed standard through private agreements that protect landowners when CCR units are operated by another entity.

vii. Permit actions—This proposed standard term clarifies that a permit may be modified, revoked and reissued, or terminated for cause. It also stipulates that applying for a permit modification or termination, or notifying the Administrator of planned changes or anticipated noncompliance, does not stay any permit condition. This standard term would implement the modification procedures in §§ 257.150 through 257.152. This proposed standard term is consistent with other federal permitting programs, including part 270.

EPA does not believe this standard term would conflict with the proposed minor modification provisions in § 257.151. Specifically, § 257.151(b)(7) would provide that if a permittee applies to modify the permit and the modification qualifies as minor, and if EPA does not respond to the request to modify the permit within 45 days, the permittee can proceed with the modification. While the permittee may go ahead with the minor modification, all permit terms would remain effective until EPA issues a modified permit. EPA does not anticipate conflict between these provisions, because the criteria for minor modifications generally include changes which increase the stringency of the CCR permit.

viii. Property Rights—EPA is proposing that each CCR permit include a term that clarifies the permit does not convey any property rights. This standard term would implement provisions proposed at § 257.125(c). EPA does not have the authority to convey property rights in a CCR permit. This proposed standard term is consistent with permit terms used in other federal permitting programs, including part 270.

ix. Duty to Provide Information—EPA is proposing that each CCR permit include a term that establishes the permittee's duty to provide information requested by the Administrator to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The term would also require the permittee to furnish to the Administrator, upon request, copies of records required to be kept by this permit. This standard term would implement provisions in the WIIN Act that provided EPA information gathering authority under RCRA section 3007. This proposed standard term is consistent with other federal permitting programs, including part 270.

x. Inspection and Entry—EPA is proposing that each CCR permit include a term that clarifies the permittee's duty to allow EPA access to inspect, collect samples, and access records at the permitted facility. These activities are necessary elements of any permitting program and are common in federal permitting programs. The authority for EPA to conduct these activities under section 3007 of RCRA was provided in the WIIN Act.

The proposed language includes provisions that inspection, sample collection, and access to records must be conducted at reasonable times, which would generally be during normal business hours. It also specifies that presentation of credentials would be required to gain access for these purposes.

xi. Monitoring and Records—EPA is proposing that each CCR permit include a term that establishes the permittee's duty to maintain certain types of records related to monitoring. This standard term would require that records of monitoring information, including all supporting data and quality assurance records, be maintained for a period of at least ten years, or longer if requested by the Administrator. Records used to support the permit application would be required to be maintained for the lifetime of the permit. The standard term would require that all groundwater monitoring records be maintained throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

These recordkeeping provisions are consistent with the underlying CCR rule. Most of the information included in the proposed standard terms is required to be posted to a facility publicly accessible CCR website. The posting requirements do not allow for removing information from the publicly accessible CCR websites, and so information posted there is maintained throughout the life of the unit. Because CCR permits are proposed to be issued without expiration, EPA believes the records used to develop the permit application would remain relevant throughout the lifetime of the permit and should be maintained.

xii. Signatory requirements—EPA is proposing that each CCR permit include a term that requires applications, reports, or information required to be submitted to the Administrator by the permit be signed and certified in accordance with the procedures of proposed § 257.130(e). A CCR permit is not likely to require many submittals of information. The primary mechanism

for reporting information in the CCR program is by posting on a publicly accessible CCR website. Reporting requirements in the CCR permit are most likely to pertain to permit modifications or reports of noncompliance. For both types of submittals, EPA is proposing to require the permittees to include the same certification as to the truth, completeness and accuracy of the contents as is required for the original permit application. Applications for major permit modification would require certification according to other proposed requirements in § 257.152(b).

xiii. Reporting requirements—These standard terms would be placed in each CCR permit, and they require reporting of certain information within specified timeframes. These provisions are commonly found in other federal permitting programs, including parts 270 and 71.

(A) Anticipated noncompliance—This proposed standard term would require reporting to the Administrator in advance of anticipated noncompliance. If, for any reason, the permittee will be unable to comply with any terms or conditions, the permittee would be required to provide notice to the Administrator as soon as possible and at least 60 days prior to any planned changes in the permitted facility that may result in permit noncompliance. If the permittee applies for a modification to the permit to accommodate these changes, and the anticipated noncompliance is explained in the application, that application could serve as compliance with this notification requirement.

(B) Twenty-four-hour reporting—This proposed standard term would require reporting as soon as possible, but no later than 24 hours after any noncompliance that could impact health or the environment. EPA anticipates this reporting requirement will be used infrequently, such as after sudden releases of CCR to the environment beyond the facility property boundary or to a waterway. A requirement to report such incidents within 24 hours is appropriate, so that EPA can respond, if needed, to oversee cleanup or take other action to ensure any impacts to health or the environment are mitigated.

(C) Other information—This proposed standard term would require the permittee to supplement or correct previously submitted information if the permittee realizes later that it was incorrect or incomplete. This would help EPA to ensure that CCR permits continue to meet the requirements of RCRA § 4005(d)(2)(B) by providing the Agency the opportunity to evaluate the submitted information and determine whether any changes to the permit are needed.

xiv. *Severability*—EPA is proposing a standard term to establish severability of the CCR permit. This would mean that if a term in the permit was invalidated through an appeal process or other mechanism, the rest of the permit would remain in effect. Severability is a common element in federal permitting programs. It would allow a permittee or other affected party to pursue appeal of a permit term without risking loss of other portions of the permit. It would also avoid the administrative burden of having to re-issue an entire permit to accommodate changes to address invalidation of only a part of the permit.

b. Establishment of Permit Conditions

EPA is proposing to establish three provisions to guide a permit writer's discretion in developing individual permit conditions. Each of these provisions borrow heavily from § 270.30.

First, EPA is proposing in § 257.141(a) to include the direction that in addition to the standard conditions in § 257.140, the Administrator is to establish terms and conditions in a CCR permit, on a case-by-case basis, in accordance with the requirements and procedures of this subpart and with the mandate in section 4005(d)(2)(B) of RCRA. EPA is also proposing to codify the statutory mandate by specifying that the permit must include all permit terms and conditions necessary to ensure that each CCR unit will achieve compliance with subpart D of this part.

Second, EPA is proposing in § 257.141(b) to clarify that a permit writer may either incorporate the applicable requirements of subpart D by re-writing them into the permit or incorporating them by reference. Any incorporation by reference must include a citation to the specific provision or requirement. Allowing incorporation by reference could streamline the permit writing process or reduce the length of a permit, while maintaining clarity about which CCR rule requirements apply to the CCR unit and what the permittee must do to comply with them. Incorporation by reference could also reduce the need for permit modifications, if the permit references portions of subpart D that are subsequently amended through rulemaking. If the reference to the amended subpart D requirement in the permit continues to require compliance with the applicable requirements in subpart D, then no permit modification would be needed. EPA expects that incorporation by reference may be most effective when the reference is specific and the requirements of subpart D are straightforward, and do not require site-specific tailoring in a permit.

Third, EPA is proposing in § 257.141(c) to provide that the permit is to include such terms and conditions as the Administrator determines necessary to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at the permitted facility. This proposal is modeled on the RCRA ''omnibus'' provision at § 270.30(b)(2). It would authorize the permit writer to establish terms and conditions not expressly found in subpart D, but which the Administrator determines, after review of the CCR permit application materials and operations at the facility, to be necessary to meet the protectiveness standard in section 4004(a) of RCRA. Based on its experience implementing the subtitle C permit program, EPA considers this authority to be a key component of an effective permit program

A permit reflects the result of an adjudication in which the permit authority determines how the technical criteria in subpart D apply to the facility's specific operations and site conditions. During this process questions can arise as to how particular requirements apply to unique or anomalous situations that are not explicitly resolved by the text of the regulation (and likely could not be given the nature of these regulations, which establish generally applicable national requirements). ''Omnibus'' provides a kind of bridging or supplemental authority that allows permit writers to clarify how the technical criteria apply in a specific context, and to draft terms and conditions approving site-specific approaches, that are appropriate for the on-the-ground conditions at the facility, to achieve compliance with applicable requirements in subpart D. To be clear, this provision would not allow the Administrator to waive, amend, or alter any requirement in subpart D in a CCR permit, as that can only be accomplished through rulemaking.

Evaluating compliance approaches proposed by the applicant in site-specific plans or reports and incorporating them into the permit, either directly or by reference, is expected to be a large and critical part of the CCR permit writing process. A permit writer would review these documents in the application and draft permit conditions, which may be based on proposed compliance approaches found in the site-specific plans or reports that elaborate on the technical

criteria in subpart D. For example, an applicant who has triggered corrective action requirements for a CCR unit would develop a site-specific corrective measures assessment to comply with the requirements of § 257.96. The applicant would also select a corrective action remedy based on the findings of that assessment, in accordance with requirements in § 257.97. The corrective measures assessment would be submitted as part of the CCR permit application, and the applicant would provide documentation to support selection of the remedy. The permit writer would review these application materials and develop enforceable permit terms and conditions to require compliance with subpart D, reflecting specific approaches proposed in the application. These terms could include requirements to sample specific wells according to specific procedures, methods and schedules. They could also include requirements to design and implement specified remedial technologies in accordance with milestone deadlines. For example, ''The permittee shall complete design of an in-situ treatment system to contain and control releases of chromium from the CCR unit to a concentration no greater than 1 mg/l. The design shall be completed no later than December 1, 2019, and construction of the remedy shall begin within six months of completing the design.''

This adjudication of subpart D requirements would result in permit conditions interpreting those requirements, but which, consistent with the direction in RCRA § 4005(d)(2)(B), would be necessary to issue an enforceable CCR permit. The proposed language in § 257.141(a) and (c) is intended to provide the permit writer the authority and flexibility to develop such terms and conditions. It would also provide the permit writer, in the event that proposed approaches in the permit application are not sufficient to achieve compliance with the requirements of subpart D, with the authority to develop terms and conditions that will require the permittee to achieve such compliance.

Just as under the omnibus clause, EPA would bear the burden of demonstrating that the factual prerequisites to exercise the authority under § 257.141(c) have been met. EPA would present these findings in the Statement of Basis and Purpose accompanying both the draft and final permit.

Finally, because § 257.141(c) is both a procedural and substantive provision, EPA is proposing it pursuant to RCRA §§ 1008(a)(3) and 4004(a) as well as RCRA § 4005(d). As such, EPA considers it to be, at least in part, a technical criterion. EPA requests comment on whether it would therefore be appropriate to include a corresponding provision with the other technical criteria in subpart D.

c. Schedule of Compliance

EPA is proposing at § 257.142(a) that if a CCR unit is not in compliance with one or more applicable requirements of subpart D and will still be out of compliance at the time of permit issuance, a permit may be issued which includes a schedule of compliance. The schedule of compliance would consist of a series of enforceable actions, each with a deadline, which will result in compliance with subpart D as soon as is feasible. In cases where the applicant is subject to a judicial consent decree or administrative order, the compliance schedule would not deviate from the specific requirements in the consent decree or administrative order and would be no less stringent but may be more detailed (*e.g.,* may include interim milestones).

If the final compliance deadline in the compliance schedule is more than one year after the CCR permit becomes effective, then EPA is proposing that interim milestones with compliance deadlines would be established, each lasting no longer than one year. EPA is proposing a one-year timeframe to maintain effective oversight of compliance efforts, while recognizing that some work required to achieve compliance may take months or more, and that seasonal or inclement weather may impact the feasibility of accomplishing major construction or earth-moving activities more quickly.

In addition, EPA is proposing at § 257.142(a)(3) to require that no later than 30 days after each interim milestone deadline or the final deadline for compliance, the permittee must post a notification on the public CCR website of its compliance or noncompliance with the interim milestone or final requirements. EPA believes 30 days is sufficient time to prepare and post this notification, which is essentially a statement of actions taken or not taken. If the permittee fails to comply with deadlines in a schedule of compliance in a CCR permit, the permittee would be subject to enforcement, modification of the permit to incorporate additional requirements or restrictions, or potentially termination of the CCR permit.

An example of a situation where a compliance schedule may be appropriate would be where a CCR unit does not meet an applicable location standard but has not yet ceased receiving waste, even though the deadline to do so has passed. The facility may have failed to comply with the requirement to cease receiving waste due to delays in making the operational changes needed to cease sending non-CCR waste streams to the CCR unit. EPA could issue a CCR permit to require compliance with closure requirements in subpart D by establishing enforceable deadlines for project milestones in the CCR permit, as well as any applicable corrective action requirements. If the CCR unit is being operated under an enforcement order (*i.e.,* a federal consent decree or an administrative order) the Administrator could establish a schedule of compliance to incorporate the enforcement order in the CCR permit. If the CCR unit is not operating under an enforcement order, the Administrator could develop a schedule of compliance to ensure the fastest closure feasible and require the permittee to come into compliance with subpart D using a site-specific compliance approach, with milestones, in an enforceable permit. These milestones could include, for example: Completion of process change drawings no later than three months after permit issuance, ordering necessary equipment no later than one month after drawings are complete, and installing new equipment at the first scheduled shutdown of the unit or no later than 120 days after the new equipment is received.

4. Changes to a Permit

During the active life of a CCR unit, through post-closure care and until completion of all corrective action, changes to a permit are inevitable to keep pace with evolving business practices, technology, cleanup decisions, and changes in applicable regulatory requirements. It is likely that all CCR permits will need to be changed multiple times throughout the operation and closure of the unit, and EPA is proposing to establish procedures at §§ 257.150 through 257.152 to accomplish this.

EPA is proposing two basic categories of modifications: (1) Those which are initiated by EPA, including in response to a citizen petition submitted in accordance with § 124.5, and (2) those which are initiated by the permittee. The procedures EPA is proposing at §§ 257.150 through 257.152 would establish the factual findings and criteria applicable to all modifications. These procedures would distinguish between two types of permittee-initiated changes, categorizing them as either major or minor, along with a streamlined process for a facility to

request minor modifications. EPA is also proposing to rely on the existing procedures in part 124 or part 22 whenever EPA modifies or revokes and reissues a permit at its own initiative, terminates a permit, or acts on a permittee's request for a major modification.

a. Modification or Revocation and Reissuance of an Individual Permit at EPA's Initiative

EPA is proposing that the Administrator may modify or revoke and reissue an individual permit if one or more of the causes listed in § 257.150(a) exist. EPA is proposing explicitly that the Administrator may make this determination based on information from any source, such as through a facility inspection, information submitted or posted by the permittee, a petition under § 124.5 of this chapter, or whenever EPA reviews the permit file. When a permit is modified, only the conditions subject to modification would be reopened. By contrast, if a permit is revoked and reissued, the entire permit would be reopened and subject to revision. Revocation and reissuance would generally be appropriate when the changes are too extensive to be addressed through a permit modification. For example, revocation and reissuance may be appropriate when permitting authority is partially transferred to a state that has received a partial program approval. In this example, if a federal permit includes multiple CCR units, and some of them become subject to permit requirements under an approved state program, the federal permit may be revoked and reissued to include only the CCR units which remain subject to federal permitting requirements. This structure is consistent with procedures in other federal permitting programs and with the standard terms for severability proposed in § 257.140. See, *e.g.,* §§ 122.62, 144.39, and 270.41.

EPA is proposing to limit the Agency's authority to initiate a modification only to situations in which EPA determines that one or more of the causes listed in § 257.150(a) exist. These are generally similar to those found in several EPA programs including NPDES, UIC, and RCRA. See, §§ 122.62, 144.39, and 270.41.

The first cause listed in § 257.150(a)(1) would be if there are alterations or additions to the facility that would be materially and substantially different from those specified in the existing permit conditions or permit application, or that could otherwise impact the ability of the permit to require compliance with any of the requirements in subpart D. This type of modification could include changes to operations beyond the CCR unit but that could affect the measures the facility has adopted to comply with subpart D, such as a change to a process or operation that affects fugitive dust control or run-on runoff control. The EPA authority to initiate a permit modification to address this situation is necessary to ensure that CCR permits continue to require the permittee to achieve compliance with subpart D.

The second cause listed in § 257.150(a)(2) would be where EPA has received information since the time of permit issuance that demonstrates the need for modified permit conditions. EPA is proposing that it could modify a permit on this basis in two situations. The first situation is where the information was not available to EPA at the time of permit issuance, and the information would have justified the inclusion of different permit conditions at the time of issuance to require compliance with subpart D. The second situation would not hinge on whether the information was available at the time of permit issuance but would authorize modification whenever any information shows that modification is necessary to include requirements in the permit which ensure there will continue to be no reasonable probability of adverse effects on health or the environment from permitted operations.

EPA recognizes that this latter provision is broader than the comparable provisions under other EPA regulations (*e.g.,* § 270.42) but this was intentional. In contrast to other programs, EPA is proposing that CCR permits be issued without an expiration date, which means that there will be no routine opportunity to reexamine the permit as a whole or to rectify mistakes. Thus, for example, if an inspection reveals deterioration of a cap over a closed CCR landfill, the Administrator should be able to extend the post-closure care period in the CCR permit to ensure continued compliance with the performance standards in § 257.102, without regard to whether those conditions existed at the time of permit issuance, and therefore such information might have been available to EPA. The Agency considers such a provision to be an essential component of the program to ensure that any permit continues to meet the standard in RCRA section 4005(d)(2)(B) throughout the entire life of the permit. This authority is particularly critical in light of the permit shield provided by RCRA 4005(d)(6) and the corresponding provision proposed in § 257.125(a).

In accordance with proposed § 257.150(a)(3), if the Administrator has cause to terminate a permit under § 257.153 but determines that modification or revocation and reissuance is more appropriate, the Administrator may change the permit to incorporate updated permit terms to require compliance with subpart D. For example, if a CCR unit is out of compliance, rather than terminate the permit in accordance with § 257.153(a), the Administrator may initiate a modification to incorporate a schedule of compliance into the permit in accordance with § 257.142. This approach could minimize any interruption in the effectiveness of an enforceable CCR permit and may be appropriate if a permit modification could result in quicker compliance with subpart D requirements than other alternatives, such as an enforcement action. For example, in the context of a permittee that is not in compliance with the requirements for an ongoing, complex corrective action, EPA may decide to modify the permit to establish more prescriptive interim milestones, rather than terminating the permit and relying on a RCRA section 3008(a) compliance order to govern the cleanup.

The fourth cause listed in § 257.150(a)(4) for EPA to initiate a permit modification is if EPA becomes aware of transfer of ownership or operation of a permitted CCR unit. If the new owner and operator have not submitted a timely permit application to update the name(s) of the permittee(s), EPA may initiate modification of the permit. EPA views this as a necessary provision, given that a permit issued in the name of an entity which no longer has control of the CCR unit would be less effective and enforceable than a permit issued to the owner and operator currently in control of the CCR unit. Failure of the new owner and operator to apply in a timely manner for a permit modification to reflect the transfer of control should not preclude EPA from transferring the permit, where EPA has information verifying that the transfer has occurred.

An additional basis for EPA to initiate a permit modification under § 257.150(a)(5) is where modification is appropriate to correct any error, mistake or omission, so as to conform a permit's requirements to the applicable requirements of subpart D. EPA believes this requirement is necessary to meet the standard in RCRA section 4005(d), particularly in light of the proposed permit shield. To ensure the inclusion of all appropriate permit terms and conditions, EPA is proposing the Administrator may initiate modification

of a permit to correct errors, mistakes or omissions in order to conform CCR permits to subpart D.

EPA is proposing to include a reference in § 257.150(a) to the existing provision in § 124.5(a) that lays out the procedure by which any interested person may petition the Administrator to modify or revoke and reissue a permit. A corresponding reference to petitions to terminate a permit is proposed in § 257.153. As specified in § 124.5, such a petition can only be granted if EPA determines that one or more of the grounds in paragraph (a) of this section have been established. Also, as specified § 124.5, the petition must be in writing and contain reasons or factual information or evidence.

An interested party might obtain such information through personal observation (*e.g.,* observation of unpermitted or non-compliant CCR management activities at a facility subject to a permit issued under these proposed requirements; observation of excessive releases from a facility, such as fugitive dust, uncontrolled runoff, or seepage of CCR). An interested party could also obtain information by reviewing compliance information submitted to EPA or posted on a publicly accessible CCR website. If any member of the public believes that a CCR permit should be modified based on such information, EPA is proposing to provide the same opportunity to request that the Administrator modify, revoke and reissue, or terminate a CCR permit that is available for NPDES, UIC, and RCRA hazardous waste permits. EPA requests comment on whether this provision is appropriate in the context of a RCRA subtitle D permit program.

EPA is proposing at § 257.150(b) a provision modeled after § 270.41(c), which would provide that the suitability of the siting of a previously permitted unit will not be considered at the time of permit modification or revocation and reissuance unless new information or regulations indicate there is a reasonable probability of adverse effects to health or the environment that was unknown at the time of permit issuance. This provision is intended to confirm that the Administrator will not routinely require the owner and operator to evaluate whether an existing CCR facility or existing CCR unit continues to be properly sited during routine permit modifications. Such an action is not within the current scope of subpart D, which requires a single demonstration of compliance with the location criteria. However, if information becomes available demonstrating that the CCR unit presents a reasonable probability of adverse effects to health or the environment, the permit would fail to meet the protectiveness standard in RCRA section 4004(a). As an example, this provision might be triggered if the elevation of the aquifer beneath the unit had significantly and permanently increased over time, *e.g.,* as a result of intersecting surface water or aquifer deformation, such that the CCR unit located above the aquifer would no longer meet the requirements of § 257.60. The proposed provision at § 257.150(b) would clarify that in such a case EPA could modify or revoke and reissue the CCR permit with updated permit terms, under the omnibus provision proposed at § 257.141, to address the risks. This provision is similar to § 270.41(c), which is limited to situations in which the risk was unknown at the time of permit issuance. EPA is proposing to retain this limitation, even though, as discussed above, EPA is otherwise proposing to adopt more expansive bases for Agency-initiated modifications in this program. EPA believes that there should be a higher bar to impose further conditions on the siting of a unit, given that it may be technically difficult to address issues once the unit has been built and is operating. EPA is proposing to adopt language in § 257.150(b) that reflects the RCRA section 4004(a) standard and to clarify that the risk was unknown to the Administrator, rather than merely ''unknown.''

In fact, EPA expects that the likelihood that a unit's compliance with the location criteria would change over time is low, and because this will be a rare occurrence, would be properly addressed under omnibus authority. However, EPA requests comment on whether this could occur with sufficient frequency that it would be best addressed by amending the criteria at §§ 257.60 through 257.64 to reflect these circumstances rather than the approach proposed in this action. Note that the language under § 257.150(b) would not preclude routine application of the subpart D location criteria to lateral expansions. In subpart D, lateral expansions are considered new CCR units that must be permitted and must comply with all the requirements applicable to new units, including the location criteria.

To ensure adequate public notice and transparency, EPA is proposing at § 257.150(c) that the Administrator will post all EPA permitting actions on a publicly available website. This would include: Draft permits, permit modifications, revocations, terminations, and reissued permits. This is discussed further in Unit V of this preamble.

b. Permit Modifications at the Request of the Permittee

After an individual CCR permit is issued, the permittees are obligated to evaluate changes at the facility and changes in the regulatory requirements, and to apply for permit modifications as needed to maintain a permit which accurately reflects operations at the facility and requires compliance with the applicable requirements of subpart D and the protectiveness standard in RCRA section 4004(a). An individual CCR permit modification could be requested by the permittee at any time during the life of the permit, which is how EPA expects most modifications will be initiated.

To obtain a modification, EPA is proposing that the permittee would submit an application for a permit modification to EPA, in accordance with § 257.152, which would describe the type of permit modification requested and would specify the requested changes to permit provisions. In all applications for permit modifications, the permittees would submit information to EPA that describes the exact change requested to the permit conditions, proposes whether the change is a major or minor modification, and provides a permit application that contains the information required in the relevant provisions in §§ 257.130 and 257.131. All applications must also include the certification required under § 257.130(e), attesting to completeness, truth and accuracy of the application.

In addition, as part of seeking a modification to a permit, the owner and operator must review the previously submitted permit application in its entirety to determine whether it continues to accurately reflects solid waste management of CCR at the facility. If the permit application no longer completely and accurately describes these operations, the facility must submit an amended application that reflects its current operations, even if the facility believes that no modification of existing permit conditions is necessary in light of these changes.

EPA is proposing two types of modifications, major and minor, for many reasons. EPA examined several other environmental permitting programs to inform this proposed rule, as discussed in Unit III.C of this preamble. Some of these programs have more than two types of modifications, including the RCRA hazardous waste permitting program. However, based on the nature and complexity of the scope

of CCR disposal and waste management EPA is proposing that only two categories of modifications are necessary to capture all reasonably anticipated modification scenarios. CCR are generally managed in only two types of units: A landfill or a surface impoundment; in contrast, there are many more types of hazardous wastes which are typically managed in a wide variety of ways (*e.g.* treated, stored, or disposed of) in a variety of units (*i.e.,* landfills, surface impoundments, tanks, incinerators). Further, the modifications necessary for CCR units are anticipated to generally be similar for landfills and surface impoundments.

i. Minor Modifications at the Request of the Permittee

Minor modifications would be minor or administrative changes that keep the permit current with respect to common changes to the facility or its operations. These changes would not substantially alter the permit conditions or reduce the ability of the facility to operate in a manner that is protective of health and the environment. These criteria for minor modifications, which are proposed in § 257.151(a), were modeled on the criteria for class I modifications under § 270.42 and minor modifications in § 71.7(e)(1). The proposed criteria are intended to exclude any change that could decrease the effectiveness of the permit at either requiring compliance with subpart D, or otherwise ensuring that the facility continues to meet the protectiveness standard in RCRA section 4004(a). Because of their administrative nature, simplicity, routine nature, and lack of impact on the operation or protectiveness of the CCR unit and related waste management practices, such modifications should be implemented quickly and do not warrant public comment.

A list of examples of minor modifications is provided in § 257.151(a)(1) through (a)(10), but any modification that meets the criteria proposed in § 257.151(a) would be processed as a minor modification. EPA included the examples on the list largely because they are expected to be routine changes that can be quickly reviewed, and that should have little potential to impact human health or the environment, and consequently do not necessitate an opportunity for public comment.

Among the listed examples of minor modifications are any administrative or informational changes in the permit application, such as changes to the name or contact information of coordinators or other persons or agencies identified in the permit or compliance plans. Another example is any correction of typographical error in the permit, as long as these revisions do not substantively or materially impact any of the permit terms.

An example of a minor permit modification that EPA is proposing to include at § 257.151(a)(3) is the transfer of ownership or operational control of a CCR unit or facility. EPA understands that a change in ownership or operational control of a CCR unit or facility can sometimes happen quickly or may be uncertain until the transfer occurs. In that case, it may not be feasible for the permittee to apply for a permit modification 45 days prior to the transfer. Therefore, the proposal would require the new owner or operator to submit a revised permit application as soon as practicable, but no later than 30 days after the transfer of ownership or operational control occurs. The new permittee would also provide contact information to the Administrator.

In addition, EPA is proposing at § 257.151(a)(4) to consider any changes necessary to comply with new or amended regulations as minor modifications, when these changes can be incorporated directly into the permit without requiring a significant exercise of technical judgement or discretion and without substantially changing design or operational restrictions or compliance approaches required by the existing permit. EPA is proposing that public input is not needed for the kind of ministerial modification that merely implements the change in the regulation. This is also the case for any changes in statutory requirements. Since a change in the regulation underlying the permit condition would go through public notice and a public comment, further opportunity for public comment on effectuating that change is not needed. Similarly, when the statute changes, EPA has no discretion to revise Congress's mandate, and updating the permit to reflect that mandate is merely a ministerial exercise that does not warrant public comment.

In these circumstances, permittees will be expected to initially determine the changes that are applicable to their CCR units and the changes to the permit conditions that are needed. The permittees would to submit an application for a minor modification if those changes can be incorporated directly, without requiring discretion regarding applicability or any changes to site-specific compliance approaches. If the change in regulatory or statutory requirements requires a permit modification that is complex or requires changes to compliance approaches or other decisions in the permit that relied on any significant judgment or discretion, then the modifications would be considered major. See proposed § 257.151(c)(9).

EPA is proposing in § 257.151(a)(6) that minor modifications can include any changes that increase the stringency of permit requirements, such an increase in the frequency or duration of the procedures for inspection, monitoring, recordkeeping, web posting, sampling, analytical methods, or maintenance activities. If the permittee wants to inspect the CCR unit more often than required by the existing permit, conduct more groundwater samples or increase the frequency of sample collection, or use any equivalent analytical methods, this provision allows the permittee to make these changes using the minor modification procedures. Also, if there are changes to monitoring, sampling, or analysis methods or procedures that are appropriate to conform permit conditions to updated agency guidance or regulations, these would be considered minor modifications. EPA will review the proposed modifications to make sure the changes are equivalent to or more stringent than the permit terms, but EPA believes that, on balance, an opportunity for public comment would unnecessarily delay implementation of clearly desirable changes.

Another minor modification at § 257.151(a)(8) would be if an existing groundwater monitoring well needs to be replaced because it has been damaged or rendered inoperable. As long as the well replacement does not significantly change the location, design, or depth of the sampling interval of the well, this can be considered a minor modification, but if it does change any of those criteria, it would be considered a major modification. The last example of a minor modification in the proposed rule would be a change to the closure plan to adjust the estimates of the maximum extent of operations or the maximum inventory of waste onsite at any time during the active life of the facility. This is proposed at § 257.151(a)(9). These would be considered minor modifications as long as all of the other monitoring and reporting requirements are conducted in accordance with the permit and as long as these changes continue to ensure there is no reasonable probability of adverse effects to health and the environment.

The procedures to obtain a modification are proposed at § 257.151(b) and would differ for minor modifications and major modifications. In either case, the owner and operator

would submit a permit modification application to EPA in accordance with § 257.152 and indicate whether the permittee considers the proposed change to be a major or minor modification. All minor permit modification applications must contain sufficient information to justify treating the modification as minor. The Administrator would review the application and determine if that characterization is accurate. This is an important step, because the major and minor procedures differ significantly in several respects. For example, the minor modification procedures proposed at § 257.151(b) would not require a public comment period or public meeting as they are changes that do not substantially alter the permit conditions. Any modifications that meet the criteria at § 257.151(a) would be considered as minor; if multiple modifications are requested in a single application, the permittee would be required to demonstrate that all of them meet the criteria. Any that do not would be considered major modifications and processed according to the procedures proposed at § 257.151(d).

EPA is proposing two provisions that specify the timing for requesting a minor modification; first at § 257.151(b)(1), which would apply to most requests, EPA is proposing to require the permittee to submit an application no less than 45 days before making a change to the CCR unit. This deadline would be excepted for minor modifications requested due to the transfer of ownership or operational control of a CCR unit or facility, where it is often not feasible to apply 45 days in advance, as provided in § 257.151(a)(3).

Second, EPA is proposing at § 257.151(b)(2) that if there are revisions to subpart D, such as a final rule promulgation or court order, which makes the underlying requirements less stringent than the existing permit conditions, the owner and operator may continue to operate in accordance with the permit or may apply for a minor permit modification in accordance with § 257.152. All regulatory revisions will be posted in the **Federal Register**, and it will be the permittee's responsibility to be aware of any new or more stringent applicable requirements. Whenever the underlying requirements in subpart D change to be more restrictive, such that compliance with the permit no longer results in compliance with subpart D, the permittee would be required to apply for a permit modification. EPA believes that the permittee should initiate these modifications because an owner and operator is best able to identify the impact of any regulatory changes on operations at a facility. Moreover, these modifications will be put into effect faster if the permittee initiates the modification than if EPA initiated the modification.

After a permit application for a minor modification is submitted, EPA is proposing in § 257.151(d)(4) and (d)(5) that the Administrator would determine whether the modification is appropriate and protective. The Administrator may take a number of actions in response; first EPA may determine that the proposed modification does not meet the criteria for a minor modification and therefore must follow the procedures for a major modification in § 257.151(d). The Administrator could also determine that additional information is needed to evaluate the modification; for example, if the application does not contain enough supporting information to demonstrate that the change is necessary or that it meets the conditions for a minor modification. The Administrator may also deny the request if it does not contain enough supporting information or if the requested modification would result in a permit that does not require compliance with subpart D or otherwise fails to meet the statutory protectiveness standard. If the Administrator takes any of these actions, the permittee may update the application and submit it again to the Administrator. In this case, the permittee must continue to comply with the original permit conditions.

Finally, the Administrator may approve the minor modification and update the permit accordingly, including a new permit issuance date. EPA is proposing at § 257.151(b)(7) that if EPA has not responded within 45 days after the permittee submits the application for the modification, the application will be considered to be approved and the permittee may make the change as described in the permit modification application. Since minor modifications do not substantially alter the permit conditions, EPA believes that 45 days provides sufficient notice of the proposed change. This ensures that minor, unsubstantial changes are made in a timely manner and keeps the permit application up to date. Note that minor modifications would not be subject to the requirements in § 124.5, which is consistent with the approach under the NPDES, UIC, 404 programs, as well as the RCRA hazardous waste program, which excludes both Class 1 and 2 modifications. See § 124.5(c)(3).

ii. Major Modifications at the Request of the Permittee

In contrast to minor modifications, major modifications are those changes that materially alter the facility, its operation, or compliance approaches required in the existing permit, or changes to address regulatory revisions that will require a significant exercise of technical judgement or discretion to implement. EPA is proposing at § 257.151(c) that any modification that does not meet the criteria proposed at § 257.151(a) to be a minor modification would be a major modification. Major modifications would include physical or operational changes, changes to compliance approaches, or any other changes that could impact the protection of health and the environment. If a CCR unit transitions into a new operating phase and becomes subject to requirements in subpart D not included in the permit, a major modification application must be submitted to the Agency to update the permit. However, if a CCR unit transitions into a new operating phase and all requirements in subpart D applicable to the unit in the new operating phase are already included in the permit, no permit modification would be required. Examples of major modifications that meet the above criteria are proposed in § 257.151(c)(1) through (9). EPA requests comment on whether the criteria proposed in § 257.151(c) is sufficiently comprehensive to include all potential modifications that should be treated as major, and on the appropriateness of the listed examples of major modifications.

The first example of a major modification that EPA is proposing at § 257.151(c)(1) is any change that reduces the frequency or stringency of requirements for inspection, monitoring, sampling, analysis, recordkeeping, reporting, web posting, or maintenance activities by the permittee. These would be considered major modifications because there is a possibility that the change would make the newly revised permit conditions less stringent than the existing requirements in the permit, which warrants careful review and, because it could impact the public, an opportunity for public comment. The Administrator will not approve changes that make the permit conditions less protective than the underlying requirements in subpart D. For example, a facility might be required to conduct daily inspections following a structural stability failure at the CCR surface impoundment to monitor the progress of remediating the issue. After the structural stability issue is resolved, a

major modification could be requested to allow the facility to instead comply with the weekly inspection requirements in § 257.83(a)(i). This modification would be less stringent than the original permit term, but not than the technical criteria in subpart D, and could be approved because the permit would continue to meet the statutory standard that each permit requires compliance with subpart D.

Removing a permit condition because the underlying regulatory requirement is no longer applicable would be considered to be a major modification, if the change in the applicable requirement was not merely incorporating a regulatory revision, a statutory change, or a court order (*e.g.,* vacatur of a requirement). See § 257.151(c)(2). For example, this could include a change based on completion of an operating phase (*e.g.,* completion of closure activities). Another example could be a change in the applicability of emergency action plan (EAP) requirements for existing and new CCR surface impoundments, in response to a change in the unit's hazard potential classification. See §§ 257.73(a)(3) and 257.74(a)(3), respectively. The EAP is a document that identifies potential emergency conditions at a CCR surface impoundment and specifies actions to be followed to minimize loss of life and property damage. The requirement for an owner and operator of a CCR surface impoundment to prepare an EAP applies to non-incised [9] surface impoundments classified as either high- or significant hazard potential.[10] A hazard potential classification provides an indication of the potential for danger to human life, economic loss, environmental damage, disruption of lifeline facilities, or other impacts in the event of a release of CCR from a surface impoundment due to failure or mis-operation. If subject to the requirement, owners and operators must conduct periodic (*i.e.,* every five years) hazard potential re-assessments. The CCR regulations address situations where the hazard potential classification of a CCR unit changes over time (*e.g.,* the circumstances presenting the potential for loss of life no longer exist). In the situation relevant to this example, if the CCR unit is determined to be no longer classified as either a high hazard potential unit or significant hazard potential unit, then the CCR unit is no longer subject to the EAP requirements. See § 257.73(a)(3)(iii). Once this determination is made, it would be appropriate to modify the permit to remove the EAP requirements from the permit because the EAP provisions are no longer applicable to the CCR surface impoundment. EPA is proposing this would be a major modification to a CCR permit.

EPA is also proposing at § 257.151(c)(3) that any reduction in the number, or substantial changes in location, depth, or design of groundwater monitoring wells required by the permit would be considered a major modification. This is considered a major modification because there is a possibility that the change would make the requested permit conditions less stringent than the existing permit, which warrants careful review and, because it could impact the public, an opportunity for public comment.

EPA is also proposing at § 257.151(c)(4) that the addition of a new CCR unit, including a lateral expansion, would be considered a major modification, provided the new unit did not qualify for and opt for coverage by either a general permit or the permit by rule (proposed at § 257.128). Such an addition would be a significant change to the CCR facility; it may allow a higher volume of CCR to be managed at the facility, and the new CCR unit may be subject to different requirements than the other unit(s) at the facility, which may have predated the 2015 rule. This would mean that new permit terms would be required, and, because these changes could significantly impact the public, EPA would consider public notice and an opportunity for comment not only appropriate, but necessary.

EPA is also proposing at § 257.151(c)(5) that any modification of a CCR unit, including physical changes or changes in management practices which are not minor modifications under § 257.151(a) will be considered a major modification. This would include any change to the CCR unit or CCR management operations that would require a material revision to the permit terms as written.

EPA is also proposing at § 257.151(c)(6) that initiation of a corrective action program, in accordance with § 257.96, or any substantive revision to the corrective action requirements in the permit would be considered a major modification. A site-specific compliance approach to corrective action is required when there is a statistically significant increase (SSI) above a groundwater protection standard for any constituent listed on Appendix IV of part 257, which indicates that there is a reasonable probability of adverse effects on health and the environment. Since corrective action will require discretion and professional judgment to determine an appropriate compliance approach and could impact the public, this would be considered a major modification.

EPA is proposing in § 257.151(c)(7) that changes to an approved plan required by subpart D, such as a closure plan required by § 257.102(b) or post-closure care plan required by § 257.104(d), and any reduction in the post-closure care period for any reason would also be examples of major modifications. The closure and post-closure requirements are found in §§ 257.100 through 257.104. Development of a site-specific plan for a CCR unit involves many decision points. For example, when developing a closure plan, the permittee must decide whether to close by removal or close by leaving CCR in place and how to design a final cover system. Moreover, the performance standards in the regulations allow for a variety of engineering approaches and can involve complex technical issues. These decisions also involve a certain degree of long-term risk, all of which warrants the greater degree of oversight and public involvement that comes with a major modification. These same considerations would apply equally to any other plans, such as a groundwater monitoring plan, a run-on run-off control plan, or a post-closure care plan. These plans serve to establish maintenance and monitoring procedures to ensure the continued effectiveness of controls to prevent releases, monitoring to evaluate effectiveness of controls or corrective measures, or of closure requirements. Therefore, EPA is proposing that these also be considered major modifications.

EPA is also proposing at § 257.151(c)(8) that an extension of the final date in a schedule of compliance established in accordance with § 257.142 would be an example of a major modification. A compliance schedule would be included in a CCR permit if the permittee is out of compliance with one or more provisions of subpart D. A modification to extend a compliance schedule would extend its period of noncompliance. Because this could increase the probability of adverse effects on health or the environment,

[9] The CCR regulations define an ''incised'' surface impoundment as a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

[10] A ''high hazard potential'' impoundment is a diked surface impoundment where failure or mis-operation will probably cause loss of human life. A ''significant hazard potential'' impoundment is a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

default approval of the proposed modification is inappropriate and public input is warranted.

EPA is proposing at § 257.151(c)(9) that if there is a change in underlying regulatory requirements, which requires substantial changes to the design, operation, or compliance strategies established in the permit, or that requires the application of significant technical judgement or discretion, this type of change would be considered a major modification. This would include, for example, the establishment or revision of a performance standard or applicability determination that is complex or relies on significant judgment or discretion to account for site-specific considerations. Public input on EPA's determinations regarding the requirements of that revised standard in the site-specific context at the particular CCR unit or facility would be warranted.

EPA is proposing to rely on the existing decision-making procedures in part 124 when issuing RCRA CCR permits, consistent with procedures followed in other federal permitting programs. The procedures for approving a major modification are the same as those that must be followed to issue the initial permit. Specifically, EPA must issue a draft permit (or tentative denial) in accordance with § 124.6 accompanied by a statement of basis or fact sheet, as appropriate. See §§ 124.7 and 124.8. The draft must be publicly noticed and made available for public comment. See §§ 124.9 through 124.11. EPA would provide notice of an opportunity for a public hearing and would hold one if EPA determines there is significant public interest and a public hearing is warranted. See § 124.12. EPA's final decision will include a response to comments and may be appealed under § 124.19. See also, §§ 124.15, 124.17. Unlike minor modifications, for major modifications, EPA is not proposing to establish a default approval if EPA does not take action within a certain number of days after the application for the modification is received.

c. Application To Modify a Permit

Whenever a permittee needs to make a change to a CCR permit, EPA is proposing that the permittee will update the permit application and submit it to the Administrator for review. EPA is anticipating that the permit application will be the same for initial permit issuance, as proposed at §§ 257.130 and 257.131 and in Unit IV.C.2, as it would be for a modification, through an electronic permitting process (see Unit V of this preamble). When the permittees need to make a change to the permit application, they would be able to access the permit application from the electronic permitting system and make any necessary changes throughout the entire permit application. Then, the permittees will be required to certify the amended permit application for truth, completeness and accuracy. The timelines for applications that EPA is proposing would be no less than 180 days in advance of the proposed change for a major modification, and for minor modification no less than 45 days in advance of the proposed change. See proposed § 257.152(c) and (b)(2), respectively. EPA anticipates more time would be needed to process major modifications to CCR permits, because the operational or regulatory changes would be more complex, and to follow the required public participation procedures.

EPA is proposing at § 257.152(a) that for either type of modification, major or minor, a complete permit application must contain sufficient information about the specific change anticipated, the modification type that is requested, and the reason why the permit modification is necessary. EPA is proposing that the permittee must give a detailed description of the exact modification or modifications requested for the facility or operations as well as any supporting documentation referenced by the permit. Since some requirements in subpart D pertain to the entire facility, such as the Fugitive Dust Control Plan required in § 257.80, any proposed changes to the facility-wide requirements must address any impacts that the modification could have around the facility. The permittee must also identify which permit condition(s) it is requesting to modify. The application must also identify whether the change meets the criteria for either a major or a minor permit modification, with sufficient information to support that classification. In addition, the permit modification application must contain an explanation of why the modification is necessary to ensure that the permit accurately reflects the current facility conditions and operations. In many cases, this explanation will include a written description of exactly why the change must be made, any technical justifications, along with supporting data, and any other applicable information required by §§ 257.130, 257.131, or 257.152. EPA believes that all of this information is necessary to completely understand and evaluate the requested modification, as well as how to draft modified permit terms that will require compliance with subpart D.

Consistent with the procedures for initial permit applications and § 124.3(c) EPA would review the application for a permit modification for completeness. If it is found to be incomplete, EPA will notify the applicant(s) in writing and will list the information necessary to make the application complete. In practice, EPA has frequently informally requested additional information from the applicant or provided an opportunity to supplement their application prior to triggering a formal notification that an application for a permit modification is incomplete. EPA generally expects to adopt a similar practice for CCR permit modification applications.

Prior to submitting the permit modification application, the owner and operator must review and update the previously submitted permit application in its entirety. The owner and operator would need to certify, as proposed at § 257.130(e), that both the updated sections to support the requested modification, and all other sections of the previously submitted permit application, truthfully, accurately, and completely describe all CCR units and solid waste management operations regulated by this program. If, the applicant, during this review, determines that any information in the prior application is no longer accurate, complete, or true, then that information must be updated in the modification application. This requirement is proposed because a modified permit would be issued with a new effective date, which would begin anew the periodic application review period proposed in § 257.132. In order to avoid a situation where a portion of a permit application could remain unreviewed for many years, this application review should occur each time an application for a modification is submitted.

EPA requests comment on whether these application procedures are sufficient and if the time periods identified for minor and major modifications are feasible for making these changes to a permit.

d. Termination of an Individual Permit

Establishing the circumstances under which a permit is no longer necessary or can be revoked is a key component of any permit program. The grounds for permit termination are specified in EPA regulations in several permit programs, including CWA, SDWA and RCRA hazardous waste permitting. See §§ 122.64, 144.40, 233.36, 270.43. These regulations share several common elements; generally, permits can be terminated under these regulations to address a significant risk, or in response to a permittee's malfeasance. See, Id. Some of these programs include

additional grounds that would be relevant in this context; allowing for termination when the permitted activity ceases, or to transition to some other regulatory mechanism, See §§ 122.64(b), 233.36(a)(3) and (4).

Accordingly, EPA is proposing at § 257.153(a) that an individual CCR permit could be terminated for limited, specified reasons. Consistent with the programs discussed above, a permit could be terminated by: Significant noncompliance; failure to fully disclose all relevant facts in an application or during the permit issuance process; misrepresentation of relevant facts at any time; or a determination that there is reasonable probability of adverse effects on human health or the environment from the permitted activity, which can only be addressed by permit termination. EPA is also proposing to adopt provisions that would authorize permit termination to allow transition to coverage by a general permit under § 257.127; permit by rule at § 257.128; to a permit issued under an approved State CCR Permit Program; or in response to cessation of the permitted activity with no remaining compliance obligations in subpart D.

EPA does not anticipate that CCR permit termination to address permittee malfeasance or a significant risk will occur often. While there is a future date where a CCR unit may no longer be subject to requirements in subpart D, and may not need a permit, these units typically operate for decades. After a CCR unit is closed, post-closure care is conducted over 30 years, and corrective action measures can take decades to achieve all cleanup goals. Closure, post-closure care and any required corrective action would be conducted under the terms of a CCR permit. Even if serious noncompliance leads EPA to deny a CCR permit for disposal, a new or modified CCR permit would be issued to require other activities to be conducted in compliance with the requirements of subpart D. Thus, in the overall scheme of the CCR permit program, permit termination should happen infrequently as the result of a unit no longer having compliance obligations, or if transitioning to a different CCR permitting mechanism, such as a general CCR permit.

EPA is proposing at § 257.153(b) that any termination of a CCR permit would follow the procedures in part 124 or part 22. Part 22 contains the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and EPA proposes to amend it by adding § 257.153 to the list of provisions by which EPA may terminate a permit for cause in § 124.5. This would make the requirements of § 22.44 applicable to termination of a CCR permit, including requirements for public notice and comment.

V. Electronic Permitting

The Agency is proposing to use electronic permitting (e-permitting) for as much of the permitting process as possible. E-permitting would improve the effectiveness and efficiency by streamlining the permitting process for both the permitting authority and the permittee, reducing time between application and permit issuance as well as improving the permit modification process. For each applicable CCR unit or facility, e-permitting could include the:

- Submittal of the initial permit application,
- Public notice of draft permitting actions,
- Issuance of final permitting actions,
- Submittal of an application for a permit modification,
- Public notice on draft permits and draft major modifications,
- Permittee access to the permit application for the periodic application review,
- Correspondence between EPA and the permittee or interested parties, and
- Termination of a permit.

To accomplish electronic permitting, EPA proposes to develop a CCR module in the RCRAInfo system using the Central Data Exchange (CDX) for owners and operators of CCR units to create a profile and submit information in this system. RCRAInfo allows for the creation of an EPA Identifier number if the facility does not already have one through the system. EPA envisions the system to include fillable forms with different options based on CCR unit type. For example, existing CCR surface impoundments would have different requirements to enter in the system than existing CCR landfills, and both would have different requirements in the permit application than new CCR units (*i.e.,* landfills, lateral expansions, and surface impoundments). Since EPA is proposing to ideally issue one individual CCR permit per facility, the basic information about the facility, owner, operator, and operations would be entered once in the permit application; separate information about each CCR unit at the facility would be entered based on the number and type of CCR units. The electronic system would also include the ability for the permit applicant to submit plans, drawings, and other documents into the system for review as part of the permit application.

Another option that EPA is considering for e-permitting is the use of a secure email box or another electronic method to reduce the use of paper but follow a streamlined permitting process. EPA requests comment on the use of electronic permitting. Are there other electronic information collection methods that should be considered, what would those entail and why should the Agency consider them? In addition, what type of information collection would be the most effective for this industry?

Regardless of the permit submission method that is developed for the CCR permit program, all the information submitted by the permit applicant must be certified for truth and accuracy, and then must be reviewed by a permit writer for compliance with both the technical requirements in subpart D and the permitting requirements in this proposed rule.

VI. The Projected Economic Impacts of This Action

A. Costs of the Proposed Rule

EPA estimated the costs associated with this action in an Economic Analysis (EA) which is available in the docket for this action. The EA considers two general categories of costs: Costs to regulated entities to prepare, submit, and revise initial permit applications, and to prepare, submit, and revise anticipated major and minor permit modifications; and costs to EPA to review and assess permit applications and permit modifications. The proposed permit application contents align with information already required by Subpart D to be developed and posted on publicly accessible CCR websites. Therefore, the EA estimates the incremental costs attributable to the provisions of this action against the baseline costs and practices in place as a result of the 2015 CCR final rule. The EA estimates that the net annualized impact of this proposed rule over a 20-year period of analysis will be annual costs of between $0.09 million and $0.85 million. This action is not considered an economically significant action under Executive Order 12866.

B. Affected Universe

This proposed rule affects facilities subject to EPA's 2015 CCR final rule, which generally includes electric utilities and independent power producers who fall within the North American Industry Classification System (NAICS) code 221112, and who generate CCR. The EA estimates that between 86 and 271 facilities will be affected by the proposed rule.

VII. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. While this is not an economically significant action, it is expected to raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This Economic Assessment (EA), entitled *Economic Assessment; Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program; Proposed Rule* is summarized in Unit VI of this preamble and is available in the docket.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2610.01, OMB control number 2050–NEW. The ICR for this proposed rule will serve is an amendment to the ICR approved by OMB for the Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities published in the **Federal Register** at 80 FR 21302, April 17, 2015. You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under Sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 62.

Frequency of response: The frequency of response varies.

Total estimated burden: EPA estimates the total annual burden to respondents to be *an increase in burden of* approximately 2,288 hours from the currently approved burden. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The total estimated annual cost of this rule is a *cost increase* of approximately $136,312. This cost increase is composed of approximately $135,690 in annualized labor costs and $622 in capital or operation and maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than March 23, 2020. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are generally electric utilities and independent power producers who fall within the NAICS code 221112, and who generate CCR. The Agency has determined that no small entities are affected at or above one percent of annual revenues, thus, determining that there is not a significant economic impact on any small entities. Estimated costs to regulated entities rely on information in prior Information Collection Requests (ICRs) prepared for similar permitting programs, including costs to prepare, submit, and revise initial permit applications, and to prepare, submit, and revise anticipated major and minor permit modifications. Estimates of annual revenues are calculated using reported generation figures and average annual power costs. Details of this analysis are presented in Unit VI of this preamble and in the Economic Assessment, which is available in the docket for this action. This action does not change the existing regulatory requirements associated with the 2015 CCR rule, which EPA previously determined would not have a SISNOSE.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications because it would impose requirements on facilities located in Indian country. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA will engage with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes concurrent with the public comment process for this regulation to permit them to have meaningful and timely input into its development.

For the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015, in the **Federal Register** at 80 FR 21302 (the 2015 CCR Rule), EPA identified three of the 414 coal-fired electric utility plants (in operation as of 2012) which are located on tribal lands. That rulemaking and the CCR rules and proposed rules that followed all

concluded however, that these facilities are not owned by tribal governments. The Agency is correcting that analysis today for the following three facilities: (1) The Navajo Generating Station in Coconino County, Arizona, which is operated by the Arizona Salt River Project and owned by the Navajo Nation; (2) the Bonanza Power Plant in Uintah County, Utah, which is operated by the Deseret Generation and Transmission Cooperative and owned by the Ute Indian Tribe; and (3) the Four Corners Power Plant in San Juan County, New Mexico, which is operated by the Arizona Public Service Company and owned by the Navajo Nation. The Navajo Generating Station and the Four Corners Power Plant are on tribal trust lands belonging to the Navajo Nation, while the Bonanza Power Plant is located on tribal trust lands within the Uintah and Ouray Reservation of the Ute Indian Tribe. Because CCR units are land-based units, the fact that these CCR facilities are located on tribal trust land means that the facility owners within the meaning of the CCR Rule are the tribal trust beneficial landowner tribes. The Agency continues to believe that the facility operators will bear all direct compliance costs associated with the above-mentioned rules and this proposal. However, to the extent that an operator fails to comply with a federal CCR requirement, CCR facility owners may also be held liable.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled ''Human and Ecological Risk Assessment of Coal Combustion Residuals'' which is available in the docket for the final rule as docket item EPA–HQ–RCRA–2009–0640–11993.

As ordered by E.O. 13045 Section 1–101(a), for the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015 in the **Federal Register** at 80 FR 21302, EPA identified and assessed environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Thus, EPA believes that this rule will be protective of children's health.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This rule is not economically significant and is not expected to have a significant effect on the production, use or supply of energy commodities. Additionally, it is narrowly tailored such that no novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities or the principles set forth in Executive Orders 12866 and 13211 will occur.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR final rule as docket item EPA–HQ–RCRA–2009–0640–12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, this rule creates a permitting framework that implements the CCR rule, which is risk-reducing with reductions in risk occurring largely within the surface water catchment zones around, and groundwater beneath, coal-fired electric utility plants. Since the CCR rule is risk-reducing and this action does not add to risks, this action will not result in new disproportionate risks to minority or low-income populations.

Additionally, EPA evaluated the demographic characteristics of communities that may be affected by the CCR rule. In the analysis contained in the RIA the demographic characteristics of populations surrounding coal-fired electric utility plants are compared with broader population data for two geographic areas: (1) One-mile radius from CCR management units (*i.e.,* landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (*e.g.,* unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. The percentage of minority residents of the entire population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, *i.e.,* 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, *i.e.,* 18.6 percent versus 11.3 percent nationally.

Comparing the population percentages of minority and low-income residents within one mile of landfills to those percentages in the general population, EPA found that minority and low-income residents make up a smaller percentage of the populations near landfills than they do in the general population, *i.e.,* minorities comprised 16.6 percent of the population near landfills versus 24.8 percent nationwide and low-income residents comprised 8.6 percent of the population near landfills versus 11.3 percent nationwide. In summary, although populations within the catchment areas of plants with surface impoundments appear to have disproportionately high percentages of minority and low-income residents relative to the nationwide average, populations surrounding plants with landfills do not. Because landfills are less likely than impoundments to

experience surface water run-off and releases, catchment areas were not considered for landfills.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: December 19, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1361; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

■ 2. Amend § 22.44 by revising paragraph (b) introductory text to read as follows:

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

* * * * *

(b) In any proceeding to terminate a permit for cause under § 122.64, § 257.153, or § 270.43 of this chapter during the term of the permit:

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

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

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

■ 4. Amend § 124.1 by revising paragraphs (a) and (d) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES ''permits'' (including ''sludge-only'' permits issued pursuant to § 122.1(b)(2) of this chapter). The latter kinds of permits are governed by part 270. RCRA interim status and UIC authorization by rule are not ''permits'' and are covered by specific provisions in parts 144, subpart C, and 270. This part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR parts 320–327. The procedures of this part also apply to denial of a permit for a RCRA CCR unit under § 257.133 or for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

* * * * *

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator or the Administrator, in the case of RCRA CCR permits. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under § 124.12. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

* * * * *

■ 5. Amend § 124.2 by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding in alphabetical order the definitions of ''RCRA CCR General Permit'', ''RCRA CCR Permit'', ''RCRA Permit''; and

■ c. Revising the definitions of ''Director'', ''Facility or activity'', ''Permit'', ''Regional administrator'', and .

The additions and revisions read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 257.121, 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41. Terms not defined in this section have the meaning given by the appropriate Act.

* * * * *

Director means the Administrator, Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, *Director* means the Regional Administrator, except for RCRA CCR permits where *Director* means the Administrator. When there is an approved State or Tribal program, ''Director'' normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1) In such cases, the term ''Director'' means the Regional Administrator and not the State or Tribal director.

* * * * *

Facility or activity means any ''HWM facility,'' UIC ''injection well,'' NPDES ''point source'' or ''treatment works treating domestic sewage'' or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs. For RCRA CCR permits, *facility* means *facility* as that term is defined in § 257.53 of this chapter.

* * * * *

Permit means an authorization, license or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of this part and parts 122, 123, 144, 145, 233, 257, 270, and 271 of this chapter. ''Permit'' includes RCRA ''permit by rule'' (§ 270.60), RCRA standardized permit (§ 270.67), UIC area permit (§ 144.33), NPDES or 404 ''general permit'' (§§ 270.61, 144.34, and 233.38), RCRA CCR general permit (§ 257.127), and RCRA CCR permit by rule (§ 257.128). Permit does not include

RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a ''draft permit'' or a ''proposed permit.''

* * * * *

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator. For RCRA CCR permits, this term shall mean Administrator if the Administrator has not issued a delegation of authority to the Regional Administrator.

* * * * *

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, and Pub. L. 114–322, 42 U.S.C. 6901 *et seq*).

RCRA CCR general permit means a RCRA CCR permit containing terms and conditions to require compliance with requirements of part 257, subpart D of this chapter applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits in the CCR program are issued in accordance with § 257.127 of this chapter.

RCRA CCR permit means a federal permit issued pursuant section 4005(d) of RCRA, 42 U.S.C. 6945(d).

RCRA permit means a permit issued pursuant to any section of RCRA, 42 U.S.C. 6901 *et seq.*

* * * * *

■ 6. Amend § 124.3 by revising paragraph (a) to read as follows:

§ 124.3 Application for a permit.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the Director an application for each permit required under §§ 257.130 or 270.1 (RCRA), 144.1 (UIC), 40 CFR 52.21 (PSD), and 122.1 (NPDES). Applications are not required for RCRA permits by rule (§ 257.128 or § 270.60), RCRA CCR general permits (§ 257.127), underground injections authorized by rules (§§ 144.21 through 144.26), NPDES general permits (§ 122.28) and 404 general permits (§ 233.37).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 257.130, 257.131, 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), 257.130 and 270.11 (RCRA).

* * * * *

■ 7. Amend § 124.5 by revising paragraphs (a), (c)(1), (3), (d)(1), and (3) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 122.62 or § 122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 257.150, 257.151, 257.153, 270.41 or 270.43 (RCRA). All requests shall be in writing and shall contain facts or reasons supporting the request.

* * * * *

(c) * * * (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 257.150, 257.151, 257.152, 270.41 (other than § 270.41(b)(3)), or § 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

* * * * *

(3) ''Minor modifications'' as defined in §§ 122.63 (NPDES), 144.41 (UIC), 233.16 (404), 257.151 and ''Classes 1 and 2 modifications'' as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

(d) * * * (1) If the Director tentatively decides to terminate: A permit under § 144.40 (UIC) of this chapter, a permit under § 122.64(a) (NPDES) of this chapter, a permit under § 257.153 or 270.43 (RCRA) of this chapter (for EPA-issued NPDES permits, only at the request of the permittee), or a permit under § 122.64(b) (NPDES) of this chapter where the permittee objects, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 of this chapter.

* * * * *

(3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 123.24(b)(1) (NPDES) of this chapter, 145.25(b)(1) (UIC) of this chapter, 257.129 or 271.8(b)(6) (RCRA) of this chapter, or 501.14(b)(1) (sludge) of this chapter. In addition, termination of an NPDES permit for cause pursuant to § 122.64 of this chapter may be accomplished by providing written notice to the permittee, unless the permittee objects.

* * * * *

■ 8. Amend § 124.6 by revising paragraphs (c), (d)(1), (2), (3), and (4)(i) to read as follows:

§ 124.6 Draft permits.

* * * * *

(c) *(Applicable to State programs, see §§ 123.25 (NPDES) and 233.26 (404).)* If the Director tentatively decides to issue an NPDES, 404, or RCRA CCR general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) * * *

(1) All conditions under §§ 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC), 233.7 and 233.8 (404), 257.140 and 257.141 (RCRA CCR), or 270.30 and 270.32 (RCRA) (except for PSD permits);

(2) All compliance schedules under §§ 122.47 (NPDES), 144.53 (UIC), 233.10 (404), 257.142 or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under §§ 122.48 (NPDES), 144.54 (UIC), 233.11 (404), 257.140(k) or 270.31 (RCRA) (except for PSD permits); and

(4) * * *

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under § 257.140 or 270.30;

* * * * *

■ 9. Amend § 124.10 by revising paragraphs (c)(1)(i), (2)(i), (2)(ii), (d)(1)(ii), and (1)(iii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(i) The applicant (except for NPDES, 404, and RCRA CCR general permits when there is no applicant);

* * * * *

(2) * * *

(i) For major permits, NPDES and 404 general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES and RCRA CCR general permits, in the **Federal Register**;

Note: The Director is encouraged to provide as much notice as possible of the NPDES, Section 404, or RCRA CCR draft general permit to the facilities or activities to be covered by the general permit.

(ii) For all RCRA permits, other than RCRA CCR permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations. For RCRA CCR permits, publication of a notice on a publicly accessible internet website and by any other method the Director determines will effectively provide timely notice to interested persons.

* * * * *

(d) * * *

(1) * * *

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES, 404, and RCRA CCR draft general permits under §§ 122.28, 233.37, and 257.127;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES, 404 or RCRA CCR general permits when there is no application.

* * * * *

■ 10. Amend § 124.12 by revising the introductory text of paragraph (a)(3) to read as follows:

§ 124.12 Public hearings.

(a) * * *

(3) For RCRA permits only, other than RCRA CCR permits:

* * * * *

■ 11. Amend § 124.15 by revising introductory text paragraph (a) and paragraph (b) to read as follows:

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision (or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29). The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29) shall become effective 30 days after the service of notice of the decision unless:

* * * * *

■ 12. Amend § 124.19 by revising paragraphs (a)(1) and (3) to read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.

(a) * * * (1) *Initiating an appeal.* Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.

* * * * *

(3) *Filing deadline.* A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

* * * * *

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 13. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), 6945(d); 33 U.S.C. 1345(d) and (e).

■ 14. Part 257 is amended by adding subpart E to read as follows:

Subpart E—Federal Coal Combustion Residuals Permit Program

General Information

Sec
257.120 Program overview.
257.121 Definitions.
257.122 Considerations under Federal law.
257.123 Applicability.
257.124 Deadlines for application submission.
257.125 Effect of a permit.
257.126 Duration of a permit.
257.127 General permits.
257.128 Permit by rule.
257.129 Transfer of permit program administration.

Permit Application

257.130 Permit application requirements.
257.131 Application contents.
257.132 Periodic review of permit applications.
257.133 Permit application denial.

Permit Content

257.140 Standard permit conditions.
257.141 Establishment of permit conditions.
257.142 Schedules of compliance.

Changes to a Permit

257.150 Modification or revocation and reissuance of an individual permit at EPA's initiative.
257.151 Permit modifications at the request of the permittee.
257.152 Applications to modify an individual permit.
257.153 Termination of an individual CCR permit.

Subpart E—Federal Coal Combustion Residuals Permit Program

General Information

§ 257.120 Program overview.

(a) *Coverage.* (1) These regulations establish provisions for the federal coal combustion residuals (CCR) permit program for the disposal and other solid waste management of CCR pursuant to section 4005(d) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), (Pub. L. 94–580, as amended by Pub. L. 95–609, Pub. L. 96–482, and Pub. L. 114–322; 42 U.S.C. 6901 *et seq.*).

(2) The regulations in this subpart contain federal CCR permit program requirements, such as applications,

content, modifications, revocation and reissuance, permit termination. Procedural requirements are found in part 124, subpart A of this chapter.

(3) *Technical regulations.* There are separate regulations in subpart D of this part that contain technical and substantive requirements that will be the basis of the permit requirements.

(b) *Scope of the CCR permit requirement.* (1) RCRA section 4005(d) requires the Administrator to implement a permit program to require each CCR unit, located in a nonparticipating state and in Indian country, to achieve compliance with the applicable criteria in subpart D of this part. This subpart applies to owners and operators of any CCR unit located in a nonparticipating state and in Indian country, including new and existing landfills and surface impoundments and lateral expansions of such units, that dispose or otherwise engage in solid waste management of CCR, regulated under subpart D of this part.

(2) Owners and operators of CCR units must continue to comply with all applicable requirements of subpart D of this part until a RCRA CCR permit is in effect.

(3) Prior to issuance of a RCRA CCR permit, submittal of a complete and timely permit application serves as compliance with the requirement to obtain a permit, until final disposition of the permit application. A timely permit application includes an individual permit application submitted in accordance with the requirements in §§ 257.124, 257.130, and 257.131, or an application submitted in accordance with procedures established in a general permit issued in accordance with §§ 257.124 and 257.127, or submittal of a Notice of Intent to be covered by the Permit by Rule in accordance with §§ 257.124 and 257.128.

(4) Once a permit has been issued, any CCR unit located in a nonparticipating state or in Indian country must continue to have a permit during any stage of operation covered by § 257.123(a). Any such CCR unit without a permit will be considered an ''open dump,'' as defined in RCRA 4005(d) irrespective of the unit's compliance with the requirements of subpart D of this part and may no longer receive waste.

(5) The owner and operator of a CCR unit must satisfy the requirement to have a RCRA CCR permit through one of three mechanisms: obtaining coverage under an individual permit, under a general permit issued in accordance with § 257.127, or under the permit by rule in accordance with § 257.128.

(6) EPA may issue or deny a permit for one or more CCR units at a facility without simultaneously issuing or denying a permit for all the CCR units at the facility. The status of any CCR unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other CCR unit at the facility.

(7) CCR permits issued by EPA will not have an expiration date. Permit terms will remain in effect until modified, or until the permit is revoked and reissued or terminated.

(8) A permit may be modified, revoked and reissued, or terminated for cause as set forth in §§ 257.150 through 257.153.

§ 257.121 Definitions.

The following definitions apply to this subpart. Terms not defined in this section have the meaning defined in part 124 of this chapter, subparts A and D of this part, or in RCRA.

Applicable requirement means a requirement of subpart D of this part to which a permittee is subject based on applicability criteria in subpart D of this part.

Completion of all corrective action means that all activities required by § 257.95(g) through (i), § 257.96, § 257.97, and § 257.98(a) and (b) have been completed in accordance with the requirements of §§ 257.98(c) through (f).

General permit means a permit containing terms and conditions to require compliance with requirements of subpart D of this part applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits are issued in accordance with § 257.127.

Individual permit means a permit containing terms and conditions to require compliance with requirements of subpart D of this part issued for one or more specifically identified CCR units owned and operated by the same entities and located at the same facility.

Owner and operator means the owner and operator of any CCR unit or property used for solid waste management of CCR, which is subject to regulation under RCRA.

Permit by rule means a provision of these regulations stating that a facility or activity is deemed to have a RCRA CCR permit if it meets the requirements of § 257.128.

Responsible official means one of the following:

(1) *For a corporation:* (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) *For a partnership or sole proprietorship:* A general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* Either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.,* Regional Administrators of EPA).

§ 257.122 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of RCRA CCR permits. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements must also be followed.

(a) *The Wild and Scenic Rivers Act.* 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits EPA from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966.* 54 U.S.C. 300101 *et seq.* Section 106 of the Act and implementing regulations (36 CFR part 800) require EPA, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity on properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State and Tribal Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) *The Endangered Species Act.* 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR part 402) require EPA to ensure, in

consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act.* 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management Program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) *The Fish and Wildlife Coordination Act.* 16 U.S.C. 661 *et seq.* requires that EPA, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

§ 257.123 Applicability.

(a) *Requirement to obtain a permit.* (1) Owners and operators of a CCR unit located in a nonparticipating state or in Indian country, and subject to requirements of subpart D of this part, must obtain and maintain a RCRA CCR permit under this subpart. An owner and operator must apply for a RCRA CCR permit for all CCR units and associated solid waste management operations subject to requirements in subpart D of this part. The requirement to obtain and maintain a RCRA CCR permit applies throughout the following stages of operation: Active life of the CCR unit, the post-closure care period, and until completion of all corrective action.

(2) This requirement does not apply to CCR units and associated solid waste management operations, if any, that are subject to permitting under a state permit program approved by EPA pursuant to section 4005(d) of RCRA. In a state with partial approval, the requirement in § 257.123(a)(1) applies only to those CCR units and associated solid waste management operations that are subject to requirements of subpart D of this part for which the state has not been approved (*i.e.,* is a nonparticipating state).

(3) The requirements to apply for and obtain a RCRA CCR permit may initially be satisfied by submitting one of the following:

(i) A complete and timely permit application in accordance with the requirements in §§ 257.124, 257.130 and 257.131 for an individual permit,

(ii) If the CCR unit meets the criteria for a general permit, a complete and timely application in accordance with § 257.127 and procedures established in the general permit, or

(iii) A Notification of Intent of eligibility for coverage under a permit by rule in accordance with § 257.128.

(4) Submittal of any of these documents constitutes compliance with these obligations only until the final administrative disposition of the permit application.

(b) *Denial of a permit application.* The denial of a permit application to dispose or otherwise manage waste in a CCR unit does not affect the requirement to obtain a federal CCR permit in paragraph (a) of this section to conduct other activities under subpart D of this part (*e.g.,* monitoring, retrofit, closure, post-closure care or corrective action).

(c) *Exclusions and exemptions.* (1) Entities exclusively engaged in the beneficial use of CCR that meets the requirements detailed in § 257.53 are not required to obtain a RCRA CCR permit for those activities.

(2) (i) A permit or permit modification is not required for a person engaged in CCR disposal or solid waste management to conduct an immediate response to any of the following situations:

(A) A sudden release of CCR; or

(B) An imminent and substantial threat of a release of CCR.

(ii) Any person who continues or initiates CCR disposal or solid waste management activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

§ 257.124 Deadlines for application submission.

Owners and operators of CCR units located in a nonparticipating state or in Indian country that meet the applicability requirements to obtain a RCRA CCR permit under § 257.123(a) must submit a permit application as described in this section and §§ 257.130 and 257.131 to the Administrator by the following deadlines:

(a) *First tier deadline.* For a facility with CCR units meeting the criteria in (1) or (2) where such unit was subject to the requirements under subpart D of this part prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the permit application must be submitted for all CCR units at the facility subject to this subpart no later than [DATE 18 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

(1) Located in Indian country,

(2) An existing CCR surface impoundment, new CCR surface impoundment or inactive CCR surface impoundment that is classified as a high hazard potential unit under the assessment procedures in § 257.73(a)(2) or § 257.74(a)(2).

(b) *Future tier deadlines.* For a CCR unit that is not required to submit a permit application under paragraph (a) of this section, and where such unit was subject to the requirements under subpart D of this part prior to [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the permit application must be submitted for such CCR unit no later than a date set by the Administrator, whereby such date provides notice of at least 180 days to the owner and operator.

(c) *Deadlines for newly subject CCR units.* For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the permit application must be submitted for such CCR unit in accordance with the following deadlines:

(1) For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], but before [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE], the permit application must be submitted for such CCR unit prior to [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

(2) For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE], the permit application must be submitted for such CCR unit 180 days prior to placement of waste or other action that renders the unit subject to requirements of subpart D.

(d) *Deadlines for permit by rule or general permits.* For a CCR unit that would otherwise be subject to an application deadline specified in paragraphs (a) through (c) of this section, the owner and operator of the CCR unit are not required to submit a permit application by the deadlines specified in paragraphs (a) through (c) of this section, provided the owner and operator submit a Notice of Intent required by § 257.128(a)(11) or for a general permit issued in accordance with § 257.127 by such deadline.

§ 257.125 Effect of a permit.

(a) *Permit shield.* (1) Compliance with a CCR permit constitutes compliance, for purposes of enforcement, with the requirements of subpart D of this part.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 257.150 and 257.153, or the permit may be modified upon the request of the permittee as set forth in § 257.151.

(b) *No property rights.* The issuance of a CCR permit does not convey any property rights of any sort, or any exclusive privilege.

(c) *No additional authorization.* The issuance of a CCR permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local laws or regulations, or any infringement of federal laws or regulations not explicitly considered in this action.

§ 257.126 Duration of a permit.

Any federal CCR permit issued pursuant to this subpart shall be issued without an expiration date and remain in effect until the permit is revoked and reissued or terminated.

§ 257.127 General permits.

(a) *General permits.* The Administrator may issue general permits in accordance with all of the following:

(1) A general permit shall be written to cover one or more clearly identified categories of CCR units or solid waste management practices that are subject to the same requirements of subpart D of this part.

(2) Any general permit must clearly identify what types of CCR units are eligible for coverage under the general permit and clearly identify the applicable conditions for each category or subcategory of CCR units or solid waste management practices covered by the permit. A general permit may contain terms and conditions, such as limiting operations, which would ensure continued eligibility for coverage under the general permit, even if those terms and conditions are not requirements of subpart D of this part.

(3) The general permit may exclude specified types or categories of CCR units or solid waste management practices from coverage.

(b) *Administration.* (1) Any general permit will be issued, modified, or revoked in accordance with the requirements and procedures of this subpart and the following procedures in part 124 of this chapter: 40 CFR 124.6, 124.7, 124.8, 124.9, 124.10, 124.11, 124.12, 124.13, and 124.14.

(2) To obtain coverage under a general permit, an owner or operator of a CCR unit must submit request for coverage under the general permit to the Administrator. All such requests must include all information necessary to demonstrate qualification for coverage under the general permit and must be certified as required in § 257.130(e).

(3) If the Administrator makes no objection within 45 days of receiving a request for coverage under a general permit, the owner and operator shall be covered by the general permit, provided the unit remains eligible for coverage. Such an authorization will not be considered a final permit action for purposes of judicial review.

(4) The Administrator may, in a general permit, provide further procedures by which an owner and operator of a CCR unit may obtain coverage by the general permit, as well as requirements for information that must be included in a request for such coverage. These procedures may deviate from the requirements of §§ 257.130 and 257.131.

(5) Requiring an individual permit.

(i) EPA may require any owner or operator covered under a general permit to apply for and obtain an individual CCR permit. Any interested person may petition the Administrator to take action under this paragraph. Cases where an individual CCR permit may be required include the following:

(A) The owner and operator are not in compliance with the conditions of the general permit;

(B) Circumstances have changed since the time of the request for coverage so that the CCR unit is no longer appropriately controlled under the general permit; or

(C) Revised standards for the solid waste management of CCR have been promulgated for the solid waste management or practice covered by the general permit;

(D) The Administrator has received information after the general permit has been issued. The Administrator may require an application for an individual permit on this basis if:

(*1*) The information was not available to EPA at the time of the request for coverage and would have justified requiring an individual permit to ensure compliance with subpart D of this part, or

(*2*) The information otherwise shows that requiring an individual permit is necessary to ensure there is no reasonable probability of adverse effects on health or the environment from permitted operations:

(ii) EPA may require any permittee(s) to apply for an individual permit by providing a written notification that a permit application is required. This notice shall include a brief statement of the reasons for this decision, a deadline for the owner and operator to submit the application, and a statement that on the effective date of the individual CCR permit any coverage under the general permit for which the permittee has been eligible shall automatically terminate.

(iii) Such an action will not be considered a final permit action for purposes of judicial review.

§ 257.128 Permit by rule.

(a) *Requirements.* Notwithstanding any other provision of this part or of part 124, subpart A of this chapter, a new CCR landfill or lateral expansion of a CCR landfill shall be deemed to have a CCR permit if the following criteria are met:

(1) The owner and operator of the new CCR landfill or lateral expansion of a CCR landfill maintain compliance with the following provisions:

(i) Section 257.60, Placement above the uppermost aquifer

(ii) Section 257.61, Wetlands

(iii) Section 257.62, Fault areas

(iv) Section 257.63, Seismic impact zones

(v) Section 257.64, Unstable areas

(vi) Section 257.70(a), (b), and (d) through (g), Design criteria for new CCR landfills and any lateral expansion of a CCR landfill

(vii) Section 257.80, Air criteria

(viii) Section 257.81, Run-on and run-off controls for CCR landfills

(ix) Section 257.84, Inspection requirements for CCR landfills

(x) Section 257.90, Applicability

(xi) Section 257.91, Groundwater monitoring systems

(xii) Section 257.93, Groundwater sampling and analysis requirements

(xiii) Section 257.94, Detection monitoring program

(xiv) Section 257.95(a), (b), and (d) through (h), Assessment monitoring program

(xv) Section 257.105, Recordkeeping requirements

(xvi) Section 257.106, Notification requirements

(xvii) Section 257.107, Publicly accessible internet site requirements

(2) The owner and operator have not detected a statistically significant increase above a groundwater protection standard for any constituent in appendix IV to this part.

(3) The owner and operator have not detected a release from the new CCR landfill or lateral expansion of a CCR landfill.

(4) The owner had operator have not commenced closure of the new CCR

landfill or lateral expansion of a CCR landfill.

(5) The new CCR landfill or lateral expansion of a CCR landfill does not have a direct, adverse effect on the values for which a national wild and scenic river was established.

(6) The new CCR landfill or lateral expansion of a CCR landfill does not have potential adverse effects on properties listed or eligible for listing in the National Register of Historic Places.

(7) The new CCR landfill or lateral expansion of a CCR landfill is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(8) The new CCR landfill or lateral expansion of a CCR landfill does not affect land or water use in the coastal zone. The owner and operator must certify that the new CCR landfill or lateral expansion of a CCR landfill complies with the State Coastal Zone Management program and that the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence). The certification must be included in the Notice of Intent submitted in accordance with paragraph (a)(11) of this section.

(9) If located in a floodplain, the new CCR landfill or lateral expansion of a CCR landfill does not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of CCR, so as to pose a hazard to human health, wildlife, or land or water resources.

(10) The new CCR landfill or lateral expansion of a CCR landfill has not:

(i) Caused a discharge of pollutants into waters of the United States in violation of the requirements of the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act, as amended;

(ii) Caused a discharge of dredged material or fill materials to waters of the United States in violation of the requirements of the requirements under section 404 of the Clean Water Act, as amended; or

(iii) Cause non-point source pollution of waters of the United States in violation of applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 of the Clean Water Act, as amended;

(11) The owner and operator of the new CCR landfill, or lateral expansion of a CCR landfill, submit a timely and complete Notice of Intent to the Administrator in accordance with §§ 257.124 and 257.130 and posts the Notice of Intent to the facility's publicly accessible CCR website.

(b) *Transition to another permit approach.* If a CCR unit operating under this permit by rule becomes ineligible for its coverage, or the owner and operator wish to obtain a general or individual federal CCR permit, an application must be submitted in accordance with §§ 257.130 and 257.131 or established in the general permit. The owner and operator will remain in compliance with the requirement to have a federal CCR permit if a complete application is submitted to the Administrator no later than 60 days after failing to meet one of the conditions listed in paragraphs (a)(1) through (a)(11) of this section, and no later than 180 days prior to initiating closure.

§ 257.129 Transfer of permit program administration.

(a) *Transfer from EPA to a state.* If a state CCR Permit Program is approved to operate in lieu of the federal CCR program, in part or in whole, after any compliance deadline in § 257.124, EPA will describe provisions for the prompt transfer to the state of pending permit applications and any other relevant information not already in the possession of the State Director (*e.g.,* applications, supporting documentation for issued permits, etc.) in the notice of program approval. Where permits have been issued by EPA, the program approval should contain procedures for transferring the administration of these permits to the state, or for terminating the federal permits once equivalent state permits are issued.

(b) *Transfer from a state to EPA.* If a state CCR permit program has operated in lieu of the federal CCR program after the compliance deadlines in § 257.124, and approval of that state program is withdrawn, in whole or in part, or if the state relinquishes its program approval, EPA will issue a notice regarding transfer of permit program administration from the state to EPA. The notice will contain deadlines for units located in the state to comply with the federal CCR permitting requirements. The notice will also describe procedures for the state to transfer to EPA permit applications and any other information relevant to permit program administration not already in the possession of EPA (*e.g.,* pending applications, supporting documentation for issued permits, etc.). Where CCR permits have been issued by the state, the notice of program withdrawal should contain procedures for transferring the administration of these permits to EPA, or for terminating them once RCRA CCR permits are issued.

Permit Application

§ 257.130 Permit application requirements.

(a) *Duty to apply.* The owner and operator meeting the applicability criteria in § 257.123(a) must submit to the Administrator a complete application for a CCR permit as described in this section and § 257.131, in accordance with the applicable deadlines in § 257.124. When a facility or activity is owned by one person but is operated by another person, the owner may comply with this requirement through one of the following approaches:

(1) A single application may be submitted, but both entities must certify the permit application as specified in subsection (e) (*e.g.,* the operator may compile and submit the permit application, which the owner must also sign).

(2) In an application submitted by both entities, the owner may provide the following statement:

> Through this submitted application and the signature on this application, I acknowledge that [*name of company/corporation/owner*] is the owner of the facility/units that will be included in the permit this application seeks and is responsible for compliance with the permit requirements, including the requirement to obtain and maintain a permit for this facility/unit(s). I hereby authorize the facility/unit operator, *[enter name of facility operator here],* to submit compliance or any other required reports and future permit applications for this facility, including applications for future permit modifications, on my behalf, without my signature. I understand that I am jointly and severally liable for any noncompliance with the terms of any permit issued in response to this application or as modified in the future, and any submitted documents required by the permit and I accept responsibility for any enforcement action resulting from the actions of the operator in submitting compliance or any other required reports or permit applications on my behalf in relation to this facility/unit.

Once an owner submits this statement in a permit application, all future permit applications, including modification applications, will not require signature by the owner and may be signed by the operator(s) of the unit(s) and operations to be included in the permit. This does not change the requirement in § 257.123(a) for both the owner and operator to obtain a permit. All RCRA CCR permits will designate both owners and operators as permittees, even where the owner does not sign the application in accordance with this paragraph.

(b) *Completeness.* An application for a permit is complete when the Administrator receives an application form containing the information required by this section and § 257.131, about all CCR units and related solid waste management operations at the facility, which is completed to his or her satisfaction. The Administrator may deny a permit for disposal in a CCR unit without receiving a complete application for a permit. A complete permit application does not require the following information:

(1) Information about a CCR unit eligible for the permit by rule in § 257.128, for which a Notice of Intent has been submitted to EPA and posted on its publicly accessible CCR website in accordance with § 257.107.

(2) Information about a CCR unit eligible for a general permit issued in accordance with § 257.127, for which the owner and operator have complied with the procedures for obtaining coverage contained in the general permit. If EPA subsequently determines coverage under the general permit is not appropriate, the owner and operator must submit a CCR permit application for that CCR unit or must amend an existing CCR permit application to include that CCR unit, no later than 60 days after EPA makes this determination.

(3) Information about a CCR unit that is regulated in accordance with a state CCR permit program which has been submitted to the Administrator for partial approval to operate in lieu of the requirements of subpart D of this part. If the Administrator subsequently denies partial approval of the program, or the state withdraws its program, the owner and operator must submit a CCR permit application for that CCR unit or amend an existing permit application to include that CCR unit no later than 60 days after the denial or withdrawal becomes effective.

(c) *Duty to supplement or correct application.* Any owner or operator who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, submit to the Administrator such supplementary facts or corrected information along with any necessary updated certification.

(d) *Confidential business information.* In accordance with 40 CFR part 2, subpart B of this chapter, any information submitted to EPA pursuant to this subpart that is not required to be made publicly available under part 257 may be claimed as confidential by the applicant. Any such claim must be asserted at the time of submittal. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2*, subpart B.* Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

(e) *Certification of application.* Applications for CCR permits, including applications for modifications to CCR permits, must contain the following certification by a responsible official:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that, based on my inquiry of the person or persons directly responsible for gathering the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(1) Where the owner and operator are different entities, a responsible official from each entity must provide this certification, and the certification must include the following statement: ''I understand that I am jointly and severally liable for the accuracy and completeness of all information provided in this application.''

(2) This certification must also be provided where a permittee submits a statement that no changes to a CCR permit application are required after a periodic application review is conducted in accordance with § 257.132.

(f) *Application recordkeeping.* The applicant must keep records of all data used to support the permit application and any supplemental information submitted to the Administrator during the application review and permit issuance process for the life of the permit. This information shall be available at the request of the Administrator.

§ 257.131 Application contents.

The owner and operator must provide in the application all of the information necessary for the Administrator to determine the applicability of the technical criteria in subpart D of this part to each CCR unit at the facility, to establish the permit conditions necessary to achieve compliance with these technical criteria, and to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at such facility. Such information includes, at a minimum:

(a) *Information about the facility.* The owner and operator must provide sufficient information about the facility for the Administrator to establish permit conditions to ensure compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. Such information includes but is not limited to physical location; description; operations; operating history; products; an indication of whether the application is requesting an initial, revised, or modified permit; and publicly accessible CCR website address.

(b) *Information about the applicant.* The owner and operator must provide sufficient information in the application for the Administrator to identify, contact, and communicate with them. Such information includes, but is not limited to contact information, other environmental permits held for the facility, and ownership status (*e.g.,* private, governmental) of each CCR unit and related solid waste management operations at the facility.

(c) *Information about the CCR unit(s).* The owner and operator must provide sufficient technical information about each CCR unit in the application necessary for the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. Such information includes, but is not limited to the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit, as well as liners, controls, monitoring approaches, the groundwater monitoring system, corrective action or remedial measures, and other practices to comply with subpart D of this part and to prevent or clean up releases from the CCR unit.

(d) *Technical information about subsurface and surrounding features.* (1) The owner and operator must provide technical and other information about the geologic and hydrogeologic characteristics and features of the area surrounding the CCR unit, including subsurface characteristics. The owner and operator must provide this information sufficiently to support decisions by the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part, and to evaluate the compliance approaches proposed in the permit application. The owner and operator must provide, at a minimum, information about the following in proximity to the CCR unit(s): Floodplains and wetlands, fault lines or unstable areas, groundwater and surface water, soil and subsoil characteristics,

groundwater well locations and uses, adjacent land uses, and other similar information. The owner and operator must provide this information for past, present, and planned CCR units, and must provide all information in a manner that can be clearly understood, with appropriate labels.

(e) *Technical information gathered that characterizes conditions surrounding each CCR unit.* The owner and operator must provide sufficient technical and other information about conditions at the CCR unit for the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. This includes but is not limited to groundwater, aquifers, soil, or other sampling data; date and procedures used to characterize background concentrations; well construction diagrams and drill logs; hydrogeologic cross-sections; information about the activities that yielded the sampling data, including quality assurance data; delineation of contaminant plumes; and other relevant information required to make technical assessments to characterize the presence or absence of leakage or releases from the CCR unit.

(f) *Plans, maps, drawings, diagrams and other documents.* The technical information submitted in the CCR permit application must include plans, maps, drawings, diagrams, and other visual information, in addition to narrative information. The applicant must provide the following materials, at a minimum:

(1) A site map, depicting the location of the CCR unit(s) and surrounding features representing site conditions, monitoring wells, and other pertinent information.

(2) A topographic map, depicting each CCR unit, surrounding geologic and hydrogeologic features, surface water features, access and haul roads, and other pertinent information. Information in these maps must be provided to allow the permit writer to understand site conditions and evaluate compliance strategies proposed by the owner and operator, to draft terms and conditions that will achieve compliance with the requirements of subpart D of this part.

(3) Potentiometric maps depicting groundwater flow direction, all CCR units at the facility, any delineated plumes of contamination from releases from CCR units, all groundwater monitoring wells or other monitoring points where water level data were gathered, potable wells on the facility property or nearby property, and other pertinent information. A sufficient number and quality of maps are required to represent seasonal or temporal changes in groundwater flow direction.

(4) Other documents, including: Hydrogeologic cross-sections depicting subsurface conditions, drill logs, CCR unit construction diagram(s), and groundwater monitoring well construction diagrams.

(5) All site-specific compliance plans and assessments required by subpart D of this part (*e.g.,* fugitive emissions control plan required by § 257.80, emergency action plan required by § 257.73, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), assessment of corrective measures required by § 257.96, closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104).

§ 257.132 Periodic review of permit applications.

(a) *Requirement for periodic review.* Once a RCRA CCR permit is issued, the permittee must conduct periodic reviews to determine whether the permit application remains accurate and continues to meet the requirements under § 257.131. The timeframes for conducting periodic permit application reviews are provided in paragraph (d) of this section.

(b) *Procedures if no changes are needed.* If the permittee determines that the permit application remains accurate and meets the requirements under § 257.131, the permittee must submit a certified statement that the application continues to be complete and accurate. The certified statement must be completed by a responsible official in accordance with § 257.130(e).

(c) *Procedures if changes are needed.* If the permittee determines that the permit application is no longer accurate or no longer meets the requirements under § 257.131, the permittee must:

(1) Prepare a revised permit application in accordance with the requirements of §§ 257.130 and 257.131, which accurately reflects current operations and any changes since the previous application was submitted;

(2) Determine whether the permit must be modified based on any changes to the permit application, and, if so, apply for a permit modification according to the procedures under § 257.152.

(d) *Review frequency.* (1) The permittee must complete the initial permit application review required by paragraphs (a) through (c) of this section no later than ten years after the date of initial permit issuance or after any reissuance or modification of such permit, whichever date is later.

(2) The permittee must complete periodic permit application reviews required by paragraphs (a) through (c) of this section no later than ten years after the date of completing the previous permit application review or after any reissuance or modification of the permit, whichever date is later.

§ 257.133 Permit application denial.

(a) *Denial for Cause.* The Administrator may, pursuant to the procedures in part 124 of this chapter, deny an individual CCR permit application in its entirety, or in part (*e.g.,* for a specific activity or for an individual CCR unit), upon a determination that any of the following causes exist:

(1) Any permittee has failed or refuses to correct deficiencies in the application identified in a notice of deficiency issued in accordance with § 124.3(c);

(2) Failure by any permittee in the application or during the permit issuance process to disclose fully all relevant facts;

(3) Misrepresentation by any permittee of any relevant facts at any time;

(4) A determination by the Administrator that the risks arising from disposal or other solid waste management of CCR can only be regulated to acceptable levels by permit denial.

(5) The Administrator has received notification under § 124.3 of this chapter of an applicant's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128.

(6) EPA has transferred administration of the permit program to a state in accordance with § 257.129, and the state permit is in effect for each CCR unit at the facility.

(b) *Denial process.* The Administrator may deny a permit in accordance with paragraphs (a)(2) through (6) of this section even in the absence of a complete application.

Permit Content

§ 257.140 Standard permit conditions.

The following conditions shall be incorporated into all CCR permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be provided in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this CCR permit, except to the extent and for the duration any noncompliance is authorized by the Administrator. Any unauthorized permit noncompliance

constitutes a violation of RCRA and is subject to enforcement action, permit termination, revocation and reissuance, or denial of a permit application.

(b) *Duty to submit periodic review certification.* The permittee must review the application materials submitted for this permit no less frequently than every ten years after the issuance date of this permit.

(1) Any information in the original application that is no longer accurate at the time of review, as well as any recent or new information not include in the original application, must be submitted in a revised application in accordance with §§ 257.130 and 257.131. If the changes reflected in the revised application meet the criteria for a permit modification in §§ 257.150 through 257.151, the revised application must specify the type of modification requested and include information required for a modification in accordance with § 257.152.

(2) If all information in the original application is still accurate at the time of review and there is no new or additional information relevant to the application, the permittee shall submit a statement that no information in the application has changed, certified in accordance with the requirements in § 257.130(e).

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Requirement to mitigate impacts of noncompliance.* In the event of noncompliance with this permit, the permittee must take all reasonable steps to minimize releases to the environment and must carry out such measures as necessary to reduce reasonable probability of adverse impacts on health and the environment.

(e) *New statutory requirements or regulations.* If the standards or regulations on which this permit is based change through changes to statute, promulgation of new or amended regulations, or by judicial decision, and this results in failure of the permit terms and conditions to ensure compliance with the revised standard or regulation, the permittee must apply for a permit modification. The permittee shall submit an application to modify this permit to include the revised requirements within 180 days after the change becomes effective.

(f) *Proper operation and maintenance.* The permittee shall ensure the proper operation and maintenance of all units, ancillary equipment and systems of treatment and control, which are installed or used to achieve compliance with the conditions of this permit. Failure to properly operate and maintain such equipment does not excuse failure to comply with requirements in this permit. The term ''Proper operation and maintenance'' includes effective performance, adequate funding, adequate staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Operation of back-up or auxiliary equipment or similar systems is required only when necessary to achieve compliance with the conditions of this permit.

(g) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The application by the permittee for a permit modification, or termination, or anticipated noncompliance, does not stay any permit condition.

(h) *Property rights.* The permit does not convey any property rights of any sort, nor any exclusive privilege.

(i) *Duty to provide information.* The permittee must furnish to the Administrator, within a reasonable time, any relevant information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Administrator, upon request, copies of records required to be kept by this permit.

(j) *Inspection and entry.* The permittee shall allow the Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter at reasonable times upon the permitted premises where a regulated unit or activity is located or conducted, or where records that must be kept under the conditions of this permit are located;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any units, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by RCRA, any substances or parameters at any location.

(k) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(2) The permittee must retain records of all monitoring information, including all calibration, maintenance, and quality assurance records; all original monitoring data; copies of all reports and certifications required by this permit; and records of all data for a period of at least ten years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Administrator at any time. The permittee must maintain records and data used to support a permit application for the lifetime of the permit. The permittee shall maintain records of all groundwater monitoring, including records of groundwater well construction and groundwater elevation measurements, throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

(l) *Signatory requirements.* All applications, reports, or information required to be submitted to the Administrator by this permit must be signed and certified by the owner and operator of a CCR unit in accordance with the procedures of § 257.130(e).

(m) *Reporting requirements.* (1) *Anticipated noncompliance.* The permittee shall provide written or electronic notice to the Administrator as soon as possible, but no later than 60 days in advance of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(2) The permittee shall report by phone or electronically any noncompliance or release which has a reasonable probability of adverse effects on health or the environment as soon as possible, and no later than 24 hours after the time the permittee first becomes aware of the circumstances. The notification shall include the following:

(i) Information concerning release of any CCR that may endanger public drinking water supplies.

(ii) Any information about a release of CCR that could have a reasonable probability of adverse effects on health or the environment outside the facility.

(iii) The description of the release and its cause shall include:

(A) Name, business address, business email address, and business telephone number of the owner and operator;

(B) Name, address, email address, and telephone number of the facility;

(C) Date, time, and type of release;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the release; and

(H) Action taken to mitigate the risk, including any preparation in advance of a severe weather event

(iv) A narrative shall also be posted on the public CCR website no later than five days after the time the permittee becomes aware of the circumstances. The narrative shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Administrator may waive the five-day notice requirement in favor of posting a written report within fifteen days.

(3) Where the permittee becomes aware that they failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Administrator, the permittee must promptly submit such facts or corrected information to the Administrator.

(n) *Severability.* Invalidation of a portion of this permit does not necessarily render the whole permit invalid. EPA's intent is that this permit is to remain in effect to the extent possible. In the event that any part of this permit is invalidated, the Administrator will advise the permittee as to the effect of such invalidation.

§ 257.141 Establishment of permit conditions.

(a) *Case-by-case.* In addition to the standard conditions in § 257.140, the Administrator shall establish permit terms and conditions in a CCR permit, on a case-by-case basis, in accordance with the requirements and procedures of this subpart. At a minimum, each CCR permit must include all permit terms and conditions necessary to ensure compliance with subpart D of this part.

(b) *Incorporation by reference.* Each CCR permit must incorporate, either expressly or by reference, all requirements of subpart D of this part that are applicable to the permitted CCR units and associated solid waste management activities. In satisfying this provision, the Administrator may incorporate applicable requirements of subpart D of this part directly into terms and conditions in the permit or incorporate them by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be provided in the permit.

(c) *Protectiveness.* Each CCR permit shall contain such terms and conditions as the Administrator determines are necessary to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at such facility.

§ 257.142 Schedules of compliance.

When an applicant will not be in compliance with one or more applicable requirement in subpart D of this part at the time of permit issuance, the Administrator may include in the CCR permit a schedule of compliance. The schedule of compliance shall include an enforceable sequence of actions leading to compliance with subpart D of this part. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the permittee is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the requirements in subpart D of this part on which it is based.

(a) *Time for compliance.* Any schedule of compliance established in a CCR permit must require compliance as soon as feasible.

(b) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year.

(2) The permit must require posting on the public CCR website of reports of progress toward completion of the interim requirements and indicate a projected completion date. The time between progress reports shall not exceed six months.

(c) *Reporting.* The permit must require that, no later than 30 days following each interim milestone deadline and the final deadline of the compliance schedule, the permittee must post a notification on the facility's publicly accessible CCR website of its compliance or noncompliance with the interim or final requirements.

Changes to a Permit

§ 257.150 Modification or revocation and reissuance of an individual permit at EPA's initiative.

When the Administrator receives any information (*e.g.,* inspects the facility, receives information submitted or posted by the permittee, receives a request under § 124.5 of this chapter, or conducts a review of the permit file) and determines one or more causes listed in paragraph (a) of this section exist, the Administrator may modify or may revoke and reissue the permit accordingly, subject to the limitations of paragraph (b) of this section, and may request an updated application, if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision. Revocation and reissuance are generally appropriate when the changes are too extensive to be addressed through a permit modification.

(a) *Causes for modification or revocation and reissuance.* The following are causes for modification or for revocation and reissuance of a permit by the Administrator:

(1) There are material and substantial alterations, additions, or changes in operation of the permitted facility which occurred after permit issuance and require permit conditions that are different or absent from those in the existing permit or if the permit application becomes inaccurate for the CCR unit and/or associated operations.

(2) The Administrator has received information after the permit has been issued. The Administrator may modify or revoke RCRA CCR permits on this basis if:

(i) The information was not available to EPA at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the inclusion of different permit conditions at the time of issuance to ensure compliance with subpart D of this part, or

(ii) the information otherwise shows that modification is necessary to ensure there is no reasonable probability of adverse effects on health or the environment from permitted operations.

(3) Cause exists for termination under § 257.153, but the Administrator determines that modification or revocation and reissuance is appropriate.

(4) The Administrator has received notification (as required, see § 257.151(a)(3)) of a transfer of ownership or control of the CCR unit or facility to a new owner or operator.

(5) An error or omission is discovered, regardless of whether it was susceptible to correction prior to the permit's issuance, and the Administrator determines modification is appropriate to conform a permit's requirements to the applicable regulatory or statutory requirements.

(b) *Facility siting.* Suitability of the existing facility location will not be considered at the time of permit modification or revocation and reissuance unless new information, standards, or regulations indicate that a there is a reasonable probability of adverse effects to health or the environment exists which was unknown to the Administrator at the time of permit issuance.

(c) *Permitting action list.* The Administrator will post all permitting actions, including: Draft and final permits, modifications, revocations, terminations, and reissued permits, on a publicly available website.

§ 257.151 Permit modifications at the request of the permittee.

This section lays out the procedures for a permittee to request a modification to an individual CCR permit. A permittee must apply for a modification to a permit at any time during the life of the permit when there is a change to either a CCR unit or related solid waste management operations, or to subpart D of this part, which would impact either the procedures used to comply with the permit conditions, or the applicability of requirements of subpart D of this part. There are two types of such modifications: minor and major. Minor modifications require prior notification to EPA but do not require public comment. Major modifications require prior EPA approval and an opportunity for public participation. When a permit is modified, only the conditions subject to modification are reopened.

(a) *Minor modifications.* Minor modifications are those that involve only minor or administrative changes that keep the permit current with respect to common changes to the facility or its operations. Minor modifications are changes that do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. These include changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit or where the revised regulation does not require the application of significant technical judgement or discretion. The following are examples of minor modifications:

(1) Administrative and informational changes, including changes to the name or contact information of permittees or other persons or agencies identified as points of contact in the permit or compliance plans.

(2) Correction of typographical errors.

(3) Transfer of ownership or operational control of a facility. The new owner and operator must submit a revised permit application 30 days prior to the transfer of ownership or operational control or as soon as practicable. If prior notice is impracticable, the revised permit application must be submitted no later than 30 days after the transfer of ownership or operational control.

(4) Changes to a permit condition to incorporate a change to a maximum contaminant level (MCL) under §§ 141.62 and 141.66, which serve as the underlying basis for the permit condition.

(5) Changes that increase the frequency, duration, or stringency of the requirements or procedures for inspection, monitoring, recordkeeping, reporting, web posting, sampling, analytical methods, or maintenance activities by the permittee.

(7) Changes to monitoring, sampling or analysis methods or procedures to conform with EPA guidance or regulations.

(8) Replacement of an existing groundwater monitoring well that has been damaged or rendered inoperable, as close as possible to the original location, and of similar design and depth.

(9) In the closure plan, increases to estimates of the maximum extent of operations or the maximum inventory of waste.

(b) *Procedures applicable to minor modifications.* (1) Except as provided in § 257.151(a)(3), the permittee must submit an application for a minor modification in accordance with § 257.152 no later than 45 days before making the proposed change, unless otherwise specified. If multiple modifications are requested, only those that meet the definition of a minor modification are eligible to use these procedures.

(2) When revisions to subpart D of this part are promulgated that change requirements applicable to a permitted CCR unit to become less stringent than the existing permit conditions, the owner and operator may either continue to operate in accordance with the permit or may apply for a permit modification in accordance with § 257.152.

(3) The permittee may apply for either a major modification or a minor modification to the Administrator. Any application for a minor modification must provide the necessary information to support the requested classification for each modification requested in the application.

(4) In determining the appropriate modification type, the Administrator shall consider the criteria in paragraph (a) of this section and in § 257.151(c) and the similarity of the modification to examples of modifications listed in those paragraphs.

(5) The Administrator may take the following actions in response to an application for a minor modification to a CCR permit:

(i) Determine that a proposed minor modification is a major modification that must follow the procedures for approval in § 257.151(d);

(ii) Deny for cause the proposed minor modification;

(iii) Determine that additional information is needed to evaluate the modification; or

(iv) Approve the minor modification.

(6) The Administrator will inform the permittee of any of these determinations and provide the reasons for the decision. If a minor modification has been denied, the permittee must comply with the original permit conditions.

(7) If the Administrator has not notified the permittee within the 45-day period of any of the determinations listed in paragraph (5) of this section, the permittee may proceed with the minor modification in accordance with the application.

(c) *Major modifications.* Major modifications are all changes to a permit that are not considered a minor modification listed at § 257.151(a). These include changes that materially alter the CCR unit or its operations, changes that impact the applicability of subpart D requirements, changes that could impact the protection of human health and the environment, and changes necessary to comply with new regulations, where these changes can only be implemented by substantially changing design, operational requirements, or compliance approaches in the permit, or where the revised regulation requires the application of significant technical judgement or discretion. The following are examples of major modifications:

(1) Changes that reduce the frequency or stringency of requirements for inspection, groundwater monitoring, sampling, analysis, recordkeeping, reporting, web posting, or maintenance activities by the permittee.

(2) Changes to remove or relax a permit condition that is based on an underlying requirement that is no longer applicable, but where this change in applicability is not due to a regulatory change that was subject to public notice and a public comment period, a statutory change, or an order from a court.

(3) Reduction in the number, or substantial changes in location, depth,

or design of groundwater monitoring wells required by the permit.

(4) Addition of a new CCR unit including a new landfill unit, a lateral expansion, or a new surface impoundment unit not already authorized by a RCRA CCR permit and not covered by a permit by rule in accordance with § 257.128.

(5) Modification of a CCR unit, including physical changes or changes in management practices which are not minor modifications under § 257.151(a).

(6) Addition of a corrective action program or changes to the corrective action requirements in the permit.

(7) Changes to a plan approved in a permit, including reduction in the post-closure care period for any reason. This does not include administrative changes, a change that is a direct incorporation of a change to subpart D, or changes to a closure plan specified in § 257.151(a)(9),

(8) Extension of the final compliance date in a schedule of compliance established in accordance with § 257.142.

(9) A change to a permit condition that is based on a change in an underlying regulatory or statutory requirement, which requires substantial changes to the design, operation, or compliance strategies established in the permit or which requires the application of significant technical judgement or discretion.

(d) *Procedures applicable to major modifications.* (1) The permittee must submit a revised permit application for a major modification in accordance with § 257.152. In addition to the information required by § 257.152, the application must include the applicable information required by §§ 257.130 and 257.131.

(2) When revisions to subpart D of this part are promulgated and requirements applicable to a permitted CCR unit become more stringent than the permit conditions, the owner and operator must apply for a permit modification to incorporate the new requirements, in accordance with §§ 257.151 and 257.152 and no later than 180 days after the effective date of the revisions to subpart D of this part.

(3) The permittee must place a copy of the permit modification application and supporting documents on the permitted facility's publicly available CCR website or other publicly available electronic document storage medium.

(4) The Administrator may take the following actions in response to an application for a major modification to a CCR permit:

(i) Determine that additional information is needed to evaluate the application;

(ii) Approve the proposed modification(s); or

(iii) Partially approve or deny the requested modification for any of the following reasons:

(A) The modification application is incomplete;

(B) The requested modification would result in a permit that would not require compliance with the requirements of subpart D of this part or other applicable requirements; or

(C) The requested modification would result in a permit that would fail to ensure there will be no reasonable probability of adverse effects on health or the environment.

(5) The Administrator shall grant or deny the major modification request according to the permit modification procedures of § 124.5 of this chapter.

§ 257.152 Application to modify an individual permit

(a) *Application requirements for all modifications.* The permittee must provide all information and supporting documents necessary for the Administrator to evaluate the proposed modification(s) to the permit. Any application for a modification to a CCR permit must include the following:

(1) A description of the exact modification(s) requested to the facility or operations and/or supporting documents referenced by the permit application;

(2) A description of the exact modification(s) requested to the permit conditions;

(3) Identification of the requested modification(s) as minor, in accordance with § 257.151(a), or major, in accordance with § 257.151(c), along with a justification for the classification; and

(4) An explanation of why the modification is necessary to ensure that the permit accurately reflects facility conditions or operations.

(5) A statement that the facility continues to comply with the currently applicable requirements in subpart D of this part.

(6) Corrections or updates to any information in the application that has changed since the most recent submittal of the application.

(b) *Application for a minor modification.* (1) If multiple modifications are requested, only those that meet the definition of a minor modification are eligible to use these procedures. Along with the application, the permittee must provide the applicable information required by §§ 257.130, 257.131 and 257.151, as well as any corrections or updates to any information that has changed since the most recent submittal of the application.

(2) The permittee must submit an application for a minor modification to the Administrator no later than 45 calendar days before the permittee wishes to implement the requested change(s). For transfer of ownership or operation, the permittee must submit an application for a minor modification as soon as practicable and no later than 30 days after the transfer occurs.

(3) For a minor permit modification, the permittee may instead elect to follow the procedures in paragraph (c) of this section for major modifications.

(c) *Application for a major modification.* The permittee must submit an application for a major modification to the Administrator no later than 180 calendar days before the permittee wishes to implement the requested modification(s). Along with the notice, the permittee must provide the applicable information required by §§ 257.130, 257.131 and 257.151.

§ 257.153 Termination of an individual CCR permit.

(a) *Causes.* The Administrator may terminate an individual CCR permit for any of the following causes:

(1) Significant noncompliance by any permittee with the permit;

(2) Failure by any permittee in the application or during the permit issuance process to fully disclose all relevant facts,

(3) Misrepresentation by any permittee of any relevant facts at any time;

(4) A determination by the Administrator that the permit fails to ensure there is no reasonable probability of adverse effects to health or the environment and the permitted activity can only be regulated to acceptable levels by permit termination.

(5) The Administrator has received notification of a permittee's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128.

(6) The Administrator has determined that all permitted activities have ceased and the permittee has completed closure, the required post-closure care and any required corrective action.

(b) *Procedure.* The procedures for RCRA CCR permit termination in § 124.5 of this chapter and § 22.44(b) of this chapter will be followed when terminating an individual CCR permit.

[FR Doc. 2019–28440 Filed 2–19–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 34 February 20, 2020

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 435, et al.

Medicaid Program; Preadmission Screening and Resident Review; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 433, 435, 441, and 483

[CMS–2418–P]

RIN 0938–AT95

Medicaid Program; Preadmission Screening and Resident Review

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modernize the requirements for Preadmission Screening and Resident Review (PASRR), currently referred to in regulation as Preadmission Screening and Annual Resident Review, by incorporating statutory changes, reflecting updates to diagnostic criteria for mental illness and intellectual disability, reducing duplicative requirements and other administrative burdens on State PASRR programs, and making the process more streamlined and person-centered.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 20, 2020.

ADDRESSES: In commenting, please refer to file code CMS–2418–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2418–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2418–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anne Blackfield, (410) 786–8518.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Preadmission Screening and Annual Resident Review (now referred to as Preadmission Screening and Resident Review, or PASRR) was created as part of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). The PASRR requirements, added to the statute as sections 1919(b)(3)(F) and 1919(e)(7) of the Social Security Act (the Act), required states to create a system to assess the needs of individuals with mental illness (MI) or intellectual disability (ID) applying to, or already residing in, Medicaid-certified nursing facilities (NFs), to ensure that individuals were not being placed in NFs unnecessarily or without adequate supports. These sections of the statute direct the state mental health authority (SMHA) or state intellectual disability authority (SIDA), as appropriate, to determine whether individuals with MI or ID who are applying to, or are living in, Medicaid-certified NFs require the level of services offered by a NF and whether they need additional (''specialized'') services for MI and ID beyond the services typically provided in a NF. (Note that section 1919(e)(7)(G)(i) of the Act explicitly excludes individuals with dementia or Alzheimer's disease or a related disorder from the definition of MI. The current and proposed definitions of MI and ID are discussed in the discussion of § 483.102 in this rule.)

When first enacted, sections 1919(b)(3)(F) and 1919(e)(7) of the Act set forth basic requirements for PASRR, including:

- Requirements for preadmission screening of NF applicants, which states were required to implement by January 1, 1989;
- Requirements for annual review of NF residents with MI or ID, which states were required to begin by April 1, 1990;
- Discharge procedures for short-term residents found to not need NF level of services;
- Options for long-term residents (who had lived in a nursing facility for 30 or more months) found to not need NF level of services, but to need specialized services;
- Basic rules for Federal Financial Participation (FFP), including when FFP could be withheld for failure to comply with PASRR requirements;
- A requirement for an appeals procedure, to allow individuals to appeal adverse outcomes resulting from PASRR determinations; and
- Basic definitions for MI, ID (referred to in statute as ''mental retardation''), and specialized services (originally called ''active treatment'').

We published initial criteria for the PASRR programs in the State Medicaid Manual (HCFA Pub. 45–4) in May 1989 (Transmittal No. 42). These criteria functioned as interim guidelines for states' PASRR programs, and formed the basis for the proposed rule, published in the **Federal Register** on March 23, 1990 (55 FR 10951). In the meantime, on November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508) was enacted. Section 4801(b) of OBRA '90 contained several revisions to the PASRR requirements in sections 1919(b)(3)(F) and 1919(e)(7) of the Act. Notable revisions included the addition of exemptions from Preadmission Screening for readmissions and certain hospital discharges to NFs, and adding the term ''specialized services'' in place of ''active treatment.'' We published the final PASRR rule on November 30, 1992 (57 FR 56540), which reflected the statutory changes to PASRR made by OBRA '90.

On October 19, 1996, Public Law 104–315 removed the requirement that Resident Review be performed annually, and provided instead at section 1919(e)(7)(B)(iii) of the Act that Resident Review should be performed upon a significant change in the resident's physical or mental condition. We have not issued additional regulations since the final rule in November 1992, so current regulations do not reflect this statutory change.

We have received feedback from stakeholders including states' Medicaid agencies, states' PASRR programs, clinicians, NFs, and NF resident advocates that portions of the current PASRR regulations are unclear, illogical, duplicative, or out of touch with current long-term care practices. While we have attempted to address some of the challenges presented by outdated regulations through technical assistance,

we believe updating and streamlining the regulations will provide the most effective method of improving implementation of PASRR nationwide. With this proposed rule, we seek to modernize PASRR requirements so that they may become an even more effective tool and resource for states, NFs, and individuals with MI or ID.

II. Provisions of the Proposed Regulations

A. Parts 431, 433, 435, and 441

1. Basis and Scope (§ 431.200)

Section 431.200 sets out the basis for the regulations in part 431, subpart E, stating that the fair hearings process afforded to Medicaid beneficiaries and applicants is authorized by sections 1902(a)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act. Section 431.200(c) provides that regulations in part 431, subpart E implement section 1919(e)(7)(F) of the Act, which provides an appeal for any person who has been adversely affected by the PASRR process. We propose technical changes to § 431.200(c)(1). We propose to replace the word ''pre-admission'' with ''preadmission,'' so that the word ''preadmission'' conforms to how it appears in other regulations. We propose to remove the word ''annual'' before ''resident review.'' We also propose to add ''and further described in part 483, subpart C of this chapter'' after ''section 1919(e)(7) of the Act.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

2. Definitions (§ 431.201)

Section 431.201 contains definitions of terms used in part 431, subpart E. We propose a technical change to the definition of ''date of action,'' which includes a mention of PASRR, to remove the word ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

3. Informing Applicants and Beneficiaries (§ 431.206)

Section 431.206 contains requirements for when the state must notify Medicaid applicants and beneficiaries of their appeal rights. We propose a technical change to § 431.206(c)(4) to remove ''annual'' before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

4. Exceptions From Advance Notice (§ 431.213)

Section 431.213 contains exceptions to the advance notice requirements contained in § 431.211. Section 431.211 requires that the state Medicaid agency provide Medicaid applicants and beneficiaries with notice of appeal rights 10 days before the effective date of the action they wish to appeal. However, actions associated with PASRR are exempted from this requirement. Rather, per § 431.213(g), the state Medicaid agency may provide notice on the date of action—namely, the date the PASRR program issues the determinations required in sections 1919(e)(7)(A) and 1919(e)(7)(B) of the Act. We propose a technical correction to § 431.213(g), which states that the exception applies to notices involving adverse determinations made ''with regard to the preadmission screening requirements of section 1919(e)(7) of the Act.'' We propose to add ''and resident review'' after ''preadmission screening.'' Section 1919(e)(7) of the Act pertains to both preadmission screening and resident review requirements, and we propose to fix the omission of ''resident review'' in this provision. We also propose to replace ''of section 1919(e)(7) of the Act' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

5. When a Hearing Is Required (§ 431.220)

Section 431.220 lays out the circumstances when an individual may request a hearing, which includes when an individual believes the PASRR program has made an error in making the determinations required by section 1919(e)(7) of the Act. We propose a technical change to § 431.220(a)(3) to add ''screening'' after the word ''preadmission.'' We propose this change so that this mention of Preadmission Screening conforms to how it appears elsewhere in regulation—as ''preadmission screening,'' not just ''preadmission.'' We propose to remove ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

6. Matters To Be Considered at the Hearing (§ 431.241)

Section 431.241(c) addresses the matters that must be reviewed during the PASRR hearing. We propose a technical change to remove ''annual'' from before ''resident review.'' We also propose to replace ''of section 1919(e)(7) of the Act'' with ''under part 483, subpart C of this chapter.'' We believe a cross-reference to the regulations that implement PASRR statutory requirements would be helpful to readers.

7. Hearing Decisions (§ 431.244)

Section 431.244 sets out the requirements for the hearing decision, including how the decision may be reached and the appellant's access to the decision. We propose a technical change to § 431.244(f)(3)(i). We propose to add ''screening'' after the word ''preadmission.'' We propose this change so that this mention of Preadmission Screening conforms to how it appears (as ''preadmission screening,'' not just ''preadmission'') elsewhere in regulations. We propose to remove ''annual'' from before ''resident review.''

8. Federal Financial Participation (§ 431.250)

Section 431.250 discusses the availability of FFP for activities relating to hearings and hearing decisions. We propose a technical change to § 431.250(f)(4) to remove ''annual'' from before ''resident reviews.''

9. State Requirements for Nursing Facilities (§ 431.621)

Section 431.621 provides guidelines for the interagency agreement that the states' Medicaid agencies must execute with the SMHA and SIDA regarding the authorities' respective roles in implementing PASRR. We propose to make technical corrections in this section, including: removing ''PASARR'' and replacing it with ''PASRR''; removing the word ''annual'' before ''resident review''; correcting typos; and updating cross-references.

Additionally, we propose a modification to § 431.621(c)(6). The current provision specifies that determinations regarding NF level of services and specialized services must be consistent with criteria adopted by the State Medicaid Agency (SMA) under its approved State plan. We propose to remove the words ''under its approved State plan'' because State plan approval is not required for states to develop

state-specific PASRR criteria or NF admissions criteria.

10. Rates of FFP for Administration (§ 433.15)

Section 433.15(b)(9) provides the FFP rate for PASRR administrative activities. We propose technical changes in this provision to replace ''PASARR'' with ''PASRR'' and to remove ''annual'' before ''resident review.''

11. Definitions Related to Institutional Status (§ 435.1010)

Section 435.1010 provides the definition for ''persons with related conditions.'' Related conditions, also commonly referred to as ''developmental disabilities,'' are considered a subset of ID for PASRR purposes (see discussion regarding § 483.102 in this proposed rule). The definition for PASRR ID at § 483.102(b)(3) contains a cross-reference to § 435.1010. Section 435.1010 contains one use of the outdated term ''mentally retarded persons,'' which we propose to replace with ''people with intellectual disabilities.''

12. Supporting Documentation Required (§ 441.303)

Section 441.303, which provides guidance on HCBS programs, make incidental reference to the PASRR process. We propose to make technical changes to paragraphs (f)(4) and (f)(9), including: replacing ''PASARR'' with ''PASRR''; removing ''annual'' before ''resident review''; correcting typos; and replacing the phrase ''developmentally disabled'' with ''individuals with developmental disabilities'' at 441.303(f)(4). We also propose to replace the word ''inpatients'' with ''residents'' to reflect language more commonly used to describe individuals who live in NFs or ICF/IIDs.

We also propose in § 441.303(f)(4) to clarify that in making estimates for annual per capita expenditures for a separate waiver program, the state may estimate costs for individuals with developmental disabilities who have been identified by PASRR, who are residents of NFs, or require the level of care provided by an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

B. Part 483, Subpart B

1. Resident Assessment (§ 483.20)

Section 483.20 provides instructions to NFs on resident assessments, as required by section 1919(b)(3) of the Act, which requires that NFs perform a comprehensive, standardized, reproducible assessment of each resident's functional capability. NFs must use an assessment tool known as the Resident Assessment Instrument to identify residents' strengths, needs, and preferences in key areas of functional abilities and activities of daily living. The minimum data set (MDS) is a component of the resident assessment, which contains a standardized set of essential clinical and functional status measures. Information gathered from the MDS is used to identify conditions that require additional evaluation, and the information gathered from these assessments is used to develop the individualized care plan required for each NF resident.

Despite certain superficial similarities between the resident assessments and PASRR evaluations, the two processes are distinct statutory requirements. Resident assessments are specifically intended to be the responsibility of the NF (per section 1919(b)(3)(A) of the Act), whereas PASRR evaluations are specifically the responsibility of the SMHA and SIDA, and cannot be delegated to the NF (in accordance with section 1919(b)(3)(F) of the Act). Unlike PASRR evaluations, resident assessments are performed for all NF residents, not just those with MI or ID. The timing for resident assessments and PASRR evaluations is also different. A comprehensive resident assessment must be performed initially within 14 days after NF admission and then every year until the resident's discharge from the NF (per section 1919(b)(3)(C) of the Act) with modified quarterly assessments performed in the intervals between the annual comprehensive resident assessments to ensure the information stays up-to-date (per § 483.20(c)). Additionally, when an individual experiences a ''significant change'' in physical or mental conditions, as defined in § 483.20(b)(2)(ii), the NF must perform a new comprehensive resident assessment within 14 days of the significant change (even if this significant change happens before the resident's scheduled annual comprehensive resident assessment). By comparison, Preadmission Screening evaluations for PASRR must be performed prior to NF admission (per section 1919(b)(3)(F) of the Act), and Resident Review evaluations must be done ''promptly'' after a NF has observed a significant change of physical or mental condition (per sections 1919(b)(3)(E) and 1919 (e)(7)(B)(iii) of the Act). Both resident assessments and PASRR evaluations involve reviewing the individual's medical history, cognitive and behavior patterns, psychosocial well-being, and long-term care goals (in accordance with § 483.20(b) for resident assessment and § 483.128 of this proposed rule for PASRR evaluations). However, the resident assessment is focused on the individual's needs while in the NF, while the PASRR evaluation considers whether the individual may be better served in a different setting other than a NF. As described in § 483.20(b), resident assessments focus on a broad range of functional needs—such as vision, dental, continence, and skin conditions—that may be out of scope for a PASRR evaluation, which focuses on only those needs directly related to the individual's MI or ID. PASRR evaluations will include recommendations for NF services and specialized services (which are discussed in greater detail in the discussions of §§ 483.120 and 483.128 later in this proposed rule). However, these differences notwithstanding, both resident assessments and PASRR evaluations are designed to assess needs of NF residents and provide information needed to identify residents' care needs while they are in the NF.

Section 483.20(e) implements the requirement at section 1919(b)(3)(E) of the Act that NFs must coordinate Preadmission Screening with resident assessments to the greatest extent practicable. We propose a technical correction to § 483.20(e) to replace ''PASARR'' with ''PASRR.'' We also propose to change the term ''mental disorder'' to ''mental illness'' in this section to align with the language in part 483, subpart C, which uses ''mental illness'' rather than ''mental disorder.'' The term ''mental illness'' is more aligned with terminology used in the authorizing statute for PASRR at sections 1919(b)(3)(F) and 1919(e)(7) of the Act, which uses ''mentally ill'' and ''serious mental illness.'' Additionally, we note that the term ''mental disorder'' commonly denotes neurodevelopmental disorders (such as intellectual disability and developmental disability) and neurocognitive disorders (such as dementia and Alzheimer's or related conditions).[1] People with intellectual and developmental disabilities are identified in sections 1919(b)(3)(F)(ii) and 1919(e)(7)(B)(ii) of the Act as distinct from people with mental illness, who are addressed in sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i). Section 1919(e)(7)(G)(i) indicates that primary diagnoses of dementia and

[1] See, for example, World Health Organization, ''Mental Health Disorders.'' April 9, 2018. Available at *https://www.who.int/news-room/fact-sheets/detail/mental-disorders.* Last accessed: August 19, 2019.

Alzheimer's or related disorders cannot be included in the PASRR-specific definition of mental illness. Thus we propose to replace the broad term ''mental disorder'' with the narrower term ''mental illness'' in order to indicate mental disorders that do not include neurodevelopmental or neurocognitive disorders. Because there is much discussion in the behavioral health community about appropriate terminology, we solicit feedback on this proposal to use ''mental illness'' rather than ''mental disorder.''

We propose a change to the language § 483.20(e)(1), which requires that PASRR recommendations be incorporated into a resident's assessment, care planning, and transitions of care. We propose to remove the mention in § 483.20(e)(1) of care planning and transition planning because they are both out of scope for this section. Care planning requirements are addressed in § 483.21, whereas § 483.20 contains requirements for resident assessments. Additionally, paragraphs (a)(1)(ii)(F) and (b)(1)(iii) at § 483.21 both address the inclusion of PASRR recommendations in care planning, so including the same requirement in § 483.20(e)(1) is duplicative. We also propose in § 483.20(e)(1) to replace PASRR ''recommendations'' with PASRR ''findings.'' The word ''recommendations'' is not defined in this provision, but seems to refer to recommendations for NF services or specialized services—information that would be incorporated into a care plan, but would not be incorporated into the resident assessment. Rather, we propose using the word ''findings'' in its place because this more clearly refers to the data collected by the PASRR evaluator regarding the individual's medical history, psychosocial history, diagnosis of MI or ID, and functional needs—information that could be used to help complete the resident assessment.

We propose to make changes to § 483.20(e)(2), which requires that NFs refer all NF residents with known MI or ID (as determined by the PASRR program) and all residents with *possible* MI or ID to the PASRR program for Resident Review upon the completion of a significant change in status assessment. This requirement somewhat duplicates the requirement at § 483.20(k)(4) that NFs promptly refer all NF residents with known MI or ID (as determined by the PASRR program) for a Resident Review upon a significant change in physical or mental condition. One key difference between these provisions is the timing of when the referral must be made. Section 483.20(e)(2) specifies that the referral must happen upon a significant change in status assessment. Significant change in status assessments, per § 483.20(b)(2) must be completed within 14 days of the significant change, so it appears that § 483.20(e)(2) currently allows NFs to wait at least 14 days before making a referral for Resident Review. This conflicts with the requirement in § 483.20(k)(4) (which more closely mirrors the language in section 1919(b)(3)(E) of the Act), requiring referrals for Resident Review to be made ''promptly after a significant change.'' Another key difference between the two provisions is that § 483.20(e)(2) addresses the needs of residents with ''newly evident or possible'' MI or ID—meaning residents who had not been previously identified by the PASRR program as having MI or ID. Section 483.20(k)(4) only refers to residents with MI or ID—presumably residents who have already been identified by the PASRR program as having MI or ID.

We propose to resolve the duplications and misalignment between § 483.20(e)(2) and (k)(4) by striking the current language in § 483.20(e)(2) and replacing it with proposed language that would clarify that NFs would be required to refer residents with newly evident or possible MI or ID to the PASRR program for a Resident Review within 72 hours of when the NF identifies conditions indicating the person has possible MI or ID. (See discussion of § 483.126 in this proposed rule for proposed criteria for ''possible'' MI and ID.) We believe it is critical for NFs to refer such individuals to the PASRR program, since any resident of a Medicaid-certified NF with possible MI or ID falls within PASRR's purview—including individuals who had been misidentified at admission, or developed MI post-admission. While the NF would be expected to complete a Level I identification screen (discussed in detail in the discussion of § 483.126 of this proposed rule), we do not propose to require that a NF first complete a significant change in status assessment to make the referral. In some instances the NF's discovery of an overlooked MI or ID identification may occur during the initial comprehensive resident assessment performed at admission (in which case, the NF's discovery of the possible MI or ID would not be the result of a resident experiencing a significant change in physical or mental condition). We also do not propose that a NF first complete a significant change in status assessment before making the referral for Resident Review. This would apply even if the newly evident or possible MI or ID is discovered by the NF as a result of a significant change in the resident's condition; rather, we propose that the referral for Resident Review be made first, so that the evaluations performed as part of the Resident Review could be used to help the NF complete the significant change in status assessment, if one ultimately needs to be performed. We propose in the amended § 483.20(e)(2) that the referral for Resident Review be made within 72 hours after the facility identifies evidence indicating the individual has possible mental illness, intellectual disability, or related conditions, to align with the timeframe for Resident Review referral we propose to add to § 483.20(k)(4), discussed below.

Section 483.20(k) is currently titled ''Preadmission screening for individuals with a mental disorder and individuals with an intellectual disability.'' We propose to retitle this provision ''Preadmission screening and resident review for individuals with mental illness and individuals with an intellectual disability.'' We propose this change because § 483.20(k) addresses both Preadmission Screening and Resident Review requirements. Additionally, we propose to change ''mental disorder'' to ''mental illness'' to align § 483.20(k) with PASRR requirements in part 483, subpart C that use ''mental illness'' rather than ''mental disorder.'' Similarly, we propose at § 483.20(k)(1)(i) to change ''mental disorder'' to ''mental illness.'' (See discussion of rationale for this change in the discussion of § 483.20(e) above.)

Section 483.20(k)(2) describes exceptions to Preadmission Screening requirements. We propose to add language to § 483.20(k)(2)(i) to clarify that neither new Level I identification screens, nor new preadmission Level II evaluation and determinations, are required for readmissions. We propose this clarification because, as will be discussed at greater length in the discussion of Preadmission Screening in § 483.112, we propose to resolve confusion about what constitutes ''Preadmission Screening'' and what PASRR activities are required to be completed prior to admission.

We propose to add language at § 483.20(k)(2)(ii), which implements the statutory Preadmission Screening exemption for individuals who have been admitted to a NF from a hospital under certain circumstances. We propose to add language that would clarify that a resident admitted under an exempted hospital discharge (as in, meeting the criteria listed in

§ 483.20(k)(2)(ii)) would not be required to receive a Level II evaluation and determination prior to admission, but would still be expected to have received a Level I identification screen prior to admission. This added language would align § 483.20(k)(2)(ii) with proposed changes to § 483.112 that would require Level I identification screens for all NF applicants, including applicants eligible for an exempted hospital discharge. These proposed changes are discussed further in the discussion of § 483.112 in this proposed rule.

We propose a new section 483.20(k)(2)(iii) that would add an additional exception to the requirement that residents not be admitted until they have received a Level II evaluation and determination. This proposed provision would specify that individuals who are admitted to the NF under a provisional admission (which is described in the discussion of proposed § 483.112(b)(3) of this rule) would be required to receive Level I identification screens, but would not be required to receive a Level II evaluation and determination prior to admission. This would align the requirements for NF admissions of individuals eligible for provisional admission with proposed requirements regarding provisional admissions in § 483.112(b)(3).

We propose a technical change in §§ 483.20(k)(3)(i) and (k)(4) to change ''mental disorder'' to ''mental illness'', for the reasons already discussed in this section.

We are also proposing an additional change to § 483.20(k)(4). Section 483.20(k)(4), like the current § 483.20(e)(2), addresses NFs' obligations to make referrals to Resident Review. As noted in the discussion of proposed § 483.20(e)(2), we propose to remove the requirement in § 483.20(e)(2) that a Resident Referral must be made after a resident with known MI or ID experiences a significant change (instead proposing to focus § 483.20(e)(2) on the needs of residents who have newly evident or possible MI or ID). We propose to retain § 483.20(k)(4) (with some rewording for clarity), as it implements a critical component of section 1919(b)(3)(E) of the Act, which requires that NFs refer residents with known MI or ID (as in, previously identified by the Level II process) to the PASRR program for Resident Review ''promptly after a significant change in physical or mental condition.'' We propose to add language to § 483.20(k)(4) to specify that ''promptly'' means within 72 hours of the significant change in condition. We also propose to add a cross-reference to paragraph (b)(2)(ii) of this section to provide a definition of ''significant change in physical or mental condition.''

2. Comprehensive Person-Centered Care Planning (§ 483.21)

Section 483.21 contains requirements for person-centered care planning, which includes services recommended through the PASRR process. We propose to make technical changes to this section to replace ''PASARR'' with ''PASRR.'' We propose to amend language at paragraph (b)(1)(iii), which indicates that PASRR recommendations of specialized services or specialized rehabilitative services must be part of the care plan. This provision currently provides that the care plan must include any specialized services or specialized rehabilitative services that the nursing facility will provide as a result of PASRR recommendations. We propose to amend this language to clarify that the state, not the NF, is responsible for providing specialized services (as is discussed in the discussion of § 483.120 in this proposed rule). We also propose changes to the second sentence of this provision, which currently states that if a facility disagrees with the PASRR findings, it must indicate its rationale in the resident's medical record. We propose to replace the word ''findings'' with ''recommendation'' in order to promote consistency in the use of those terms. As noted in the discussion of proposed changes to § 483.20(e)(1), we believe that ''findings'' connotes conclusions about the individual's diagnosis and functional abilities, whereas ''recommendations'' refers to the NF services and specialized services recommended by the PASRR program. We also seek to amend this provision to specify that NFs cannot unilaterally disregard PASRR recommendations without communication with the PASRR program. We would specify that changes to the PASRR recommendations in a plan of care would need to be made as part of the PASRR Level II determination process (as described in the discussion of § 483.130 below).

C. Part 483, Subpart C

1. Preadmission Screening and Resident Review for Individuals With Mental Illness or Intellectual Disability (Part 483, Subpart C)

The current title of part 483, subpart C is ''Preadmission Screening and Annual Resident Review of Mentally Ill and Mentally Retarded Individuals.'' We propose to change this title to ''Preadmission Screening and Resident Review for Individuals with Mental Illness or Intellectual Disability.''

2. Basis (§ 483.100)

Section 483.100 provides the authority for PASRR, which lies primarily in section 1919(e)(7) of the Act. We propose to revise this section by removing ''annual'' before ''resident review,'' and replacing the acronym ''PASARR'' with ''PASRR,'' to reflect the statutory change made in 1996 (by Pub. L. 104–315) that removed the ''annual'' requirement for Resident Review.

3. Applicability and Definitions (§ 483.102)

Section 483.102(a) explains that part 483, subpart C applies to all individuals with MI or ID who apply to or reside in a Medicaid-certified NF, regardless of the individuals' source of payment to the NF or known prior diagnoses. We note that this provision means that PASRR applies to all individuals who enter a facility that is Medicaid-certified, including individuals whose stays are covered by Medicare, the Department of Veterans Affairs, private insurance, or the individual out of his or her own funds. PASRR also applies to individuals who are entering a facility that is dually-certified for Medicare and Medicaid beneficiaries, unless the facility has distinct parts for Medicaid and Medicare beneficiaries as defined in § 483.5 (in which case, PASRR would only apply to those entering the Medicaid distinct part). We do not propose to make changes to § 483.102(a).

Section 483.102(b) provides PASRR-specific definitions of MI, dementia, and ID, all of which we propose to revise.

a. Mental Illness

Section 1919(e)(7)(G)(i) of the Act indicates that an individual is considered to have MI for PASRR purposes if the individual has a ''serious mental illness'' as defined by the Secretary in consultation with the National Institute of Mental Health (NIMH); the statutory definition states that the MI must be serious and that the individual may not have a primary diagnosis of dementia. The current definition of MI at § 483.102(b)(1) requires that for a PASRR program to determine an individual has MI, the program must consider three sets of criteria related to diagnosis, functional impairment, and duration of illness as measured by how recently the individual received intensive treatment.

The current diagnosis criteria for MI at § 483.102(b)(1)(i) requires that an individual have a ''major mental disorder'' diagnosable under the ''Diagnostic and Statistical Manual of Mental Disorders, 3rd edition'' (also

referred to as the DSM–III–R), which was released in 1987. The mental disorders listed currently in § 483.102(b)(1) include ''schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder'' and any other mental disorder that may lead to a chronic disability. Since § 483.102(b)(1) was issued, the DSM has been revised several times and is now in a 5th edition (DSM–5), published in 2013. The DSM–5 and DSM–III–R are not identical, and the DSM–5 does not categorize disorders the same way as the DSM–III–R. As a result, clinicians must currently crosswalk diagnoses made using the DSM–5 with the categories of mental disorders listed in the DSM–III–R.

In addition to diagnosis, the current definition of MI at § 483.102(b)(1)(ii) also includes criteria that an individual must have experienced a functional impairment within the previous 3–6 months and, at § 483.102(b)(1)(iii), that an individual must have required intensive psychiatric treatment or social supports within the previous 2 years. We believe that limiting the definition of MI only to those individuals who have recently had acute symptoms may be unintentionally problematic. For instance, under a strict reading of this current definition, an individual with MI who has successfully managed symptoms with treatment or therapy, or is in remission, may be considered to not have MI for PASRR purposes. If an individual requires such specific treatment or therapy while in a NF, including these therapies might constitute specialized services if they go beyond typical NF services (see discussion of specialized services in discussion of § 483.120 of this rule)—in which case the PASRR program may help ensure that these ongoing treatments or therapies are maintained in the NF.

We have also received feedback from stakeholders that the ''recent treatment'' requirement at § 483.102(b)(1)(iii), which requires individuals to have received inpatient hospitalization, is out of step with current practices, which are increasingly trending towards intensive outpatient and other community-based treatments. Individuals who may have received inpatient hospitalization in 1992, when § 483.102(b)(1)(iii) was originally promulgated, might today be more likely to receive some form of outpatient treatment, making this criterion unreasonably difficult to meet by today's standards of practice.

For readability, we propose to title § 483.102(b)(1) ''Mental illness.'' We propose to revise § 483.102(b)(1) in its entirety; a new definition of MI at § 483.102(b)(1) would provide that a person would be considered to have MI if:

- The individual has, within the past year, had a serious and persistent mental disorder meeting the criteria specified within the (DSM–5), with the exception of conditions that would fall under DSM–5 ''V'' codes, substance use or substance/medication-induced disorders, neurodevelopmental disorders, and neurocognitive disorders;
- The disorder has been determined by a qualified clinician to be acute or in partial remission, have recurrent or persistent features and, if the DSM includes a severity scale for the disorder, the severity level of the disorder is moderate to severe;
- The disorder has resulted in functional impairment which has substantially interfered with, or limited, one or more major life activity (including activities of daily living; instrumental activities of daily living; or functioning in social, family, and academic or vocational contexts), or would have caused functional impairment without the benefit of treatment or other support services; and
- A qualified clinician has found that the mental disorder is not a secondary characteristic of a primary diagnosis of dementia (or neurocognitive disorder due to Alzheimer's disease or related conditions), as defined in paragraph (b)(2).

The proposed definition is a PASRR-specific modification of the definition of serious MI issued by the Substance Abuse and Mental Health Services Administration (SAMHSA) as part of the Public Health Service Act (PHSA). The Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act (Pub. L. 102–321, enacted July 10, 1992) that created SAMHSA in 1992 also directed SAMHSA to issue a definition of ''serious mental illness,'' which it did in 1993 (58 FR 29425, May 20, 1993). We arrived at this proposed definition for PASRR-eligible MI after consultation with NIMH staff, as directed by section 1919(e)(7)(G)(i) of the Act. In an attempt to streamline the regulations, we are proposing a single definition of MI to apply to both children and adults, whereas the PHSA definition offers separate definitions for ''serious mental illness'' and ''serious emotional disturbance'' for children. In addition, in an effort to bring the proposed definition of MI up-to-date, we have chosen to refer to the most current available version of the DSM (which is more current than the edition reflected in the PHSA). Unlike the PHSA definition, the proposed PASRR definition for MI would exclude Alzheimer's disease and related disorders in accordance with section 1919(e)(7)(G)(i) of the Act.

Another proposed update to the definition of MI is to indicate that a person must have been diagnosed with a ''mental disorder'' rather than a ''major mental disorder.'' The DSM–5 does not classify many mental disorders as ''major'' as it may have done in previous editions, and we believe removing ''major' aligns better with the current descriptions of most of the relevant mental disorders in the DSM–5. We also believe this would avoid over-inclusion of individuals with clinically mild presentations of disorders that have the word ''major'' in the diagnosis, such as major depressive disorder. We propose instead to specify that a qualified clinician would have to identify that the disorder has recurrent or persistent features. The term ''serious and persistent mental illness'' is often used interchangeably with ''serious mental illness,'' and we propose to highlight the persistent or recurrent nature of the disorder to avoid over-inclusion of individuals who have experienced a single episode of mental illness that will not require the ongoing specialized supports offered through PASRR interventions. We also propose to specify that, if the DSM–5 includes a severity scale for the disorder, that the disorder be considered by the clinician to be moderate to severe.

We note that in the proposed definition, a diagnosis of substance use disorder (including opioid use disorder) or a substance-induced disorder would not be considered a qualifying diagnosis of MI. This is in keeping with the SAMHSA definition of serious MI. However, an individual with a diagnosis of substance use disorder and a distinct diagnosis of a qualifying MI (such as bipolar disorder) would be considered eligible for PASRR evaluation.

We believe this proposed definition would rectify the problems posed by the current definition described above by updating the diagnostic criteria and removing specific treatment criteria. It would also adopt language from the preamble to SAMHSA's 1993 definition of serious MI (at 58 FR 29425) that specifies that the mental disorder would be considered serious if it caused a functional impairment in the past year, or would have caused an impairment in the past year absent treatment or support services. This would mean that people with serious but managed conditions could still be eligible for PASRR evaluation and determination to ensure continuation of these supports while they are in the NF.

The final criterion of the proposed definition for MI reflects the statutory requirement at section 1919(e)(7)(G)(i) of the Act that a person is not considered to have MI (for PASRR purposes) if the MI diagnosis is secondary to a primary diagnosis of dementia. We propose to specify as part of this provision that a qualified clinician would make the decision that the dementia is primary, as it may difficult for non-clinicians (such as those who may be performing the Level I identification screen, discussed in § 483.126 of this proposed rule) to identify accurately whether the individual's behavioral disturbances are caused by MI or dementia. We solicit feedback on this proposed updated definition.

b. Dementia

Section 483.102(b)(2) provides a definition of dementia, and for readability, we propose to title § 483.102(b)(2) ''Dementia.'' We propose to amend the current definition of dementia at § 483.102(b)(2). In the DSM–5, dementia is now described as ''major neurocognitive disorder'' and Alzheimer's disease and related disorders are described as different forms of either mild or major neurocognitive disorders. We propose to specify that an individual would be considered to have dementia if a qualified clinician has diagnosed such individual with a ''major neurocognitive disorder'' as defined in the DSM–5, with the exception of delirium. (See the discussion of proposed § 483.112(b)(3) for a discussion of how individuals with delirium diagnoses would be addressed by PASRR.) Mild neurocognitive disorders, including mild cognitive impairment, would not be included in the definition of dementia for PASRR purposes.

We also propose to specify that an individual with a co-occurring diagnosis of MI and a neurocognitive disorder would not automatically be considered to have ''primary dementia'' unless a qualified clinician has confirmed the identification of dementia as primary. We frequently receive requests for additional guidance on what is meant by ''primary dementia'' in PASRR. We solicit feedback on our proposed approach.

c. Intellectual Disability

Section 483.102(b)(3) provides a definition of intellectual disability, and for readability we propose to add a title to this provision, ''Intellectual disability.'' The statute does not provide a specific definition of ''intellectual disability''. Section 1919(e)(7)(G)(ii) of the Act states that a person is ''mentally retarded'' if the person is mentally retarded or has a related condition as described in section 1905(d) of the Act.'' Section 1905(d) defines intermediate care facilities for people with intellectual disability (ICF/IID), but does not define ''intellectual disability''. Section 483.102(b)(3)(i) currently provides a definition of ''intellectual disability,'' but it relies on an outdated diagnostic manual (the American Association on Mental Deficiency's ''Manual on Classification in Mental Retardation'' (1983)). We propose to update this definition, using an adaptation of the most current definition provided by the American Association on Intellectual and Developmental Disabilities (AAIDD), formerly known as the American Association on Mental Deficiency. We propose to specify that an individual may be considered to have an intellectual disability if the individual has a disability, with onset before age 18, which is characterized by significant limitations in both intellectual functioning and adaptive behavior, as described in the American Association on Intellectual and Developmental Disabilities' ''Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition'' (2010). We also propose to retain the provision at § 483.102(b)(3)(ii) that an individual may also be considered to have ID for PASRR purposes if the individual has a related condition as defined by § 435.1010. We welcome public comment on this definition.

d. Incorporation by Reference: Material Availability and Description

We also propose to add a new § 483.102(c) to incorporate the American Psychiatric Association's ''Diagnostic and Statistical Manual of Mental Disorders, 5th Edition'' (DSM–5) and the 11th edition of AAIDD's Intellectual Disability: Definition, Classification, and Systems of Support'' by reference; PASRR programs would use these materials to identify MI, dementia and ID, in accordance with 5 U.S.C. 552(a) and 1 CFR 51.5(a). Incorporation by reference allows federal agencies to comply with the requirement to publish rules in the **Federal Register** and the Code of Federal Regulations (CFR) by referring to material already published elsewhere. The legal effect of incorporation by reference is that the material is treated as if it had also been published in the **Federal Register** and the CFR. This material, like any other properly issued rule, has the force and effect of law. New § 483.102(c)(1) would incorporate by reference the DSM–5, which we propose would be used to identify qualifying MI diagnoses and to identify primary dementia diagnoses. Section 483.102(c)(2) would incorporate by reference the current edition of the AAIDD's ''Intellectual Disability: Definition, Classification, and Systems of Support'', which we propose would be used to identify instances of intellectual disability.

The ''Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition'' (DSM–5) is the diagnostic tool published by the American Psychiatric Association (APA). The DSM serves as one of the principal authorities for identifying and classifying the psychiatric diagnoses required for treatment recommendations and health care payments. The DSM–5 contains criteria that help clinicians identify subtypes of: Neurodevelopmental disorders; schizophrenia spectrum and other psychotic disorders; bipolar and related disorders; depressive disorders; anxiety disorders; obsessive-compulsive disorders; trauma- and stressor-related disorders; dissociative disorders; somatic symptom and related disorders; feeding and eating disorders; elimination disorders; sleep-wake disorders; sexual dysfunctions; gender dysphoria; disruptive, impulse-control, and conduct disorders; substance-related and addictive disorders; neurocognitive disorders; personality disorders; and paraphilic disorders.

The AAIDD's manual, ''Intellectual Disability: Definition, Classification, and Systems of Supports'', contains current guidelines on diagnosing and classifying intellectual disability, as well as information on developing a system of supports for people with an intellectual disability. The manual was created to provide an authoritative definition and diagnostic system of intellectual disability and to give guidance on the role of assessment in the diagnostic process, the role of the intelligence quotient (IQ) in making a diagnosis, and methods of assessing adaptive behavior.

We would make both the DSM–5 and the AAIDD's ''Intellectual Disability: Definition, Classification, and Systems of Support'' available for inspection at the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Information on how to purchase a copy of the DSM–5 may be

obtained from the American Psychiatric Association, 800 Maine Avenue SW, Suite 900, Washington, DC 20024, 202–559–3500, or from American Psychiatric Association Publishing at *www.appi.org.* Information on how to purchase a copy of the AAIDD manual may be obtained from the AAIDD, 8403 Colesville Road, Suite 900, Silver Spring, MD 20910, 202–387–1968 or *www.aaidd.org.*

4. State Plan Requirement (§ 483.104)

§ 483.104 provides that, as a condition of approval of the State plan, states must operate a PASRR program that meets the requirements of §§ 483.100 through 483.138. We propose in this provision to remove the word ''annual'' to indicate that Resident Review is no longer required annually.

5. Basic Rules and Responsibilities (§ 483.106)

Currently, § 483.106 is titled ''Basic rule.'' The focus of this section is on providing a high-level overview of PASRR requirements and outlining the roles of the State Medicaid Agency (SMA), the SMHA, and the SIDA in implementing PASRR. PASRR is a somewhat unusual Medicaid mandate in that the statute (sections 1919(b)(3)(F) and (e)(7)(A) and (B) of the Act) assigns responsibilities to the SMHA and the SIDA, as well as the SMA. We propose to retitle this section ''Basic rules and responsibilities'' to draw readers' attention to these distinct responsibilities. We also propose to make revisions to this section to clarify and highlight the respective roles of each authority.

The current § 483.106(a) reiterates the requirement in section 1919(e)(7)(A)(i) of the Act that states were to have a system for Preadmission Screening in place by January 1, 1989. It also reflects the requirement in section 1919(e)(7)(B) of the Act that states must perform an initial Resident Review of all individuals with MI or ID in NFs by April 1, 1990, and have a system of annual Resident Review in place by April 1, 1990. This requirement for annual Resident Review was repealed in 1996 (by Pub. L. 104–315) and replaced with the requirement that a Resident Review was required upon a resident's ''significant change of physical and mental condition.'' We propose to remove § 483.106(a) because the deadlines for implementation of Preadmission Screening implementation and Resident Review programs have long passed, and the reference to annual Resident Review is now obsolete.

We propose to redesignate the current § 483.106(c) as § 483.106(a) and remove the existing reference to ''annual'' Resident Reviews. This provision provides the basic purpose of PASRR programs, which are to have Preadmission Screening and Resident Review processes that result in determinations for NF applicants and residents with MI and ID, based on a physical and mental evaluation of the individual.

The current § 483.106(b) indicates that ''new admissions'' must receive Preadmission Screening, and clarifies who is considered a ''new admission.'' It also defines and distinguishes among new admissions, exempted hospital discharges, readmissions, and inter-facility transfers. Because this provision has more relevance to Preadmission Screening than to Resident Review, we propose to move this provision to § 483.112 (which discusses Preadmission Screening for NF applicants) and to redesignate it as § 483.112(b). Additional proposed changes to that provision are contained in the discussion of § 483.112 in this proposed rule.

We propose new language at § 483.106(b) to provide a proposed restatement of the basic requirements of the PASRR programs, including:

- Identification of all applicants for admission to, and residents of, Medicaid-certified NFs who have possible MI or ID;
- Preadmission Screening of all eligible new admissions with MI or ID who apply to Medicaid NFs and tracking of individuals with possible MI or ID admitted under Preadmission Screening exceptions; and
- Resident Review of eligible residents with MI or ID.

This proposed regulation would provide a clear overview of PASRR requirements that reflects current statutory requirements. The proposed § 483.106(b)(2) would provide a cross-reference to § 483.112, where we propose that exempted hospital discharge and other exceptions to Preadmission Screening be defined.

We propose a new requirement at § 483.106(c) that would describe the SMA's PASRR responsibilities, including:

- General responsibility for ensuring and enforcing the PASRR program's compliance with federal regulations;
- Executing and enforcing written interagency agreement among the State Medicaid agency, SMHA and SIDA as required at § 431.621;
- Designating an entity to perform the evaluations for individuals with MI;
- Ensuring timely and accurate reporting of data as required in proposed § 483.130(j); and
- All PASRR functions not explicitly assigned to another entity by statute or regulation.

We believe this new regulation is necessary because the current regulations do not offer explicit discussion of the SMA's role in PASRR. Our proposed regulation would largely affirm current responsibilities of the SMA. We have observed that while the SMA does bear ultimate responsibility for PASRR implementation, in some instances SMAs have been unaware of some of their specific obligations, and we attempt to highlight these obligations in proposed § 483.106(c). For instance, the existing § 431.621 requires the SMA to execute a PASRR-related interagency agreement among the SMA, SMHA and SIDA—a requirement that is easy to overlook because it is not part of the PASRR requirements in part 483, subpart C. Additionally, we propose to clarify that since the SMHA cannot perform or delegate responsibility for evaluations for people with MI (per the restrictions at sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i) of the Act, discussed further in the discussion of § 483.106(d) in this proposed rule), that responsibility would fall to the SMA.

To the list of the SMA's responsibilities, we propose to add one new responsibility in proposed § 483.106(c)(4), to ensure timely and accurate reporting of data as required in proposed § 483.130(j). The proposed reporting requirements are discussed at greater length in the discussion of § 483.130(j) in this proposed rule. We propose at § 483.106(c)(4) that, when a PASRR program gathers and submits data on PASRR program activities, the SMA would bear ultimate responsibility for ensuring that this data is reported to the Secretary, as required in section 1919(e)(7)(C)(iv) of the Act.

Section 483.106(d) describes the specific obligations of the SMHA and SIDA to perform determinations for people with MI and ID (respectively), as described in the statute. Sections 1919(b)(3)(F)(i) and 1919(e)(7)(B)(i) of the Act specify that the determinations made by the SMHA must be based on an ''independent physical and mental evaluation performed by a person or entity other than the [SMHA.]'' Sections 1919(b)(3)(F)(ii) and 1919(e)(7)(B)(ii) of the Act require the SIDA to base determinations ''on the physical and mental condition'' of the individual (implying that determinations must also be based on evaluations). Unlike the SMHA, the SIDA is not statutorily prohibited from performing the evaluation on which the determination is made. The language in current

§ 483.106(d) generally reflects this set of statutory requirements. We propose in § 483.106(d) to change a mention of ''the level of services provided by a NF'' to ''NF level of services'' to maintain consistent language around NF level of services. We propose to add clarifying language to § 483.106(d)(1) that indicates that the SMHA's determination for people with MI must be based on a physical and mental evaluation performed by a person or entity that is ''independent from'' the SMHA. The current language indicates only that the person or entity must be ''other than'' the SMHA. That arguably ambiguous language has created the misimpression for some PASRR programs that the evaluation of people with MI can be performed by an entity that is distinct from, but still under contract with, the SMHA. We believe a plain reading of the statute indicates that the entity performing the evaluation for people with MI cannot have a contractual relationship with the SMHA, and propose to make that clear. The SIDA's role is summarized at § 483.106(d)(2). To highlight the differences between the SIDA statutorily-authorized roles in evaluations, we propose to add language at § 483.106(d)(2) that specifies that the determination made by the SIDA must be ''based on a physical and mental evaluation performed by the state intellectual disability authority or its designee.''

We propose changes at § 483.106(e), which currently describes the obligations placed on the SMHA and the SIDA when delegating statutory responsibilities. We propose to redesignate § 483.106(e)(1)(i) through (iii) as § 483.106(e)(1) through (3). We propose to expand § 483.106(e) and (e)(1) to include the SMA, as well as the SMHA and SIDA. We also propose to remove current § 483.106(e)(1)(ii), which contains an instruction to the SMHA and SIDA that the two determinations as to the need for NF services and specialized services must be made based on a consistent analysis of the data. We believe this instruction is unnecessary, as this principle is also addressed in rules regarding determinations (contained in § 483.130). We propose to replace this provision with a clarification at newly redesignated § 483.106(e)(2) that the SMA cannot delegate the evaluation responsibility to the SMHA (in accordance with sections 1919(b)(3)(F)(i) and (e)(7)(B)(i) of the Act). Section 483.106(e)(1)(iii), which we propose to redesignate § 483.106(e)(3), instructs that the responsibility of evaluations and determinations cannot be delegated to a NF or an entity with a direct or indirect relationship with a NF. As this is required by sections 1919(b)(3)(F) and (e)(7)(B)(iv)) of the Act, we propose to retain this provision without amendment.

We propose to remove the current § 483.106(e)(2), which contains redundant language describing the SIDA and SMHA's responsibilities and ability to delegate these responsibilities. We also propose to remove the current § 483.106(e)(3), which reiterates the restriction against the SMHA providing (or delegating) evaluations for people with MI, and restricting the state from delegating this responsibility to NFs. We believe this language duplicates existing and proposed language in § 483.106(d)(1) and of newly redesignated § 483.106(e)(2) and (3).

We propose to move the current § 483.128(b) to § 483.106 and redesignate it as § 483.106(f). This provision requires that PASRR evaluations and determination notices be adapted to the cultural background, ethnic origin, language, and means of communication used by the individual. We propose this redesignation because the provision is currently in § 483.128, which provides criteria only for evaluations, yet the provision addresses both evaluation and determination practices. Culturally-sensitive and accessible communications are fundamental to all PASRR-related activities, so we consider this provision most appropriate for the section on basic rules. In relocating language currently found at § 483.128, we propose to revise the reference to ''PASARR notices'' to ''PASRR-related communications'' to clarify that cultural adaptation and accessibility would be expected of all communication, and not limited to formal determination notices issued by the PASRR program. We would also add in this provision that, at no cost to the individual, evaluations should include qualified interpreters as needed, as required by Section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964, and qualified sign language interpreters and auxiliary aids as required by Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act of 1973, to ensure there is effective communication.

6. Relationship of PASRR to Other Medicaid Processes (§ 483.108)

Section 483.108 describes the protections for, and limitations on, the independence of the SMHA and SIDA in making determinations, and the statutory responsibility to coordinate PASRR with the resident assessment in § 483.20(b).

We propose to make only minor technical changes to § 483.108(a), to remove the acronym ''PASARR'' and replace it with ''PASRR.'' We propose minor changes in § 483.108(b). We propose replacing ''NF care'' with ''NF level of services'' to keep language regarding the NF level of services determination consistent. The current provision specifies that determinations regarding NF level of services and specialized services must be consistent with ''any supplemental criteria adopted by the State Medicaid agency under its approved State plan.'' We propose to remove the words ''under its approved State plan'' because state plan approval is not required for states to develop state-specific rules about PASRR criteria or NF admissions criteria.

We propose to add clarifying language in § 483.108(c), which reflects the statutory requirement in sections 1919(b)(3)(E) and 1919(e)(7)(B)(iii) of the Act that the resident assessment process implemented in § 483.20 must be coordinated with the state's PASRR program. (See discussion of § 483.20 for discussion of the resident assessment process.) As we discuss in the discussion of § 483.20(e) in this proposed rule, Preadmission Screening and Resident Review may be coordinated with the resident assessment by gathering the preliminary documentation that will aid in the completion of the resident assessment. To this end, we propose to replace language in § 483.108(e) requiring that PASRR must be coordinated with the routine resident assessments with a more specific statement to the effect that information gathered by the PASRR process must be incorporated into the routine resident assessments required by § 483.20(b) whenever possible. We recognize that the need for coordination between PASRR and resident assessments is both critical and complex, and intend to expand on this requirement through future sub-regulatory guidance.

7. Out-of-State Arrangements (§ 483.110)

Section 483.110 describes how responsibility for PASRR is assigned when an individual seeks admission or transfer to an out-of-state NF. The general goal of § 483.110(a) is to ensure that one state (the ''sending state'') cannot obligate another (the ''receiving state'') to provide, or pay for, NF services or specialized services that do not align with the NF level of services

or specialized services in the receiving state.

We have received stakeholder feedback that, for some states, deciding how PASRR should be performed when a NF resident is transferred between states, or otherwise moves over state lines, can be a source of confusion. We understand that some receiving states: (1) Elect to accept the PASRR documentation from the sending state, even if the receiving state will ultimately be responsible for paying for the individual's care (including paying for specialized services); (2) redo all PASRRs for relocated residents; or (3) attempt to perform Preadmission Screening on prospective new residents themselves, which may involve sending staff from the receiving state's PASRR program across state lines to the sending state to perform the Preadmission Screening.

Some of the challenges related to admitting NF applicants or residents from another state are beyond PASRR's scope, such as differences in Medicaid eligibility or states' level of care criteria for NF admission. However, while we do not currently propose substantive changes to § 483.110(a), we solicit suggestions from stakeholders on ways that the language in § 483.110 may, within the scope of the authority of this subpart, be amended to address any barriers to executing PASRR responsibilities associated with out-of-state transfers.

We propose to remove the current requirement at § 483.110(b), which indicates that states may choose to include PASRR in interstate agreements. States do not need regulatory authority to do so, and may continue to do so if this removal is finalized. We have observed that some states have interpreted § 483.110(b) as a mandate, which it is not. We note that the delegation authority granted at § 483.106(e) would include, for example, allowing a receiving state to delegate its authority to perform PASRR activities to a sending state's PASRR program to complete needed Preadmission Screening. Because we propose to remove § 483.110(b), we propose that § 483.110(a) would be redesignated as § 483.110.

8. Preadmission Screening of Admission to NFs (§ 483.112)

Section 483.112 describes the requirements for Preadmission Screening. Per section 1919(b)(3)(F) of the Act, Preadmission Screening instructs that ''new resident[s]'' with MI or ID cannot be admitted to a NF unless the SMHA or SIDA has determined ''prior to admission'' that the individual needs NF level of services and, if the individual does need NF level of services, whether the individual needs specialized services. (The need for NF level of services and specialized services are discussed in greater detail in the discussions of §§ 483.120, 483.132, and 483.134 of this proposed rule.)

In this section, we propose to reorganize and expand on the requirements for Preadmission Screening. As part of this reorganization, we propose to remove current § 483.112(a) and (b). These sections reiterate the statutory requirement set out in the previous paragraph. We propose removing these sections and consolidating this information into a single requirement at § 483.112(d), discussed later in this proposed rule.

We propose a new § 483.112(a) that would clarify who would be required to receive Level I identification screening prior to NF admission. We would specify that all individuals who are applying to Medicaid-certified NFs as a new admission (as defined in proposed § 483.112(b)) must receive a Level I identification screen. We note that Level I identification screens performed prior to admission do not constitute Preadmission Screening, but rather are used to indicate who must receive Preadmission Screening. This means that *all* applicants, including those who are eligible for exemptions from Preadmission Screening, would be required to receive a Level I identification screen. The rationale for this proposed policy is discussed further in the discussion of proposed § 483.112(b) in this proposed rule.

We propose a new § 483.112(b), which is largely a redesignation of the current § 483.106(b). As noted in our discussion in § 483.106, this provision currently describes who is required to receive Preadmission Screening. We would add new language in this revised § 483.112(b) that clarifies that new admissions with positive Level I identification screens applying to become a new resident of a Medicaid-certified NF would be required to receive Preadmission Screening prior to admission. (Proposals regarding the Level I identification process, including what may constitute a positive Level I screen, are discussed in the discussion of § 483.126 of this proposed rule.) We also propose to add language at proposed § 483.112(b) clarifying that Preadmission Screening (also referred to in this proposed rule as ''Level II Preadmission Screening'') consists of a Level II evaluation and determination as described in §§ 483.128 and 483.130. We believe this definition of Preadmission Screening accurately reflects the description of Preadmission Screening required by sections 1919(b)(3)(F) and 1919(e)(7)(A) of the Act, which only specifically includes the evaluation and determination process.

Proposed § 483.112(b)(1) contains much of the current language from existing § 483.106(b)(1) that defines ''new admission.'' We propose to retain the language that explains that ''new admissions'' are individuals applying for admission to a Medicaid-certified NF for the first time and who do not qualify as ''readmissions'' or an ''inter-facility transfer.'' (Readmissions and inter-facility transfers are discussed further in the discussions for § 483.112(b)(4) and (b)(5), respectively in this proposed rule.) We also propose to add language at proposed § 483.112(b)(1) that clarifies that, with the exception of certain hospital discharges or provisional admissions (explained in the next paragraph), new admissions would be subject to Preadmission Screening (meaning they must receive, if they have possible MI or ID, a Level II evaluation and determination prior to admission).

At proposed § 483.112(b)(2), we would preserve much of the language from current § 483.106(b)(2) that defines exempted hospital discharge. Current § 483.106(b)(2)(i) mirrors the language in section 1919(e)(7)(A)(iii) of the Act, which provides that Preadmission Screening ''shall not apply'' to an individual: (1) Who is admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital; (2) who requires nursing facility services for the condition for which the individual received care in the hospital; and (3) whose attending physician has certified, before admission to the NF, that the individual is likely to require less than 30 days of nursing facility services. Current § 483.106(b)(2)(ii) adds that if an individual who was admitted to a NF under an exempted hospital discharge ends up staying in the NF for more than 30 days, the SMHA or SIDA must conduct a Resident Review by the 40th day of the individual's admission.

We believe the current regulations do not provide adequate oversight for the exempted hospital discharge because they have left unclear whether the PASRR program may have any contact with individuals who qualify for the exempted hospital discharge prior to the NF admission (such as by performing a Level I identification screen on the individual or verifying that the person meets the criteria for exempted hospital discharge). We have received anecdotal

feedback from stakeholders that many states' PASRR programs do not feel they have the authority, under current regulations, to conduct proper oversight of the application of hospital discharge exemptions. The lack of oversight of hospital discharge exemptions may result in improper use of the exemption, such as identifying individuals as qualifying for the exemption even though they do not have written documentation from a physician as required by law. Another issue that may arise with hospital discharge exemptions is that individuals with possible MI or ID may initially meet the criteria for an exempted hospital discharge but then stay in the NF longer than 30 days, and not receive a timely referral for Resident Review; it is difficult for PASRR programs to ensure that such Resident Review referrals are being made when the PASRR program has no prior knowledge of the individuals admitted under this exemption.

To address these potential issues, we propose to add language at § 483.112(b)(2) to clarify that exempted hospital discharges are considered new admissions, which means that while they are exempted from Preadmission Screening (Level II evaluation and determination), they are not exempted from Level I identification screening. Performing Level I identification screens on people who qualify for the hospital discharge exemption would serve two purposes. One is to serve as notice to PASRR programs that individuals with MI or ID (as identified via a positive Level I screen) are being admitted to a NF under a hospital discharge exemption and may need a Resident Review if their stays exceed 30 days. The second is to have the Level I identification screen function as a means of verifying that the conditions of the hospital discharge exemption are met, including that a physician has certified the expected length of the stay. This proposed clarification would assist us in providing greater oversight of the use of hospital discharge exemptions to avoid misapplication or misuse of this exemption, and would provide PASRR programs with an improved ability to track individuals with MI or ID who have been admitted to NFs.

We propose to redesignate § 483.106(b)(2)(i) as § 483.112(b)(2)(i). The language in this provision describes the conditions for exempted hospital discharge per section 1919(e)(7)(A)(iii) of the Act. Additionally, we propose in § 483.112(b)(2)(ii) to retain the provision in current § 483.106(b)(2)(ii) which states that, if an individual ends up staying in a NF longer than 30 days, the state's PASRR program would be required to conduct a Resident Review (consisting of a Level II evaluation and determination) within 40 calendar days of admission. However, we propose to add language in proposed § 483.112(b)(2)(ii) specifying that only individuals who have possible MI or ID (as identified by the Level I identification screen) would have to receive a Resident Review by the 40th day of admission. We also propose to change the word ''conduct'' to ''complete,'' to make it clear that the Level II evaluation and determination would have to be completed by the 40th day (rather than merely initiated) after the person's admission date. We believe this proposed Resident Review requirement would provide a critical protection to ensure that individuals with MI or ID who intended to stay in a NF for only a short time do not become long-term residents without being reviewed by the PASRR program to confirm that the individual needs NF level of services and to determine whether the individual needs specialized services.

We propose to add a new provision at § 483.112(b)(3) that describes a second exemption to Preadmission Screening, called a ''provisional admission.'' Section 1919(b)(3)(F) of the Act specifies that those applying as ''new residents'' are subject to Preadmission Screening. We would define a provisional admission as a new admission in which the individual is only admitted to a NF for short, time-limited stays, and thus is not considered a ''new resident'' for PASRR purposes. These individuals would be subject to a Level I identification screen but, even if the individuals receive positive screens, would not be required to receive Level II evaluation and determination prior to admission. Provisional admissions, like hospital discharge exemptions, would be time-limited NF stays that are admissions for:

- Emergency stays due to emergency evacuations or protective services placements, with placement in the NF not to exceed 14 days;
- Individuals with delirium where the delirium prevents an accurate diagnosis at the time of entry into the NF, but is expected to clear within 14 days;
- Respite stays of up to 30 consecutive days to provide respite to in-home caregivers; or
- Convalescent stays of up to 30 days in which an applicant requires a stay in the NF to recover from an acute physical illness that required hospitalization; and does not meet all the criteria for an exempted hospital discharge (described previously in this proposed rule in the discussion of § 483.112(b)(2)). Convalescent stays, for example, may be required for individuals who do not qualify for hospital discharge exemptions because they are being discharged to a NF from a rehabilitative hospital, rather than an acute care hospital as specified by section 1919(e)(7)(A)(iii) of the Act.

While this would be a new requirement, it is one designed to reduce burden. We propose such provisional admissions in lieu of the categorical determinations, examples of which are set out at current § 483.130(d). Categorical determinations are part of the current regulations and are designed to expedite admissions for individuals with positive Level I screens whose conditions are such that the SMHA or SIDA can determine, without a comprehensive evaluation, that the individual either needs NF level of services or does not need specialized services, or both. As authorized by the current regulations, categorical determinations frequently result in ''desk reviews,'' which are quick reviews of the individual's medical paperwork (often without the individual's direct involvement).

We believe the proposed regulations at § 483.112(b)(3) would reduce PASRR programs' burden by eliminating the need to collect and review paperwork for individuals with positive Level I identification screens who are going to be in the NF for such a short period of time that the individual is not likely to become a long-term resident and would not have time to benefit from specialized services. The application of this exception would be voluntary for state PASRR programs; this provision would not preclude states, if they so choose, from performing Preadmission Screening or providing specialized services, as appropriate, to individuals with positive Level I identification screens who fall under these categories if the state identifies that the individual would benefit from such interventions.

We also propose to provide a schedule at proposed § 483.112(b)(3)(ii) for when a Resident Review would need to be completed by the SMHA or SIDA for an individual with possible MI or ID (as indicated by the Level I identification screen) who was admitted under provisional admission. We propose a similar timeframe to the Resident Review policy on expired hospital discharge exemptions described in proposed § 483.112(b)(2)(ii), which contemplates 9 calendar days for the Resident Review. We propose that a Resident Review would have to be completed by the 24th

calendar day after admission for emergency admissions and delirium, and the 40th calendar day after admission for respite stays and convalescent care stays. This ensures that individuals who are admitted under provisional admissions do not become long-term residents without an appropriate review for NF level of services and specialized services.

In summary, we are proposing parallel processes for hospital discharge exemptions and provisional admissions. We propose that individuals in both categories would receive Level I identification screening prior to admission to identify individuals who have possible MI or ID (as described in the discussion for § 483.126) and to confirm that the individual qualifies for a Preadmission Screening exemption, the individual's MI or ID notwithstanding. These exemptions come with an expiration date—30 days for exempted hospital discharge and provisional admission for respite or convalescent stays, 14 days for provisional admissions for emergencies and delirium. We propose that when individuals who have been admitted under an hospital discharge exemption or as a provisional admission remain in the NF past the allotted exemption period, the NF must notify the PASRR program promptly so that the SMHA or SIDA can perform a Resident Review and make a Level II determination within an average of 9 calendar days of when the individual's exemption period expired.

We propose at § 483.112(b)(4) to relocate and revise the language from current § 483.106(b)(3) that defines ''readmissions''. Readmissions, as set forth in section 1919(e)(7)(A)(ii) of the Act do not need to receive Preadmission Screening. We propose to remove the sentence that explains that readmissions are exempt from Preadmission Screening, but are subject to ''annual'' Resident Review, because annual Resident Review is no longer a requirement. In its place, we propose to add a specification that readmissions of individuals who received a Level I identification screen and Level II evaluation and determination (if needed) upon initial admission do not need to have these processes repeated upon readmission. We propose to retain the language from current § 483.106(b)(3) that readmissions are still subject to Resident Review, although we propose to remove the language that says that this Resident Review must be performed annually and would clarify that the Resident Review would need to be performed in accordance with § 483.114.

At proposed § 483.112(b)(5), we propose to retain the definition of ''inter-facility transfer'' from current § 483.106(b)(4), which is that an individual is being transferred from one NF to another, with or without an intervening hospital stay. We propose to add language specifying that inter-facility transfers are treated similarly to readmissions, in that Level I identification screening and, for individuals with MI or ID, Level II evaluations and determinations (conducted as Preadmission Screening and any subsequent Resident Reviews), Level I identification and Level II Preadmission Screening typically do not need to be repeated during the transfer. We propose to add language at § 483.112(b)(5)(ii) that would specify that a receiving NF would have to ensure that the individual has paperwork demonstrating that the individual has previously received a Level I identification screen and, if necessary, Level II determination (or multiple Level II determinations). Absent this documentation or if this documentation does not reflect the individual's current physical or mental condition, we would specify that the individual must be treated as a new admission (meaning the individual would need to receive a new Level I identification screen and, if necessary, Level II evaluation and determination prior to admission.) We also propose a new requirement at § 483.112(c)(5)(iii) indicating that a new Level II Preadmission Screening would be required for an individual whose inter-facility transfer involved an intervening stay in an inpatient facility in which the individual received inpatient psychiatric treatment or active treatment (as defined in § 483.440(a)).

We propose changes to the provisions at § 483.112(c)(1) describing the timeliness of the Level II Preadmission Screening. The current regulation indicates that Level II determinations must be made in writing within an annual average of 7–9 working days from the day the Level I referral was made. We believe setting a standard that is both an average *and* a range presents an unnecessarily confusing benchmark for PASRR programs. While 9 working days is clearly the upper limit of how long most determinations should take, states are not required to complete determinations in a minimum of 7 days. We propose to revise the existing completion rate of an annual average of 7 to 9 working days to within an annual average of 9 calendar days from date of receipt of the Level I referral. We propose to change ''working days'' to ''calendar days'' because calendar days, unlike ''working days'' are unambiguous. We also note that in the requirement for completing Level II determinations for expired hospital discharge exemptions (discussed in this section above in relation to proposed § 483.112(b)(2)), the need for the Level II determination would begin on the 31st day after admission, and the Level II would need to be completed by the 40th day of admission—in other words, within 9 calendar days. Thus, we propose that *all* Level II determinations be made within, on average, 9 calendar days of the Level I referral in order to streamline timeframes.

We also propose to add at § 483.112(c) that Level II Preadmission Screening (consisting of a Level II evaluation and determination) would have to be completed prior to admission, and propose to clarify that the Level II determinations may be made electronically or in writing. We believe many PASRR programs already deliver determinations electronically, and propose to formally memorialize this practice in regulation. Relatedly, we propose to remove § 483.112(c)(2) allowing the PASRR program to make Level II determinations verbally and confirming in writing. The presumed purpose of this requirement was to help expedite admissions to NFs at a time when email and other forms of electronic communication were not widely available. Electronic communication at this point can be almost as instantaneous as phone calls (if not more so) and, unlike verbal communications, create an instant verifiable record of the determination.

We propose to relocate § 483.112(c)(3) and (c)(4), which pertain to requirements for gathering data on the annual average timeliness and the ability to request waiver of this requirement to a new provision at proposed § 483.130(j). We discuss these requirements at greater length in the discussion of § 483.130 of this proposed rule.

We propose a new provision at § 483.112(d) that contains the expectations for Preadmission Screening determinations set forth in section 1919(b)(3)(F) of the Act. The Act indicates that NF applicants referred to the PASRR program for Level II determinations must first receive a determination for NF level of services and, if found to require NF level of services, a determination for specialized services.

9. Review of NF Residents (§ 483.114)

The title of § 483.114 is currently ''Annual Review of NF Residents.'' As

has been discussed elsewhere, Resident Review is no longer required annually so we propose to retitle this section ''Review of NF Residents.'' All regulations in this section currently presume the Annual Resident Review requirement. As such, we propose to remove them and replace them (at § 483.114(e)) with language on how states' PASRR programs may implement section 1919(e)(7)(B)(iii) of the Act, which requires that Resident Review be performed when there has been a ''significant change in the resident's physical or mental condition.''

We propose a new requirement at § 483.114(a) specifying the circumstances under which a referral for a Resident Review would be required. We propose at § 483.114(a) to specify that a referral for Resident Review would be required when a resident with known MI or ID (as confirmed by a previous Level II evaluation and determination) experiences a possible significant change in physical or mental condition, as defined in § 483.20(b)(2)(ii). The definition of ''significant change'' in § 483.20(b)(2)(ii) is a ''major decline or improvement in the resident's status'' that (1) will not normally resolve itself without further intervention by staff or by implementing standard disease-related clinical interventions, (2) has an impact on more than one area of the resident's health status, and (3) requires interdisciplinary review or revision of the individual's care plan (or both). In the absence of a specific definition of ''significant change'' in part 483, subpart C, NFs have already been using the definition of ''significant change'' provided in § 483.20(b)(2)(ii) when identifying the need for referral for Resident Review, and we propose to formally adopt this definition in subpart C.

We propose at § 483.114(a)(2) that an individual with possible MI or ID who was exempted from receiving Preadmission Screening (because the individual qualified as an exempted hospital discharge or a provisional admission) would be required to be referred for a Resident Review upon the expiration of the exemption's time limit as described in proposed § 483.112(b).

We propose at § 483.114(a)(3) that a Resident Review referral would be required when the NF identifies, through any means not otherwise described in this section, that a resident has a possible MI or ID that was not previously identified by a Level I identification screen. We propose at § 483.114(a)(4) to specify that states would be able to establish criteria, in addition to the criteria listed above, for when a Resident Review is required.

We propose at § 483.114(b) to provide a definition of Resident Review, which we propose would consist of a Level II evaluation and determination (and is sometimes referred to in the proposed regulations as the Level II Resident Review). This proposed regulation would reflect the description of Resident Review in section 1919(e)(7)(B) of the Act, which describes Resident Review as a determination based on an evaluation. Criteria for Level II evaluation and determination are discussed in greater detail in the discussions of sections §§ 483.128 and 483.130, respectively. We propose new language at § 483.114(b)(1) to specify that the purpose of a Resident Review would be to provide first-time Level II evaluation and determination for residents with possible MI or ID who had not previously received Level II evaluation and determination. We propose new language at § 483.114(b)(2) to provide that a Resident Review would provide a new Level II evaluation and determination for residents who have previously been confirmed by Level II determination to have MI and ID, but are experiencing a significant change in physical or mental condition such that the PASRR program will need to revise the findings of the previous Level II determination.

We propose at § 483.114(c) requirements for when the NF would refer residents to the PASRR program for Resident Review. We propose at § 483.114(c)(1) that referrals would have to be made within 72 hours of when the resident experiences one of the circumstances described in proposed § 483.114(a)(1) and (a)(3), including an apparent significant change in an individual's mental or physical condition, or evidence of a previously-unidentified MI or ID. We propose a 72-hour timeframe for Resident Review referral because section 1919(e)(7)(B)(iii) of the Act requires NFs to make Resident Review referrals ''promptly'' when a ''significant change' occurs. Additionally, we propose at § 483.114(c)(2) that NFs must make a referral for Resident Review within 24 hours of when the NF identified, or should have identified, the expiration of an exemption period for exempted hospital discharges or provisional admissions. These conditions are described in greater detail in the discussion of proposed § 483.112(b).

In an effort to create consistency in PASRR processes where possible, we are proposing at § 483.114(d) to align the timeframe for completing a Level II determination made as part of Resident Review with the timeframe proposed at § 483.112(c) for Level II determinations made as part of Preadmission Screening—that is, within an annual average of 9 calendar days from date of receipt of referral. The rationale for that timeframe is discussed in the discussion of proposed § 483.112(c).

We are proposing a new requirement at § 483.114(e) that reflects the language from sections 1919(e)(7)(B)(i) and (ii) of the Act that describes, generally, the expectations for Resident Review determinations. These sections of the statute specify that NF residents referred to the PASRR program for determination must receive a determination for NF level of services (or the need for the level of services provided by an inpatient psychiatric hospital for individuals under age 21, an institution providing medical assistance for individuals over age 65, or an ICF/IID), and a determination for specialized services.

10. Residents and Applicants Determined To Require NF Level of Services (§ 483.116)

Section 483.116 describes the admission and retention requirements for individuals found to need NF level of services and specialized services. We are proposing only one technical change to this section. We propose to remove the phrase ''for the mental illness or intellectual disability'' from § 483.116(b). The definition of ''specialized services'' at § 483.120 makes it clear that specialized services are inherently services that support an individual's MI or ID. To avoid the impression that there are different types of ''specialized services'' and for consistency throughout the revised regulation, we propose to replace the phrase ''specialized services for mental illness and intellectual disability'' with ''specialized services'' in this regulation.

11. Residents and Applicants Determined Not To Require NF Level of Services (§ 483.118)

Section 483.118 describes the discharge and retention options for NF applicants and residents who have been determined by the PASRR program to not need NF level of services. These outcomes are carefully described in sections 1919(e)(7)(C) of the Act, and we do not propose to make significant changes to the regulations in § 483.118 that reiterate these requirements.

We propose to make minor changes in §§ 483.118(b) and (c) to promote consistency in how the regulations refer to ''specialized services.'' For the reasons explained in the discussion of § 483.116, we propose to remove the phrase ''specialized services for MI or IID'' where it appears in §§ 483.118(b)

and (c), as well as the phrase ''specialized services for the mental illness or intellectual disability'' in §§ 483.118(c)(1)(iv) and (c)(2)(iii), and replace them with ''specialized services.''

We propose to remove language in § 483.118(c)(1) and (2) that references alternative disposition plans. Alternative disposition plans were allowances under section 1919(e)(7)(E) of the Act for states to delay discharging residents from NFs pending development of resources in alternative settings. As noted in section 1919(e)(7)(E) of the Act, this allowance expired April 1, 1994, therefore it is no longer necessary to include in the regulations.

12. Specialized Services and NF Services (§ 483.120)

The current § 483.120 contains provisions describing specialized services, which are a central component of PASRR. We propose to revise the definition of ''specialized services'' and to add clarity as to how the provision of specialized services relates to, and is different from, the provision of NF services. We propose retitling § 483.120 to ''Specialized Services and NF Services'' to reflect this expanded focus on both specialized services and NF services.

Section 1919(e)(7)(G)(iii) of the Act gives the Secretary broad authority to define ''specialized services'' in regulations, so long as the definition specifies that they do not include services within the scope of services which the NF must provide or arrange for its residents under section 1919(b)(4) of the Act. (Section 1919(b)(4) of the Act contains a list of services that NFs must provide and are typically included in their per diem reimbursement rate.)

The current § 483.120(a) provides a definition of ''specialized services'', which distinguishes between specialized services for people with MI and for people with ID. In the current definition of ''specialized services'' for people with MI (at current § 483.120(a)(1)), the focus of the services is split between improving the resident's ''level of independent functioning'' and addressing the needs of residents ''experiencing an acute episode of serious mental illness.'' ''Specialized services'' for people with ID are defined at current § 483.120(a)(2) as equivalent to active treatment offered in ICF/IIDs, which is defined at § 483.440(a)(1). We have found that these requirements inadvertently perpetuate an image of specialized services as being restricted to institutional-type services. We propose a broader understanding of specialized services, beyond those furnished in institutional settings such as inpatient psychiatric facilities or ICF/IIDs.

We propose a new definition at § 483.120(a) that would define specialized services as state-defined services for NF residents with MI or ID, which, we propose, would have to be:

- Developed by an interdisciplinary team, that would include, at minimum, a physician and a mental health professional (for people with MI) or intellectual disability or developmental disability professional (for people with ID or related conditions);
- Designed to address needs related to MI or ID;
- Of greater intensity, frequency or customization than the NF services for MI or ID required in part 483, subpart B;
- Designed in a person-centered manner that promotes self-determination and independence,
- Designed to prevent or delay loss of, or support increase in, functional abilities; and
- If the individual is admitted to or remains in an institutional setting, designed to support any goals the individual may have of transition to the most integrated setting appropriate.

This proposed definition would depart from the current definition of ''specialized services'' in § 483.120(a) in several key ways. The proposed definition would not provide a distinct definition for ''specialized services'' for people with MI and a separate distinct definition for people with ID. This is, in part, because we want to provide a more flexible definition, and we believe a combined definition would pose fewer logistical challenges when designing service plans for people with co-occurring diagnoses of MI and ID. This also means, should our proposal be finalized as proposed, that for people with MI, specialized services would emphasize developing long-term skills needed for independence as opposed to focusing narrowly on managing discrete periods of crisis. Likewise, for people with ID, specialized services would have an even greater emphasis on developing skills needed to transition to the community than what may currently be captured in the active treatment requirement at § 483.440(a)(1).

Many states have done a commendable job of looking beyond the institutional bias of the current definition of ''specialized services'' and developing robust and creative systems of specialized services, and we propose to update this definition in ways that would solidify the commitment to using specialized services as a tool for assisting individuals' transition to the community. We emphasize, however, that we do not believe specialized services are *only* to be delivered to people with a specific goal of transitioning from the NF into the community. Rather, specialized services should be designed to maintain individuals in the most integrated setting appropriate—whether that is to help maintain them in a NF (versus a more restrictive institutional setting such as a locked psychiatric unit) or whether that is to assist the individual's move into a home- or community-based setting. The purpose of PASRR ultimately is to allow people to live in the optimal setting for that individual, as reflected by the individual's needs and preferences. Because they are critical to the operation and success of PASRR, we solicit comments on the proposed definition of specialized services.

We propose to remove the current § 483.120(b), which describes who must receive specialized services. Currently, § 483.120(b) requires that the state provide or arrange for the provision of specialized services, to all NF residents with MI or ID who require ''continuous supervision, treatment and training'' by qualified mental health or intellectual disability personnel. We propose to replace the language ''continuous supervision, treatment and training'' with new language that indicates that states would provide specialized services to individuals needing specialized services, as identified through the Level evaluation and determination process (discussed in sections §§ 483.128 and 483.130.) This proposal would remove language that ambiguously suggests that these services would be restricted only to those individuals requiring ''continuous supervision, treatment or training''—language reminiscent of the definition of ''active treatment'' in § 483.440(a)—and would clarify the connection the Level II evaluation and determination process and the provision of specialized services.

We also propose to remove language in § 483.120(b) suggesting that only ''mental health and intellectual disability professionals'' may provide specialized services. We propose to replace this with new language in § 483.120(b) that the state must ensure that the services are provided by qualified personnel. We propose to give states more flexibility in deciding the qualifications of who may deliver the specialized services and potentially to allow services to be delivered by qualified professionals who would not necessarily be considered ''mental

health or intellectual disability personnel.''

We also propose in revised § 483.120(b) to require that specialized services be periodically reviewed to ensure they remain effective for the individual. We include this proposal out of concern that once specialized services are recommended, it is not always clear if they are monitored for quality, safety, and efficacy. We want to ensure that states take measures to ensure that specialized services are not only being delivered to individuals as required, but that they are delivered efficiently and effectively. We do not propose a specific frequency with which specialized services must be reviewed, but welcome stakeholder comments on this proposal.

We propose to change the current title of § 483.120(c) from ''Services of a lesser intensity than specialized services'' to ''Provision of NF services'' as this provision describes services offered by NFs as part of their per diem and ''specialized services'' does not need to be included in the title.

We propose to add a new requirement at § 483.120(d) that would specify that specialized services may not duplicate the services NFs must provide under part 483, subpart B, which describes the activities NFs must perform to meet the requirements (also known as ''conditions of participation'') as a Medicaid provider, and for which they are already reimbursed by states participating in the Medicaid program. These are services that are largely medical or rehabilitative in nature and, while intended to improve or maintain an individual's health and well-being, may not explicitly prioritize helping individuals transition to the most integrated setting. This proposed requirement would reaffirm the statutory prohibition of specialized services duplicating NF services set forth in section 1919(e)(7)(G)(iii) of the Act.

We propose a new requirement at § 483.120(e) that would specify that, for individuals who are admitted to or retained by a NF, NF services and specialized services recommended by the PASRR program would have to be coordinated with the individual's care plan, as required at § 483.21(b)(1)(iii).

We propose a new § 483.120(f) to explain that, if an individual requiring specialized services is discharged to another institutional setting or to a community program for the purposes of receiving long-term services and supports, services offered in those settings would be presumed to satisfy the specialized services requirement. This proposed requirement would seek to clarify the requirement in sections 1919(e)(7)(C)(i) and (ii) of the Act that the state must continue to provide specialized services for residents who need specialized services but who have been discharged from a NF because they do not need the NF level of services.

13. FFP for NF Services (§ 483.122)

FFP for NF services, including when FFP may be provided to NF residents or withheld for non-compliance with PASRR requirements, is described in § 483.122. We propose at § 483.122(a) to remove the reference to alternative disposition plans provided for by section 1919(e)(7)(E) of the Act, since, as we explained in the discussion of §§ 483.118(c)(1) and (2) in this proposed rule, the availability of alternative disposition was a statutory construct that expired in 1994; consequently the language in this section, as in the other sections, is obsolete and can be removed.

We also propose to change ''NF care'' to ''NF level of services'' in § 483.122(a)(1), and we propose to change ''NF services'' to ''NF level of services'' in § 483.122(a)(2) to promote consistency in references to the determination for NF level of services.

In § 483.122(b), we propose to remove the obsolete mention of an ''annual review'' (referring to the annual Resident Review) and replace it with ''resident review.''

14. FFP for Specialized Services (§ 483.124)

Section 483.124 currently indicates that FFP is not available for specialized services delivered as NF services. This language has long caused confusion; until recently it has been misinterpreted as a prohibition against FFP for any specialized services. However, section 1919(e)(7)(G)(iii) of the Act does not prescribe such a restriction on specialized services; it only specifies that specialized services cannot be NF services. We propose to remove the current language in § 483.124 and replace it with new language that would more clearly describe the conditions under which FFP is available for specialized services. We propose language that states that FFP would be available for specialized services furnished to NF residents so long as the state has added a description of the services in its State plan (which is approved by CMS) and these services do not duplicate NF services included in payments to the NF. This language would not create a new policy regarding FFP for specialized services, but rather affirms existing policy.

15. Level I Identification Criteria (§ 483.126)

The current § 483.126, titled ''Appropriate placement,'' contains a single provision defining what ''appropriate placement'' in a NF means. This phrase relates to NF level of services determinations and is addressed in §§ 483.130(c) and 483.132. We propose to remove both the title and the requirement in § 483.126.

In its place, we propose to include requirements that describe the Level I identification process. Level I identification is the function of identifying people with possible MI or ID who are eligible for Preadmission Screening or Resident Review. Despite being a critical precursor to the PASRR process, the Level I identification process is not described in current regulation, aside from a brief mention in current § 483.128(a). We propose to retitle § 483.126 ''Level I identification criteria,'' and to provide in this revised section a description for the Level I process.

We propose a new provision at § 483.126(a) that would explain that the state's PASRR program must have a Level I screening process to identify all individuals with possible MI or ID who require Preadmission Screening (if they are NF applicants) or Resident Review (if they are residents). Note that, as will be explained in the discussion of § 483.126(b), people with known diagnoses of MI or ID are still considered to have ''possible MI or ID'' until the Level II evaluator has confirmed the individual meets the definition of MI or ID proposed in § 483.102(b).

We propose a new § 483.126(b) that would provide guidelines on the criteria for identifying ''possible MI'' that would be used during the Level I process. We propose that an individual may be considered to have possible MI if one or more of the following criteria are met:

- The individual has received a diagnosis of MI that appears to meet the definition at § 483.102(b)(1);
- Within the last 12 months the individual has experienced significant challenges to interpersonal or cognitive functioning, including but not limited to hallucinations or delusions, attempts to harm self or others, or suicidal ideation;
- Within the last 12 months the individual has required psychiatric treatment, including residential treatment, partial hospitalization, or inpatient hospitalization; or
- The Level I identification screener cannot rule out possible MI based on the available data.

We propose a new requirement at § 483.126(c) that would specify that an

applicant may be considered to have ''possible ID'' if:

- The individual has received a diagnosis of ID or a related condition that appears to meet the definition of ID in § 483.102(b)(3),
- Within the past 12 months the individual has received active treatment (as defined in § 483.440(a)) in an ICF/IID; or
- The Level I identification screener cannot rule out possible ID or related condition based on the available data.

We note that for both proposed definitions, an individual would not need to meet all of the listed criteria, but rather would have to meet at least one. We also propose to give Level I screeners flexibility to exercise judgment, particularly in instances in which the individual has gaps in medical history or is exhibiting behaviors not listed in this proposed regulations that the Level I screener regards as needing further examination. For instance, a Level I screener might have reason to believe that someone with a diagnosed substance use disorder, but no formal diagnosis of MI might nevertheless require evaluation for MI, given the high incidence of overlap between substance use disorders and MI. We welcome comments on our proposed criteria.

We propose at § 483.126(d) to specify that the state would be able to designate the qualifications for who may complete the Level I screen. While NFs are prohibited from performing the Level II evaluations and determinations by sections 1919(b)(3)(F) and (e)(7)(B)(iv) of the Act, NFs are not excluded from performing Level I screens because they are distinct from the evaluation and determination process.

We propose at § 483.126(e) to clarify that individuals performing the Level I identification screen would be able to rely on existing records, including hospital records, physician's evaluations, election of hospice status, school records, records of community mental health centers or community intellectual disability or developmental disability providers, and other information provided by the individual or the individual's legally authorized representative. We also propose in this provision that the Level I screener would have to certify that the records relied upon support the screener's conclusions regarding whether the individual has possible MI or ID and if the individual qualifies for a hospital discharge exemption or as a provisional admission.

We propose a new § 483.126(f) which would require that individuals with possible MI or ID be referred to the PASRR program for Level II evaluation and determination, unless the individuals are applicants who qualify for an exemption to Preadmission Screening due to a hospital discharge exemption or provisional admission, as discussed in the proposed changes to § 483.112(b) in this proposed rule. These individuals would have to be identified to the PASRR program but would not need to receive a Level II evaluation and determination prior to admission. Notifying the PASRR program when someone with a positive Level I identification screen has been admitted to the NF under a hospital discharge exemption or provisional admission would allow the PASRR program to track how often these exceptions were applied (to discourage misuse or overuse) and would alert the PASRR program to individuals who might need a Resident Review in the near future should the exception period expire (to offer better oversight of when NFs' Resident Review referrals).

We propose to move the fourth sentence of current § 483.128(a) to this section and redesignate it as § 483.126(g). This sentence currently states that as part of the Level I identification function, an individual must be provided (at least in the case of first time identifications), with written notice that the individual is ''suspected of having'' MI or ID and is being referred to the SMHA or SIDA for Level II evaluation and determination. We propose to retain some of this language in this section as well, but to modify it so that it would provide that the state's performance of the Level I identification function would have to provide a copy of the completed Level I identification screen (rather than a ''written notice'') to the individual, the individual's legal representative and the admitting or retaining NF (if applicable.) We also propose that the Level I identification screen would clearly indicate whether the individual is being referred to the PASRR program for Level II evaluation and determination. We believe it is important for individuals to have documentation demonstrating that they have had a Level I identification screen completed in compliance with this subpart. We also believe it is important that individuals be notified whether they are being referred for additional evaluation as part of the Level II evaluation and determination process. When an applicant has a positive Level I screen, providing a copy of the Level I screen would alert the NF that the individual could not be admitted until Preadmission Screening (consisting of a Level II evaluation and determination) is completed. In cases in which the individual has a negative Level I screen, the NF would be provided documentation that proves admission was appropriate and Level II Preadmission Screening was not required.

16. Level II Evaluation Criteria (§ 483.128)

Section 483.128 describes the criteria that must be used to perform the physical and mental evaluations on which the Level II determinations must be made. We propose to retitle § 483.128 ''Level II Evaluation Criteria,'' which would acknowledge that evaluations are typically referred to as ''Level II evaluations'' and further distinguish evaluations from the Level I identification process described in the previous section.

We propose to remove the first three sentences of § 483.128(a), which contain definitions of the terms ''Level I'' and ''Level II'' that are contained elsewhere (including proposed §§ 483.126, 483.128 and 483.130). We propose to redesignate the fourth sentence of § 483.128(a) as § 483.126(g), which is discussed in the discussion of § 483.126(g). We propose that the requirements of § 483.128(b) be redesignated as § 483.106(g), which is discussed in the discussion of § 483.106 in this proposed rule.

We propose new language for § 483.128(a) that would more clearly articulate the purpose of the evaluation, which is to provide the SMHA or SIDA with enough information to confirm that the individual has MI or ID, as defined in proposed § 483.102, or to confirm that the individual has experienced a qualifying significant change in physical or mental condition, as defined in § 483.114(b)(2); and to make the determinations regarding need for a NF level of services and specialized services.

We propose a new requirement at § 483.128(b) that would authorize the state to specify the mental health, intellectual disability or developmental disability professionals who may perform the evaluations. We specify in the proposed requirement that the state would have to ensure that the evaluators are qualified to make or confirm clinical diagnoses, and that the evaluations are performed in accordance with statutory restrictions. Specifically, evaluations for people with MI cannot be performed by the SMHA, and NFs cannot perform evaluations. The language of this proposed requirement is adapted from the current requirements for who may conduct evaluations at §§ 483.134(c)(2) and 483.136(c).

We propose to remove current § 483.128(c) as its substance would be incorporated into a new proposed requirement at § 483.128(e)(10), described later in this proposed rule.

We propose to redesignate current § 483.128(d), addressing interdisciplinary coordination of evaluations where more than one evaluator is needed, as § 483.128(c). We propose to add language to specify that this coordination would, in particular, apply to individuals who have (or may have) diagnoses of both MI and ID. We propose to include this specification because some PASRR programs have different processes for evaluations of people with MI and people with ID, and we do not want people with dual diagnoses to experience unnecessary burden or delays due to the different processes.

We propose a new title for § 483.128(d), ''Data to confirm Level II identification and significant change,'' and a new provision designated as § 483.128(d)(1), that would provide a list of data to be used to confirm that the individual does have MI or ID, as defined in § 483.102. This proposed list would include, at a minimum:

- A review of current medical and psychiatric condition and current medications;
- A medical history and physical exam that has been performed by a qualified clinician, as identified by the state;
- A history of medication and prescription and illegal drug use;
- For MI evaluations, an evaluation of psychiatric history performed by a qualified mental health professional;
- For ID evaluations, an evaluation of intellectual functioning performed by a licensed psychologist or psychiatrist; and
- Any other documentation or information provided to, or gathered by, the evaluator to confirm a diagnosis.

We adapted this proposed revised regulation from the current list of data required in §§ 483.134(b) and 483.136(b). We propose to specify that this data would have to be used to confirm MI or ID for people with positive Level I identification screens who are eligible for Preadmission Screening or Resident Review. We note one specific proposed change in proposed § 483.128(d)(1)(ii). Currently, § 483.134(c)(1) requires that the history and physical examination of individuals with MI, when used during a Level II evaluation of the need for specialized services, be performed or reviewed by a physician. This same requirement currently does not exist for people with ID. We have received feedback from stakeholders that the requirement that a history and physical examination be performed or reviewed by a physician is burdensome, particularly in rural areas where there may be few physicians and such examinations are typically performed by a nurse practitioner or other qualified clinician. We propose to reduce this burden by allowing states to identify which clinicians are qualified to perform the history and physical examinations included as part of PASRR documentation for people with MI and with ID.

We propose a new provision at § 483.128(d)(2) to describe the data that we believe should be used in confirming a qualifying significant change in physical or mental status of a resident who was already confirmed by the PASRR program to have MI or ID. This data would include, at minimum, recent medical, psychiatric and medication records and resident assessments relevant to the significant change in physical or mental status; and other information deemed necessary by the evaluator. This proposed language would expand on the new regulations that we propose in § 483.114 to implement the statutory requirement that Resident Review be performed for individuals experiencing a significant change in physical or mental status.

We propose to remove § 483.128(e), which currently requires that evaluators use the data listed in §§ 483.132, 483.134, and 483.136 when performing evaluations for NF level of services and specialized services. With the changes that we propose in this rule, those cross-references would no longer be accurate. Section 483.128(e) also mentions evaluations for categorical determinations, which—as is discussed further in the discussion of § 483.128(m)—we propose to remove.

We also propose to remove the current language in § 483.128(f) describing data to be used in evaluations and propose to replace it with language that would more specifically describe the data that evaluators should use when performing evaluations for NF level of services and specialized services. Currently, §§ 483.132, 483.134, and 483.136 contain separate lists of the data that should be used to evaluate individuals' need for NF level of services and specialized services. We envision a more integrated evaluation process and propose to not require use of different sets of data for an individual's evaluation.

To that end, we propose a new provision at § 483.128(e) that would require that the data relied upon for evaluations to assess the need for NF level of services and specialized services include:

- Review of the relevant history of the physical status;
- Focused relevant physical examination (either as recorded in chart or conducted by the evaluator);
- Review of relevant psychiatric history including diagnoses, date of onset, treatment history;
- Focused relevant mental status examination, including observations and professional opinion regarding intellectual and memory functioning, impulse control, irritability and ability to be redirected, likelihood that individual may post threat to self or others, agreeableness to participate in activities of daily living (that is, how likely the patient is to resist activities such as bathing, eating, grooming, etc.);
- Functional assessment (activities of daily living and instrumental activities of daily living);
- Psychosocial evaluation (for example, living arrangements, natural and formal supports);
- Social, academic and vocational history;
- Service plans from community-based providers, if applicable; and
- Relevant sections of the individual's plan of care (as defined in § 483.21(b)) if the individual is a NF resident.

This proposed requirement is drawn from the data listed in the current requirements at §§ 483.132, 483.134, and 483.136 for evaluating need for NF level of services and specialized services. We also propose to require at § 483.128(e)(10) that these evaluations include person-centered interviews that involve the individual being evaluated and the individual's legal representative, if one has been designated under state law; and the individual's family, friends or caregivers, at the individual's discretion. With proposed § 483.128(e)(10), we propose to make it clearer that for the NF level of services and specialized services evaluations, the individual must be directly involved in the evaluation activities.

We propose at § 483.128(f) that the person-centered interviews that we propose to require in proposed § 483.128(e)(10) be conducted face-to-face. We include in this proposed provision that we would permit telehealth evaluations via live videoconferencing to be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent timely completion of the determination. We have observed that most PASRR

programs already conduct face-to-face interviews with NF applicants and residents, and some states have begun piloting the use of telehealth technologies to perform evaluations. We would specify that the telehealth technology applied would be live videoconferencing (as opposed to other asynchronous telehealth options). The purpose of the use of telehealth technology would be to recreate the experience of a live, face-to-face interaction as much as possible. Note that we do not propose to apply this face-to-face requirement for the confirmation of MI or ID, or the confirmation of a significant change in physical or mental status, which, if the state PASRR program chooses, may be performed as a desk review in advance of the NF level of services and specialized services evaluations. We propose that the face-to-face interview requirement only apply to the NF level of services and specialized services evaluations.

We propose to retain § 483.128(g), which discusses the use of pre-existing data that evaluators may use when gathering information to perform the evaluation. We propose to delete two minor elements in this regulation; we would remove reference to ''annual resident reviews'' and ''individualized evaluations.'' We would expect all evaluations to be individualized. (See discussion for §§ 483.112, 483.128(m) and 483.130 regarding removal of categorical determinations in this proposed rule.)

We propose to retain § 483.128(h) requiring that findings made in evaluations reflect the individual's current condition. However, we propose to remove references to ''categorical and individualized determinations'' as we would expect that all determinations would be individualized. As noted previously with respect to §§ 483.112, 483.128(m), and 483.130 in this proposed rule, we propose to remove categorical determinations, making references to categorical determinations unnecessary in this proposed rule.

We propose to retain § 483.128(i), which describes the evaluation report that the evaluator submits to the SMHA or SIDA after completing the evaluation. Section 483.128(i) currently requires that after completing the evaluation for NF level of services and specialized services, the evaluator must submit to the SMHA or SIDA a written evaluative report summarizing the findings. We propose to add that the report must summarize recommendations in addition to findings. (See discussion of proposed changes to §§ 483.20(e), and 483.20(k) in this rule for discussion of ''findings'' versus ''recommendations.'') We also propose to remove language that indicates this report is for ''individualized determinations'' as we would expect that all evaluations would be individualized (see discussion of the proposed removal of categorical determinations in §§ 483.112, 483.128(m) and 483.130 in this proposed rule). We propose to combine two of the provisions in § 483.128(i)—currently designated §§ 483.128(i)(3) and 483.138(i)(4)—both of which presently require the evaluator to describe the types of NF services the evaluator is recommending for the individual. We propose to merge these duplicative provisions into a single provision designated § 483.128(i)(3). Sections 483.128(i)(5) and (6) would be redesignated as §§ 483.128(i)(4) and (5), respectively.

We propose to retain the provision at § 483.128(j), with revisions. This provision describes the format of an abbreviated evaluation report generated for evaluations made for categorical determinations—a report that is shorter than the evaluation report that is to be issued for individualized evaluations. As noted in the discussions of §§ 483.112, 483.128(m), and 483.130 of this proposed rule, we are proposing to eliminate categorical determinations, so there would no longer be a need to generate an evaluation report for categorical determinations. We do, however, propose to retain the concept of an abbreviated evaluation report under certain circumstances. In particular, we propose that this abbreviated report would be issued when an evaluation is terminated before the evaluation for NF level of services or specialized services, as discussed in § 483.128(m) of this proposed rule. We propose to include a specific regulation describing evaluation reports issued after termination of an evaluation to clarify the presently existing, but ambiguously stated, expectation that evaluation reports must be generated to document the rationale for terminating an evaluation. The current regulations do not waive the evaluation report requirement for terminated evaluations, but also do not specify what information should be shared with the SMHA or SIDA. We propose at § 483.128(j) to retitle the provision ''Evaluation report: Terminated evaluations'' and replace the mention of ''categorical determinations'' in the introductory text with language specifying the regulation refers to terminated evaluations. We propose to remove § 483.128(j)(2), which is specific to categorical determinations, and replace it with a requirement that the evaluator include in the report the specific reason why the evaluator terminated the report.

We propose to retain § 483.128(k) that requires that findings of the report must be explained to the individual. We propose to remove the phrase ''For both categorical and individualized determinations'' because we expect that there would only be individualized determinations, referred to simply as determinations. (See discussion of categorical determinations in sections for §§ 483.112, 483.128(m), and 483.130 in this proposed rule.)

In § 483.128(l), we propose to retain only the requirement at § 483.128(l)(2) that the evaluation report be forwarded to the SMHA or SIDA as appropriate. In an effort to consolidate the paperwork sent to individuals during the PASRR process, we propose to remove the requirements at §§ 483.128(l)(1), (3), (4) and (5) that the evaluation report be provided to the individual and others separately from the determination notice. We discuss the proposed requirement to include the evaluation report with the determination notice in proposed § 483.130(g).

We propose to remove the language at § 483.128(m), which allows evaluators to terminate evaluations under certain circumstances. We propose to replace this regulation with language that would lay out a different set of criteria for terminating an evaluation. The current § 483.128(m) allows evaluators to terminate the evaluation if: (1) The evaluator finds that the individual being evaluated does not have MI or ID within the definition of proposed § 483.102 or (2) the individual has MI but also has primary dementia. We propose to replace this language with a revised § 483.128(m) that would indicate the evaluations may be terminated without further evaluation of the need for NF level of services or specialized services (as discussed in §§ 483.132 and 483.134 of this proposed rule), and an abbreviated evaluation report issued (per proposed § 483.128(j) discussed above) should the evaluator find that the individual being evaluated—

- Does not have MI or ID within the definition of § 483.102;
- Did not experience a qualifying significant change in physical or mental condition as defined in § 483.114(b)(2); or
- Has a severe physical illness (such as ventilator dependency; advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), terminal illness (as defined in § 418.3 of this chapter) or dementia (as defined in § 483.102(b)(2)) which

results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services and specialized services.

We intend that the list of physical conditions that we propose here would replace the current categorical determinations criteria in current § 483.130(d) and (h). Under the current regulations, categorical determinations function as expedited determinations for people with certain conditions. According to current regulations at § 483.130(f), people with severe physical illness and terminal illness do not need an evaluation for NF level of services, but are still required to receive an evaluation for specialized services. The current regulation at § 483.130(h) allows individuals with co-occurring ID and dementia to be admitted to a NF without an evaluation for specialized services, but still requires that they receive an evaluation for NF level of services. We consider this current framework of categorical determinations to be somewhat confusing, and propose to retain the principle that evaluations should not be performed needlessly on individuals who clearly need NF level of services but who are not likely, as the result of a severe physical or cognitive impairment, to benefit from specialized services. Proposed § 483.128(m) would simply require an evaluator to confirm that individuals have a condition or conditions such that the individual could not be effectively evaluated by the Level II evaluator for NF services specific to ID or MI or for specialized services.

We note that this would also allow individuals with the listed conditions to receive PASRR interventions if they are able to participate in evaluations for NF level of services and specialized services. For instance, if an individual with terminal illness is able to participate in the evaluations, the individual could still receive NF level of services and specialized service recommendations (whereas under the old categorical determinations framework, an individual with terminal illness might automatically be considered to require NF level of services without an evaluation). Our intent is that the PASRR process should be driven by the person's individual circumstances rather than a diagnosis. This focus on person-centeredness motivates the proposal to eliminate categorical determinations, which focus too heavily on making assumptions about individuals based solely on diagnosis.

17. Level II Determination Criteria (§ 483.130)

Section 483.130 sets out the criteria that must be used to make determinations of the need for NF level of services and for specialized services. We propose to retitle § 483.130 ''Level II PASRR Determination Criteria,'' to acknowledge that determinations are typically referred to as ''Level II determinations'' and to underscore that Level II evaluations and determinations should be an integrated process.

We propose to retain § 483.130(a), which explains that the determinations must be based on evaluations, and add a cross-reference to § 483.128(e). As discussed in the discussion of § 483.128(e), we propose to add language to § 483.128(e) to describe the data to be used in evaluations.

We propose to remove §§ 483.130(b) through (i), which set out requirements pertaining to categorical determinations. As we explained in discussing §§ 483.112 and 483.128(m) of this proposed rule, we propose to eliminate categorical determinations. We have found that the framework of categorical determinations has proven cumbersome and counterproductive. In too many instances, they have created the opportunity for individuals with MI or ID to be admitted to an NF with only a cursory review of the individual's records, and without a follow-up comprehensive Resident Review to ensure individuals do not end up unnecessarily becoming long-term NF residents (or, if the long-term institutionalization is necessary, to ensure that they receive needed specialized services). We believe new proposals of provisional admissions (as proposed at § 483.112(b)(3)) and the expansion of evaluation terminations (as proposed at § 483.128(m)) would adequately preserve the spirit of categorical determinations—avoiding unnecessary evaluations—but would create a simpler system with greater accountability.

We propose a new requirement at § 483.130(b) to clarify who would be able to perform the determinations. We propose that the state would be able to designate the medical, mental health, intellectual disability, or developmental disability professionals who perform the determinations, as appropriate. The proposed rule would also reiterate requirements stemming from sections 1919(b)(3)(F) and (e)(7)(B)(iv) of the Act that the determinations may not be performed by NFs.

We propose a new requirement at § 483.130(c) that would provide the criteria for making a determination regarding the need for NF level of services. (The criteria for evaluation of individuals for NF level of services on which this determination would be based will be discussed in greater detail in the discussion of § 483.132 in this proposed rule.) In proposed § 483.130(c), we propose that an individual with MI or ID could be determined to need NF level of services only when:

- The individual meets the state's criteria for NF admission;
- The individual's total needs do not exceed the services which can be delivered in the NF to which the individual is admitted, either through NF services alone or, where necessary, through NF services supplemented by specialized services; and
- Placement in HCBS program cannot be achieved either because the individual's total needs exceed or cannot currently be accommodated by the state's HCBS programs, or the individual does not want the community placement.

We propose a new requirement at § 483.130(d) that would provide criteria for determining the need for specialized services. (The criteria for evaluating individuals for specialized services is discussed in greater detail in proposed § 483.134 of this proposed rule.) We propose at § 483.130(d) that an individual may be determined to need specialized services if the individual's total needs are such that services described in § 483.120(a) would be necessary to maintain the individual in, or transition the individual to, the most integrated setting appropriate, and the individual would benefit from such services. We believe this proposed criteria for determination adequately summarizes the underlying purpose of specialized services, as discussed in proposed § 483.120.

We propose redesignating § 483.130(j), requiring that determinations be recorded in the individual's records, as § 483.130(e). This requirement currently specifies that all determinations made by the SMHA and SIDA, ''regardless of how they are arrived at,'' must be recorded in the individual's record. We propose removing the clause ''regardless of how they are arrived at,'' as its meaning and purpose is unclear.

We propose to redesignate and revise the current § 483.130(k) as § 483.130(f). This section requires that the SMHA or SIDA send determination notices (either in writing or, as we propose to add here, electronically) to the individual and the individual's legal representative, the admitting or retaining NF, the individual's attending physician, and

the discharging hospital (unless the individual is exempt from Preadmission Screening). We propose that the determination notice be sent to the ''physician most involved in the individual's medical care, as identified by the individual,'' as opposed to the presently specified ''attending'' physician. We have received feedback from stakeholders that the provision to simply send the determination to the ''attending'' physician meant that determinations notices were sometimes sent to physicians with little involvement in the individual's ongoing care, such as the attending physician during an individual's brief hospital stay.

We propose to retain § 483.130(l), but redesignate it as § 483.130(g). This requirement describes the contents of the determination notice. We propose to retain the introductory text of this newly redesignated section. We propose to replace the language in §§ 483.130(g)(1), (2) and (3). We propose a new § 483.130(g)(1) that specifies that the determination notice should indicate if the person was found by the PASRR program to have MI or ID (as defined in § 483.102) or a significant change in physical or mental status (as described in § 483.114(b)(2)). We propose a new § 483.130(g)(2) that specifies that if an individual has been confirmed to have MI or ID (as defined in § 483.102) or a significant change in physical or mental condition (as described in § 483.114(b)(2)), the determination notice should specify whether the individual needs NF level of services and specialized services, and what placement options are available to the individual as described in §§ 483.116 and 483.118. These changes largely reflect the current language in § 483.130(l), but are intended to clarify that the PASRR program only needs to make determinations regarding NF level of services, specialized services, and placement options when the individual has MI or ID, or has had a significant change in physical or mental condition, and is within the PASRR program's jurisdiction. We propose to redesignate § 483.130(l)(4), which provides for individuals' appeal rights, as § 483.130(g)(3). We also propose to add a new § 483.130(g)(4) that would require the evaluation report described in proposed §§ 483.128(i) and (j) to be attached to the determination notice. As noted in the discussion in § 483.128(l) in this proposed rule, we are proposing to remove the requirement that the evaluation report be sent to the individual separately from the determination notice; here we propose that the two documents be delivered to the individual (as well as the individual's legal representative, physician, and admitting or retaining NF) in a single package.

We propose to remove § 483.130(m) and (n), which describe the placement options and the provision of specialized services based on the determinations. We believe these regulations are duplicative of requirements in §§ 483.116, 483.118 and 483.120.

We propose to redesignate § 483.130(o), which describes requirements regarding record retention, as § 483.130(h). We propose to remove the reference to categorical and individualized determinations. Per the discussion of §§ 483.112 and 483.128, and in this section of the proposed rule, we propose to eliminate categorical determinations and such distinctions would not be necessary. The current language states that record retention is necessary to help protect the appeal rights of individuals subjected to PASRR. We also propose to revise the provision so that rather than describing individuals as being ''subjected to'' PASRR, the requirement would state that records must be kept in order to protect individuals' appeal rights related to PASRR determinations.

We propose to retain the language of § 483.130(p), but redesignate it as § 483.130(i) with no substantive changes. We propose to replace mention of ''PASARR'' with ''PASRR.'' We propose to replace ''individuals with MI or IID'' with ''individuals with MI or ID'' for grammatical reasons.

We propose to add a new § 483.130(j) that would contain new reporting requirements on two key activities related to the determination process: Timeliness and outcomes. The language we propose at § 483.130(j)(1) would require that the state report to the Secretary on an annual basis the annual averages for completion of determinations, in order to demonstrate compliance with the timeframes required in proposed §§ 483.112(c) and 483.114(d). Section 483.106(c)(3) currently requires that states compute annual averages for their completion times, and § 483.112(c)(4) allows the Secretary to grant a waiver should a state fall behind, but the current regulations do not make explicit the requirement to actually report the completion times. We seek to remedy this confusion with proposed § 483.130(j)(1). We believe our oversight of PASRR would be more effective if states affirmatively reported on their compliance with the timeliness requirement, rather than only reporting to the Secretary when the state has fallen behind on the timeliness standard. We propose to specify at § 483.130(j) that states would be expected to report the annual average of the completion of these determinations, as is suggested by current § 483.112(c)(3). While proposed changes to §§ 483.112(c) and 483.114(d) indicate that determinations would be provided within 9 calendar days of Level I referral, it is possible that some determinations would be issued sooner than in 9 days. Thus, we are proposing to request that states report on the average of the number of days required to complete determinations over the course of a year, and expect that states would report an average of 9 calendar days or less.

We propose at § 483.130(j)(2) that states would report annually on the number of people with MI or ID who, as a result of the PASRR program's determinations, are diverted or are discharged from NFs each year because the individual:

- Does not meet, or no longer meets, the state's criteria for NF level of care,
- Requires the level of services offered in another institutional setting; or
- Elects to receive services in a non-institutional setting.

This proposed provision is designed to implement section 1919(e)(7)(D)(iv) of the Act that requires that each state report annually to the Secretary the number and disposition of individuals who are discharged from NFs because they have been determined to no longer needed NF level of services (but still need specialized services) and individuals who are discharged from NFs because they are determined to need neither NF level of services nor specialized services. This reporting requirement was not explained in the current regulations, and, as a result, reporting to the Secretary has been inconsistent. We propose to require reporting on both diversions of NF applicants, as well as discharges of NF residents. We believe that the purpose of the statutory requirement at section 1919(e)(7)(D)(iv) of the Act is to ensure that PASRR has a meaningful impact on the outcome of individuals who do not need (or want) NF placement, which would include dispositions for applicants as well as residents.

We propose to add a new requirement at § 483.130(j)(3) that would retain language from current § 483.112(c)(3) allowing the state to compute separate annual averages for the determination made by the SMHA and SIDA. We propose to add language indicating that dispositions for individuals with MI or ID, as required in proposed

§ 483.130(j)(2), could also be reported separately.

We propose to add a new requirement at § 483.130(j)(4) that incorporates the language from current § 483.112(c)(4), authorizing the Secretary to grant an exception to the timeliness standard (which would be reported on per proposed § 483.130(j)(1)) at the Secretary's discretion.

We propose to add a new requirement at § 483.130(j)(5) that would require that reports containing data for the previous calendar year be submitted to the Secretary by March 1 of each year.

18. Evaluating the Need for NF Level of Services (§ 483.132)

We propose to retitle § 483.132 as ''Evaluating the Need for NF Level of Services.'' The current title, ''Evaluating the Need for Services and NF Level of Care,'' perpetuates the confusion that PASRR processes include NF level of care assessments. This is a problematic assumption. NF level of care assessments are the functional needs assessments states use to confirm basic eligibility for NF admission on the basis of functional needs. The evaluation of NF level of services evaluation required by PASRR involves a more comprehensive and holistic evaluation than most NF level of care assessments, and we want to avoid the impression that performing a NF level of care assessment satisfies the requirement to evaluate individuals with MI or ID for NF level of services. The relationship between NF level of services and NF level of care is further discussed in the discussion of proposed § 483.132(e).

Because many of the current requirements in this section were incorporated in proposed §§ 483.120 and 483.128, we propose to remove all of the requirements in this section and replace them with new language. We propose at § 483.132(a) to describe the evaluation for the most integrated setting appropriate for the individual. At proposed § 483.132(a)(1), we propose that for each NF applicant and each NF resident who has MI or ID, the evaluator would assess whether the individual has the option of placement in an HCBS program (and a non-institutional placement is desired by the individual). At § 483.132(a)(2), we propose that if the individual does not have the option of community placement, or does not want community placement, the evaluator would assess whether the individual's total needs are such that they can be met only by admitting the individual on an inpatient basis (as ''inpatient'' is defined in § 440.2 of this chapter). In that case, the evaluator would also have to assess whether the NF (with or without specialized services) would be an appropriate institutional setting for meeting those needs; or, if the NF would not be the most appropriate setting for meeting the individual's needs, whether another institutional setting would be an appropriate setting for meeting those needs. Our proposed language is similar to the current basic rule at § 483.132(a), but we propose to restructure it such that we would highlight more explicitly the expectation that evaluators should review the individual's consideration of HCBS options during the evaluation.

We propose a new requirement at § 483.132(b) that would require that the evaluator assess the individual's preferences for where the individual may receive long term services and supports, including HCBS and institutional care. We propose that this evaluation would include confirming whether the individual and the individual's legal representative, if applicable, have received information about the types of long term care options available to the individual.

We propose a new requirement at § 483.132(c) that would require that for individuals for whom NF placement is identified as an appropriate setting by the evaluator (resulting from the evaluations performed under proposed § 483.132(a) and (b)), the evaluator would be required to assess what services for MI or ID the individual may need that are offered as part of standard NF services, including behavioral health services and specialized rehabilitative services described at §§ 483.40 and 483.65, respectively.

We propose a new requirement at § 483.132(d) that would require the data relied on in performing the evaluation to include the data listed in proposed § 483.128(e).

We propose a new requirement at § 483.132(e) that would clarify the relationship between NF level of services and NF level of care, which is a set of criteria established by each state that an individual must meet to be eligible for Medicaid coverage of services provided in a NF. We propose to clarify that evaluations to determine whether an individual meets the state's NF level of care criteria are not part of the PASRR process. However, PASRR evaluators may ''look behind'' a level of care determination to confirm that the individual has been accurately assessed as meeting the state's NF level of care criteria, and may consider that assessment in determining an individual's needs for PASRR purposes. We note that Level II evaluators are charged with ensuring that individuals with MI or ID are not improperly placed in NFs simply because they have MI or ID (when other options preferred by the individuals are available), and Level II evaluators may disagree with the conclusions of a level of care assessment (so long as their findings still abide by state-specific criteria for NF level of care).

19. Evaluating the Need for Specialized Services (§ 483.134)

Currently, § 483.134 lists criteria for evaluating people with MI for specialized services and § 483.136 contains criteria for evaluating people with ID for specialized services. Because many of the requirements presented in this section were incorporated in our proposed §§ 483.120 and 483.128, we propose to remove §§ 483.134 and 483.136 in their entirety and replace them with a single new § 483.134, titled ''Evaluating the Need for Specialized Services.''

We propose a new requirement at § 483.134(a) that would provide a basic rule for performing specialized services evaluations for NF applicants with MI or ID who are recommended for NF placement per § 483.132, and for NF residents with MI or ID. (Note that for NF applicants, section 1919(b)(3)(F) of the Act makes the evaluation for specialized services conditional on the outcome of the NF level of services evaluation, while section 1919(e)(7)(B) of the Act requires NF residents to receive both evaluations for NF level of services and specialized services.) We propose at new § 483.134(a)(1) that the evaluator would be required to assess the individual's ability to engage in activities of daily living and instrumental activities of daily living. We propose at new § 483.134(a)(2) that the evaluator would then assess the level of support that would be needed to assist the individual to perform these activities successfully in the NF or while living in the community. We propose at new § 483.134(a)(3) that the evaluator would then evaluate the level of support needed by the individual could be provided by standard NF services or whether specialized services (as defined at proposed § 483.120) were required. We intend that the definition of specialized services we propose in § 483.120(a) would provide evaluators with additional guidance as to what types of services should be considered as part of this evaluation.

We propose a new requirement at § 483.134(b) that would indicate that if specialized services are already being provided to a NF resident, the evaluator would assess whether the specialized services included in the resident's care plan need to be modified. We seek to encourage regular and meaningful

review of specialized services to ensure they continue to be effective for the individual and meet the individual's needs.

We propose a new requirement at § 483.134(c) that would require, at a minimum, that the data relied on to perform an evaluation for specialized services include the data listed in proposed § 483.128(e).

20. Maintenance of Services and Availability of FFP (§ 483.138)

We are not proposing any changes to this section.

D. Part 483, Subpart E

1. Appeals of Discharges, Transfers and Preadmission Screening and Resident Review Actions (Part 483, Subpart E).

The current title of part 483, subpart E is ''Appeals of Discharges, Transfers and Preadmission Screening and Annual Resident Review (PASARR) Determinations.'' We propose to change this title to ''Appeals of Discharges, Transfers, and Preadmission Screening and Resident Review (PASRR) Actions'' in order to (1) remove the word ''annual'' from the title, for reasons we discuss previously, and (2) change the word ''Determinations'' to ''Actions'' to broaden the scope of appeals to include both Level I identification screening decisions as well as Level II determinations.

2. Provision of a Hearing and Appeal System (§ 483.204)

Section 483.204 specifies individuals' ability to appeal PASRR determinations. We propose at § 483.204(a)(2) to change ''PASARR determination'' to ''PASRR Level I screen or Level II determination.'' We propose to further streamline and update the regulation by removing ''in the context of preadmission screening and annual resident review.'' We also propose to change ''appeal that determination'' to ''appeal that Level I screen or Level II determination.'' Our intent with this proposal is to clarify individuals' right to appeal both Level I screens (positive and negative identifications) as well as Level II determinations.

III. PASRR Requirements Crosswalk

Table 1 notes the proposed changes to the regulations in part 483, subpart C.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C

Existing CFR section	Title	Action	New CFR section
§ 483.100	Basis		§ 483.100.
§ 483.100	*Basis*	Technical changes	§ 483.100.
§ 483.102	Applicability and definitions	Revised	§ 483.102.
§ 483.102(a)	(a) *Applicability*	Technical changes	§ 483.102(a).
§ 483.102(b)	(b) *Definitions*		§ 483.102(b).
§ 483.102(b)(1)	(1) untitled	Titled and revised	§ 483.102(b)(1) *Mental illness.*
§ 483.102(b)(2)	(2) untitled	Titled and revised	§ 483.102(b)(2) *Dementia.*
§ 483.102(b)(3)	(3) untitled	Titled and revised	§ 483.102(b)(3) *Intellectual disability.*
n/a	*(c) Incorporation by reference*	Added	§ 483.102(c)(1)–(2).
§ 483.104	State plan requirement		§ 483.104.
§ 483.104	*State plan requirement*	Technical changes	§ 483.104.
§ 483.106	Basic rule	Retitled	§ 483.106 Basic rules and responsibilities.
§ 483.106(a)	(a) *Requirement*	Removed	n/a.
§ 483.106(b)	(b) *Admissions, readmissions and inter-facility transfers.*	Redesignated, retitled and revised.	§ 483.112(b) *Who must receive Level II preadmission screening.*
§ 483.106(b)(1)	(1) *New admissions*	Redesignated and revised.	§ 483.112(b)(1).
§ 483.106(b)(2)	(2) *Exempted hospital discharge*	Redesignated and revised.	§ 483.112(b)(2).
§ 483.106(b)(3)	(3) *Readmissions*	Redesignated and revised.	§ 483.112(b)(4).
§ 483.106(b)(4)	(4) *Inter-facility transfers*	Redesignated and revised.	§ 483.112(b)(5).
§ 483.106(c)	(c) *Purpose*	Redesignated	§ 483.106(a).
n/a	*Requirement*	Added	§ 483.106(b).
n/a	*State Medicaid agency responsibilities*	Added	§ 483.106(c)(1)–(5).
§ 483.106(d)	(d) *Responsibility for evaluation and determinations.*	Revised	§ 483.106(d).
§ 483.106(e)	(e) *Delegation of responsibility*	Revised	§ 483.106(e).
§ 483.106(e)(1)	(1) untitled	Redesignated and revised.	§ 483.106(e).
§ 483.106(e)(1)(i)	(i) untitled	Redesignated and revised.	§ 483.106(e)(1).
§ 483.106(e)(1)(ii)	(ii) untitled	Redesignated and revised.	§ 483.106(e)(2).
§ 483.106(e)(1)(iii)	(iii) untitled	Redesignated and revised.	§ 483.106(e)(3).
§ 483.106(e)(2)	(2) untitled	Removed	n/a.
§ 483.106(e)(3)	(3) untitled	Removed	n/a.
§ 483.108	Relationship of PASARR to other Medicaid processes.	Retitled	§ 483.108 Relationship of PASRR to other Medicaid processes.
§ 483.108(a)	(a) untitled	Technical changes	§ 483.108(a).
§ 483.108(b)	(b) untitled	Revised	§ 483.108(b).
§ 483.108(c)	(c) untitled	Revised	§ 483.108(c).
§ 483.110	Out-of-State arrangements		§ 483.110.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.110(a)	(a) *Basic rule*	Redesignated and title removed.	§ 483.110.
§ 483.110(b)	(b) *Agreements*	Removed	n/a.
§ 483.112	Preadmission screening of applicants for admission to NFs.		§ 483.112.
§ 483.112(a)	(a) *Determination of need for NF services.*	Removed	n/a.
§ 483.112(b)	(b) *Determination of need for specialized services.*	Removed	n/a.
n/a	*Preadmission Level I*	Added	§ 483.112(a).
n/a	*Provisional admissions*	Added	§ 483.112(b)(3).
§ 483.112(c)	(c) *Timeliness*	Retitled and revised.	§ 483.112(c) *Timeliness of determinations.*
§ 483.112(c)(1)	(1) untitled	Redesignated and revised.	§ 483.112(c).
§ 483.112(c)(2)	(2) untitled	Removed	n/a.
§ 483.112(c)(3)	(3) untitled	Redesignated and retititled.	§ 483.130(j)(3).
§ 483.112(c)(4)	(4) untitled	Redesignated and retitled.	§ 483.130(j)(4).
§ 483.114	Annual review of NF residents	Retitled	§ 483.114 Review of NF residents.
§ 483.114(a)	(a) *Individuals with mental illness*	Removed	n/a.
§ 483.114(b)	(b) *Individuals with intellectual disability*	Removed	n/a.
§ 483.114(c)	(c) *Frequency of review*	Removed	n/a.
§ 483.114(d)	(d) *April 1, 1990 deadline for initial review.*	Removed	n/a.
n/a	*Referral for resident review*	Added	§ 483.114(a)(1)–(4).
n/a	*Level II resident review*	Added	§ 483.114(b)(1)–(2).
n/a	*Timing for referral from NF*	Added	§ 483.114(c)(1)–(2).
n/a	*Timeliness of determination*	Added	§ 483.114(d).
n/a	*Resident review determinations*	Added	§ 483.114(e).
§ 483.116	Residents and applicants determined to require NF level of services.		§ 483.116.
§ 483.116(a)	(a) *Individuals needing NF services*	No change	§ 483.116(a).
§ 483.116(b)	(b) *Individuals needing NF services and specialized services.*	Technical changes	§ 483.116(b).
§ 483.118	Residents and applicants determined not to require NF level of services.		§ 483.118.
§ 483.118(a)	(a) *Applicants who do not require NF services.*	No change	§ 483.118(a).
§ 483.118(b)	(b) *Residents who require neither NF services nor specialized services for MI or IID.*	Technical changes	§ 483.118(b).
§ 483.118(c)	(c) *Residents who do not require NF services but require specialized services for MI or IID.*	Revised	§ 483.118(c).
§ 483.120	Specialized services	Retitled	§ 483.120 Specialized services and NF services.
§ 483.120(a)(1)–(2)	(a) *Definition*	Revised	§ 483.120(a)(1)–(6).
§ 483.120(b)	(b) *Who must receive specialized services.*	Retitled and revised.	§ 483.120(b) *Provision of specialized services.*
§ 483.120(c)	(c) *Services of lesser intensity*	Retitled	§ 483.120(c) *Provision of NF services.*
n/a	*Duplication with NF services prohibited*	Added	§ 483.120(d).
n/a	*Coordination with plan of care*	Added	§ 483.120(e).
n/a	*Coordination with other program services.*	Added	§ 483.120(f).
§ 483.122	FFP for NF services		§ 483.122.
§ 483.122(a)	(a) *Basic rule*	Revised	§ 483.122(a).
§ 483.122(b)	(b) *FFP for late reviews*	Technical changes	§ 483.122(b).
§ 483.124	FFP for specialized services		§ 483.124.
§ 483.124	*FFP for specialized services*	Redesignated and revised.	§ 483.124(a)(1)–(2).
n/a	*Reserved*	Added	§ 483.124(b).
§ 483.126	Appropriate placement	Retitled	§ 483.126 Level I identification criteria.
§ 483.126	Untitled	Removed	n/a.
n/a	*Level I identification of individuals with possible MI or ID.*	Added	§ 483.126(a).
n/a	*Possible MI*	Added	§ 483.126(b)(1)–(4).
n/a	*Possible ID*	Added	§ 483.126(c)(1)–(3).
n/a	*Personnel*	Added	§ 483.126(d).
n/a	*Data*	Added	§ 483.126(e).
n/a	*Referral after positive identification*	Added	§ 483.126(f).

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.128(a)	(a) *Level I: Identification of individuals with MI or IID.*	Retitled, redesignated and revised.	§ 483.126(g) *Documentation of completed identification screen.*
§ 483.128(b)	(b) *Adaptation to culture, language, ethnic origin.*	Redesignated and revised.	§ 483.106(f).
§ 483.128(c)	(c) *Participation by individual and family.*	Removed	n/a.
n/a	*Purpose*	Added	§ 483.128(a)(1)–(2).
n/a	*Personnel*	Added	§ 483.128(b)(1)–(2).
§ 483.128(d)	(d) *Interdisciplinary coordination*	Redesignated and technical changes.	§ 483.128(c).
§ 483.128(e)	(e) untitled	Removed	n/a.
§ 483.128(f)	(f) *Data*	Removed	n/a.
n/a	*Data to confirm Level I identification or significant change.*	Added	§ 483.128(d)(1)–(2).
n/a	*Data for evaluations needed for NF level of services and specialized services.*	Added	§ 483.128(e)(1)–(10).
n/a	*Face-to-face interviews*	Added	§ 483.128(f).
§ 483.128(g)	(g) *Preexisting data*	Technical changes	§ 483.128(g).
§ 483.128(h)	(h) *Findings*	Technical changes	§ 483.128(h).
§ 483.128(i)(1)–(6)	(i) *Evaluation report: Individualized determinations.*	Retitled and technical changes.	§ 483.128(i) *Evaluation report.*
§ 483.128(j)(1)–(4)	(j) *Evaluation report: Categorical determinations.*	Retitled and revised.	§ 483.128(j) *Evaluation report: Terminated evaluations.*
§ 483.128(k)	(k) *Interpretation of findings to individual.*	Technical changes	§ 483.128(k).
§ 483.128(l)(1) through (5)	(l) *Evaluation report*	Retitled and revised.	§ 483.128(l) *Evaluation report submission.*
§ 483.128(m)(1) through (2)	(m) untitled	Titled and revised	§ 483.128(m) *Termination before evaluations for NF and specialized services.*
§ 483.130	PASARR determination criteria	Retitled	§ 483.130 Level II PASRR determination criteria.
§ 483.130(a)	(a) *Basis for determinations*	Technical changes	§ 483.130(a).
n/a	*Personnel*	Added	§ 483.130(b).
n/a	*Determination of need for NF level of services.*	Added	§ 483.130(c)(1)–(3).
n/a	*Determination of need for specialized services.*	Added	§ 483.130(d).
§ 483.130(b)	(b) *Types of determinations*	Removed	n/a.
§ 483.130(c)	(c) *Group determinations by category*	Removed	n/a.
§ 483.130(d)	(d) *Examples of categories*	Removed	n/a.
§ 483.130(e)	(e) *Time limits*	Removed	n/a.
§ 483.130(f)	(f) untitled	Removed	n/a.
§ 483.130(g)	(g) *Categorical determinations: No positive specialized treatment determinations.*	Removed	n/a.
§ 483.130(h)	(h) *Categorical determinations: Dementia and IID.*	Removed	n/a.
§ 483.130(i)	(i) untitled	Removed	n/a.
§ 483.130(j)	(j) *Recording determinations*	Redesignated and technical changes.	§ 483.130(e).
§ 483.130(k)	(k) *Notice of determination*	Redesignated and revised.	§ 483.130(f).
§ 483.130(l)	(l) *Contents of notice*	Redesignated and revised.	§ 483.130(g).
§ 483.130(m)	(m) *Placement options*	Removed	n/a.
§ 483.130(n)	(n) *Specialized services needed in a NF.*	Removed	n/a.
§ 483.130(o)	(o) *Record retention*	Redesignated and technical changes.	§ 483.130(h).
§ 483.130(p)	(p) *Tracking system*	Redesignated and technical changes.	§ 483.130(i).
n/a	*Reporting*	Added	§ 483.130(j)(1)–(4).
§ 483.132	Evaluating the need for NF services and NF level of care (PASARR/NF).	Retitled	§ 483.132 Evaluating the need for NF level of services.
§ 483.132(a)	(a) *Basic rule*	Removed	n/a.

TABLE 1—PROPOSED CHANGES TO PART 483, SUBPART C—Continued

Existing CFR section	Title	Action	New CFR section
§ 483.132(b)	(b) *Determining appropriate placement*	Removed	n/a.
§ 483.132(c)	(c) *Data*	Removed	n/a.
§ 483.132(d)	(d) untitled	Removed	n/a.
n/a	*Evaluation for appropriate settings*	Added	§ 483.132(a)(1)–(2).
n/a	*Evaluation of preferences*	Added	§ 483.132(b).
n/a	*Evaluation for NF services*	Added	§ 483.132(c).
n/a	*Data*	Added	§ 483.132(d).
n/a	*Relationship to NF level of care*	Added	§ 483.132(e).
§ 483.134	Evaluating whether an individual with mental illness requires specialized services (PASARR/MI).	Retitled	§ 483.134 Evaluating whether an individual requires specialized services.
§ 483.134(a)	(a) *Purpose*	Removed	n/a.
§ 483.134(b)	(b) Data	Removed	n/a.
§ 483.134(c)	(c) *Personnel requirements*	Removed	n/a.
§ 483.134(d)	(d) *Data interpretation*	Removed	n/a.
n/a	*Basic rule*	Added	§ 483.134(a)(1)–(3).
n/a	*Review of specialized services*	Added	§ 483.134(b).
n/a	*Data*	Added	§ 483.134(c).
§ 483.136	Evaluating whether an individual with intellectual disability requires specialized services (PASARR/IID).	Removed	n/a.
§ 483.136(a)	(a) *Purpose*	Removed	n/a.
§ 483.136(b)	(b) *Data*	Removed	n/a.
§ 483.136(c)	(c) *Data interpretation*	Removed	n/a.
§ 483.138	Maintenance of services and availability of FFP.		§ 483.138.
§ 483.138(a)	(a) *Maintenance of services*	No change	§ 483.138(a).
§ 483.138(b)	(b) *Availability of FFP*	No change	§ 483.138(b).

IV. Collection of Information Requirements

Consistent with our implementing PASARR regulation (November 30, 1992; 57 FR 56504) section 4214(d) of OBRA '87 exempts this rule's proposed nursing home reform amendments from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In this regard, Office of Management and Budget review under the authority of the PRA is not applicable. The projected costs and savings of this proposed rule are discussed in the Regulatory Impact Analysis section of this proposed rule.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule intends to modernize the requirements for Preadmission Screening and Resident Review (PASRR), currently referred to in the regulation as Preadmission Screening and Annual Resident Review. PASRR proposes to incorporate statutory changes, which reflects updates to diagnostic criteria for mental illness and intellectual disability. It will also reduce duplicative requirements and other administrative burdens on state PASRR programs, and makes the process more streamlined and person-centered.

B. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (Pub. L. 96–354, enacted on September 19, 1980) (RFA), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, enacted on March 22, 1995) (UMRA), Executive Order 13132 on Federalism (August 4, 1999), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

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). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

C. Anticipated Effects

As discussed in the Collection of Information section of this proposed rule, the proposed collections of information in this rule are exempt from Paperwork Reduction Act. However, we will identify here the estimated costs and savings associated with this proposed rule.

1. Wage Estimates

To derive average costs for this estimate, we used data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all salary estimates (*http://www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 2 presents the mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

TABLE 2—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
Social and Community Services Managers	11–9151	34.46	34.46	68.92
Healthcare Social Worker	21–1022	28.11	28.11	56.22
Registered Nurse	29–1141	36.30	36.30	72.60

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

2. Minimum Data Set Data

Unless otherwise noted, numbers drawn from the Minimum Data Set (MDS) were generated from internal analysis of MDS data reported to CMS by NFs.

3. Estimated Costs of the Proposed Regulations

Note that all of states' costs associated with the proposed regulation changes would be considered administrative costs related to administering PASRR and eligible for 75 percent FFP per § 433.15(b)(9).

a. Updated Terminology, Definition and Data Collection (§§ 483.102, 483.128, 483.132, 483.134)

We are proposing to replace the name ''Preadmission Screening and Annual Resident Review'' with ''Preadmission Screening and Resident Review'' in the regulation, to reflect the fact that the statutory obligation of ''annual'' Resident Review was removed from section 1919(e)(7)(B) of the Act in 1996. It is our understanding that most states have already updated their program materials to reflect the statutory requirement. For states that do retain references to ''PASARR'' in their documents, we presume the states would make that change while making other updates to program documents, and that the cost would be absorbed into the cost estimates calculated in the next paragraph.

In § 483.102(b), we propose to update the definitions of MI, dementia, and ID, as well as update the diagnostic manuals that would be used to identify these conditions. Currently, § 483.102(b)(1) and (2) requires that clinicians use the DSM–III–R when identifying MI and dementia; we propose that clinicians would use the most current edition of the DSM, the DSM–5. Currently, § 483.102(b)(3) also requires use of an outdated diagnostic manual for the identification of ID; we propose that clinicians instead would use the most current edition of the American Association on Intellectual and Developmental Disabilities' manual, ''Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition''. It is our understanding that most clinicians are already using the most current versions of diagnostic manuals when identifying MI, dementia, and ID, and have been performing a crosswalk between the current manuals and those included at § 483.102. We believe that no longer having to perform this crosswalk would reduce burden on clinicians. Making this update, however, may require that PASRR programs make updates to some of their program materials where they have retained references to the outdated manuals. We also propose at §§ 483.128, 483.132 and 483.134 to consolidate and simplify the data that must be collected from individuals as part of the Level II evaluation process.

We do not provide or prescribe specific program materials or forms for the Level I identification screen and the Level II evaluation and determinations (that is, states develop their own documents). We presume that these proposed updates described above would necessitate revisions to states' internal program documents and Level I and II PASRR documents.

We note that we maintain a technical contract (the PASRR Technical Assistance Center) that is a free resource to states, and would be available to provide assistance with helping state PASRR programs align documents with changes to federal PASRR requirements once they are finalized. Assuming states take advantage of this free resource, we estimate it would take 16 hours at $68.92/hr for a social and community services manager to review and update the program materials. Including the state PASRR programs of all 50 states and the District of Columbia performing this activity, we estimate a one-time burden of 816 hours (51 programs × 16 hr) at a cost of $56,239 (816 hr × $68.92/hr).

b. Preadmission Screening of NF Applicants: Exempted Hospital Discharge (§ 483.112)

We propose in § 483.112 to clarify that all individuals, including those who qualify for an exemption from Level II Preadmission Screening under the exempted hospital discharge would still receive a Level I identification screen. (See discussion of § 483.112 for information on the exempted hospital discharge and this proposed clarification.) The current regulations do not prohibit such individuals from receiving Level I identification screens, and it is our understanding that at least 15 of the 51 states and District of Columbia (29 percent of state PASRR programs) already do perform Level I identification screens or collect some other kind of preadmission documentation for these individuals.[2] We believe that our proposed change to § 483.112 would not significantly impact these states; we provide here an estimate of the cost impact on the states that may not currently be collecting preadmission documentation from individuals being admitted to NFs under an exempted hospital discharge.

[2] PASRR Technical Assistance Center, ''Revised 2017 National PASRR,'' May 2018. Available at *https://www.medicaid.gov/medicaid/ltss/downloads/institutional/2017-pasrr-national-report.pdf*. Last accessed: August 27, 2019. Data taken from page 7, showing that 15 states reported they collect data on admissions of people with exempted hospital discharges.

Using nursing home data collected as part of the MDS we estimate that there were 2,998,840 individuals admitted to NFs from acute care hospitals nationwide in 2016. A portion of these individuals would have been eligible for an exempted hospital discharge. We reduce the total number of these admissions from acute care hospitals by 29 percent, to 2,129,176 because, as previously mentioned, 29 percent of states collect preadmission documentation from exempted hospital discharges. This leaves 2,129,176 individuals potentially admitted to a NF under an exempted hospital discharge without a Level I identification screen or other collection of preadmission documentation.

MDS data indicates that 56 percent of individuals admitted to a NF from an acute care hospital will end up staying in the NF for more than 30 days (at which point these individuals would be required to receive a Level I identification screen under current rules at § 483.106(b)(2)(ii)). This means that 1,192,338 individuals (2,129,176 individuals × 0.56) would still have required a Level I identification screen performed post-admission. Under our proposed rule at § 483.112(b), performing all Level I identification screens preadmission would obviate the need for a post-admission Level I identification screen. Thus, these 1,192,338 individuals would not represent a new cost to state PASRR programs resulting from this proposed rule because they would have received a Level I identification screen under the current regulations.

We then presume that the 44 percent of residents discharged before 30 days may have been eligible for an exempted hospital discharge and would not have received a Level I identification screen either before or after admission. This would mean that 936,837 individuals (2,129,176 individuals × 0.44) a year who might not otherwise have received a Level I identification screen would now receive a screen under our proposed revisions. (We believe this number is on the high end. We are assuming here that *all* individuals admitted from an acute care hospital qualified for an exempted hospital discharge, even though many of these individuals may have not qualified and thus received a Level I identification screen prior to admission.)

It is our experience that the Level I identification screens take 0.25 hours at $56.22/hr for a hospital discharge planner (who are often social workers) to complete. With one Level I identification screen being performed for 936,837 individuals, we estimate an ongoing annual burden of 234,209 hours (936,837 screens × 0.25 hr/screen) at a cost of $13,167,244 (234,209 hr × $56.22/hr) to complete the Level I identification screens.

Additionally, both current and proposed regulations require that only positive Level I identification screens would be forwarded to PASRR programs for tracking purposes. According to MDS data, roughly 7 percent of people who are admitted to NFs are identified as having MI or ID, which means that of the 936,837 potential additional Level I identification screens, 65,578 (936,837 screens × 0.07) of the Level I identification screens may be forwarded to the PASRR programs by the Level I screeners. We estimate it would take 6 minutes (0.1 hr) at $68.92/hr for a community and social services manager to review and process the completed form. In aggregate we estimate an ongoing annual burden of 6,558 hours (65,578 screens × 0.1 hr/screen) at a cost of $451,967 (6,558 × $68.92/hr) for processing the additional positive Level I identification screens.

c. Reporting on Timeliness (§ 483.130(j)(1))

Each state's PASRR program is currently required to comply with the requirements at § 483.112(c)(1) which specify that preadmission screening must be completed within an average of 7–9 working days, and requirements at § 483.106(b)(2)(ii) which specify that Resident Reviews for expired exempted hospital discharges be completed within 40 days of admission. State PASRR programs should already be tracking their completion rates to ensure compliance with these requirements. To ensure better oversight of compliance with the timeliness standards, we propose new language at § 483.130(j)(1) which would require that the state report to the Secretary on an annual basis the annual averages for the completion of determinations.

In calculating the cost of this reporting, we assume that states' PASRR programs already have in place an effective means to track timeliness, as they are already expected under current regulations at § 483.112(c) to comply with timeliness requirements. The reporting would require the SMHA and SIDA to cooperate with the state Medicaid agency (SMA) by providing data to the SMA, which would be responsible for reporting the data to the Secretary. We anticipate that the staff in each of the SMHA, SIDA, and SMA would be of comparable positions and salaries, namely social and community service managers with an adjusted wage of $68.92/hr. We estimate that in both the SMHA and the SIDA, staff would each require 1 hour to generate, review and submit the data to the SMA. We also estimate that the SMA staff would require 1 hour to assemble the reported data and submit a report electronically to CMS, using a CMS-generated template. This is a total of 3 hours (1 hr SMHA + 1 hr SIDA + 1 hr SMA). We expect that all 50 states and the District of Columbia would submit timeliness annual reports, for an ongoing annual burden of 153 hours (3 hr × 51 respondents) at a cost of $10,545 (153 hr × $68.92/hr).

d. Reporting on Dispositions (§ 483.130(j)(2))

Section 1919(e)(7)(C)(iv) of the Act requires that each state report annually to the Secretary the number and disposition of individuals who are discharged from NFs because they have been determined by the PASRR program to no longer needed NF level of services (but still needed specialized services) and individuals who are discharged from NFs because they were determined by the PASRR program to no longer need NF level of services or specialized services. We have not previously issued robust guidance on how to comply with this statutory requirement or what kind of information relating to discharge should be reported. This rule proposes new language at § 483.130(j)(2) which would clarify that states must report annually on the number of people with MI or ID who are diverted or discharged from NFs each year because the PASRR program has determined that the individual:

- Does not meet, or no longer meets, the state's criteria for NF level of care,
- Requires the level of services offered in another institutional setting; or
- Elects to receive services in a non-institutional setting.

This rule proposes to include reporting on both diversion for applicants and discharge for residents, as we believe the intent of this statutory reporting requirement was to demonstrate efficacy of the PASRR process. The proposed requirement is designed to more effectively implement section 1919(e)(7)(C)(iv) of the Act, thus providing better insight into whether PASRR programs are fulfilling the statutory goals of avoiding unnecessary NF placements.

Since states do not consistently report on the outcomes for applicants and residents, we are using data collected on NF residents as part of the MDS to approximate the time that would be spent gathering this data. In 2016, approximately 62,000 individuals with

PASRR-level MI or ID in all 50 states and the District of Columbia were discharged from Medicaid-certified NFs into one of the settings we contemplate would be reportable under proposed § 483.130(j)(2) (community, psychiatric hospital or intermediate care facility for individuals with intellectual disabilities). We note here that the following cost estimates presumes that all 62,000 PASRR-identified individuals discharged from NFs in a year were discharged as a result of a PASRR determination. The MDS data does not indicate how many of these individuals were discharged as a result of PASRR program intervention; some portion of these individuals will have been discharged for reasons unrelated to the PASRR program's determination and thus would not be subject to the proposed reporting requirement. Thus, our cost estimates related to this proposal will be on the high end. However, in the absence of more precise data, we will use the figure 62,000 discharged individuals for our time and cost estimates.

We assume that in order to confirm the recommended discharge has occurred, NFs may need to send confirmation of the discharges of PASRR-identified individuals directly to the state PASRR program by a method identified by the state. It is our understanding that in many NFs a social worker is tasked with PASRR-related duties, taking approximately 6 minutes (0.1 hr) at $56.22/hr per discharged individual. In aggregate we estimate an ongoing annual burden of 6,200 hours (0.1 hr × 62,000 discharges) at a cost of $348,564 (6,200 hr × $56.22/hr) for all NFs to report to their respective state PASRR programs the discharge outcome for PASRR-identified individuals.

Additionally, we estimate that state PASRR program staff would need to enter this information from NFs into the PASRR program's tracking system. Per each discharged individual we estimate it would take 6 minutes (0.1 hr) at $68.92/hr for a social and community services manager to perform this task. In aggregate, we estimate an ongoing annual burden of 6,200 hours (0.1 hr × 62,000 discharges) at a cost of $427,304 (6,200 hr × $68.92/hr).

We also estimate it would take 1 hour at $68.92/hr for a social and community services manager to assemble this data into a report and submit it to CMS. We anticipate that this report will be submitted electronically to CMS via a CMS-developed template and we do not estimate additional materials costs to states. In aggregate, we estimate an ongoing annual burden of 51 hours (51 respondents × 1 hr/response) at a cost of $3,515 (51 hr × $68.92/hr).

4 Estimated Savings of the Proposed Rule

a. Changes to State Plan Requirements (§ 483.104)

Section 483.104 requires that states have a PASRR program as a condition of approval of the Medicaid State Plan. Currently in the Medicaid State Plan, states provide an assurance that they have a PASRR program on plan page 4.39. This page is a preprint created by CMS that contains boilerplate language regarding PASRR requirements and does not require states to provide additional information. As a result of this proposed rule, page 4.39 of the Medicaid State Plan would be revised by CMS. It was issued in 1993 and contains obsolete references to ''Preadmission Screening and Annual Resident Review.'' In this proposed rule we propose to remove ''annual'' before ''Resident Review,'' and replace the acronym ''PASARR'' with ''PASRR,'' to reflect the statutory change made in 1996 (by Pub. L. 104–315) that removed the ''annual'' requirement for Resident Review. Page 4.39 would also be impacted by our proposal to remove categorical determination requirements (as discussed in § 483.130 of this rule), so we would need to remove references to that requirement. Because the page simply contains boilerplate language and does not require the state to provide additional information, we do not believe it would be administratively efficient to require states to go through the State Plan Amendment (SPA) process to affirm the updated preprint. Rather, as page 4.39 (which is currently paper-based) is slated to be included in CMS' transition of the Medicaid State Plan to an electronic format (MACPro), we propose to make the necessary updates when page 4.39 is added to MACPro (CMS–10434, OMB control number: 0938–1188) as part of the routine business of that transition. No action would be required of states, aside from receiving electronic notice of the updated page.

However, by proposing to eliminate categorical determinations (as is discussed in § 483.130 of this proposed rule), we would eliminate the requirement for states to submit an attachment to page 4.39 describing the categorical determinations that they apply in their program. States are not required to update this page on a regular schedule, but rather submit updates via the SPA process whenever changes are made to their program. All 50 states and the District of Columbia have a PASRR program, and almost all of these programs have made updates to these attachments since the PASRR requirements were originally issued. We estimate that revising the attachment to page 4.39 takes 4 hours at $68.92/hr for a social and community service manager to generate and submit their state's 4.39 page attachment to CMS for approval. Since this rule proposes to remove the requirement for the attachment, we estimate a one-time savings of 204 hours (1 SPA × 4hr/response × 51 programs). This amounts to a one-time savings of $14,060 (204hr × $68.92/hr).

b. Provisional Admissions (§ 483.102(b)(3))

We propose in § 483.112(b)(3) to eliminate the need for Level II Preadmission Screening of individuals who are admitted to NFs as a ''provisional admission'' meaning the individual was admitted with delirium or as part for emergency, respite, or convalescent reasons. Under current regulations at § 483.130(d), these individuals would be required to receive a Level II categorical determination.

While we do not collect information from state PASRR programs on the number of categorical determinations they perform in a year, MDS data suggests that about 7 percent of NF residents are identified as having MI or ID for PASRR purposes. We estimate that there are 3,748,550 new admissions to NFs each year (from both acute care hospitals and other settings), of which roughly 7 percent or 262,399 individuals (3,748,550 new admissions × 0.07) may be identified as having MI or ID necessitating a Level II screen. Of those individuals, we further estimate that half of these individuals, or 131,200 individuals (262,399/2) would be eligible for a provisional admission who would have previously been required to receive a Level II categorical determination prior to admission.

Anecdotal evidence suggests that categorical determinations take 2 hours at $72.60/hr for a registered nurse to complete the Level II categorical determination and communication the information to the admitting NF. In aggregate we estimate an annual savings of 262,400 hours (2 hr × 131,200) and $19,050,240 (262,400 hr × $72.60/hr).

c. Terminating Evaluations (§ 483.128)

We propose to revise the language at § 483.128(m), which specifies when evaluators may terminate evaluations. We propose to expand on the number of conditions under which an evaluation could be terminated. The current § 483.128(m) allows evaluators to

terminate the evaluation if: (1) The evaluator finds that the individual being evaluated does not have MI or ID within the definition of proposed § 483.102 or (2) the individual has MI but also has primary dementia. We propose to revise § 483.128(m) to indicate the evaluations may be terminated without further evaluation of the need for NF level of services or specialized services if the evaluator finds that the individual being evaluated (1) does not have MI or ID within the definition of § 483.102; (2) has not experienced a qualifying significant change in physical or mental condition as defined in proposed § 483.114(b)(2); or (3) has a severe physical illness (such as ventilator dependency; advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), terminal illness; or advanced dementia (as defined in § 483.102(b)(2) which results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services and specialized services.

The first condition of our proposed change to § 483.128(m) mirrors the current regulation (allowing evaluators to terminate an evaluation if the individual does not have MI or ID.) The second proposed condition (the individual did not experience a qualifying significant change in physical or mental condition) is intended to memorialize what we believe to be current practice among PASRR programs. We do not expect this part of our proposed change to § 483.128(m) to have an impact on PASRR program expenditures.

The list of physical and neurocognitive conditions that we propose in § 483.128(m) would replace the current categorical determinations criteria in current § 483.130(d) and (h). Under the current regulations, categorical determinations function as expedited determinations for people with certain conditions. As discussed in the narrative above, we consider the current framework of categorical determinations to add unnecessary complexity to the PASRR process and propose to eliminate categorical determinations. We propose to expand the number of conditions under which a Level II evaluation may be terminated in order to retain the principle that evaluations should not be performed needlessly on individuals who, as a result of severe physical illness or cognitive impairment, cannot participate in the evaluations (and would not be expected to benefit from specialized services.)

We believe this proposal would reduce costs for PASRR programs. Because there is great variability among states' current use of categorical determinations for NF applicants with severe illness, terminal illness, and co-occurring ID/dementia, we cannot estimate the exact impact of this proposal. For states with a robust or highly expedited system of categorical determinations, we expect that terminating an evaluation for people with severe physical illness, terminal illness, or co-occurring ID/dementia would require comparable effort as performing the categorical determination for those same individuals. For states that do not use categorical determinations—meaning that NF applicants with severe physical illness, terminal illness and co-occurring ID/dementia receive complete Level II evaluations and determinations—we expect the savings to be greater, since those state PASRR programs would not need to perform as many comprehensive Level II evaluations for these individuals. We welcome public comment on the potential costs and savings associated with this proposal.

d. Telehealth (§ 483.128)

We propose at § 483.128(f) that, for evaluations that would otherwise need to be conducted face-to-face, telehealth evaluations may be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent timely completion of the PASRR Level II evaluation and determination process. We believe this proposal would present a cost savings for PASRR programs. Using telehealth technologies in states with large geographical areas, for instance, would likely be less expensive than paying for the time and travel costs for staff who would otherwise need to travel long distances to reach NF applicants and residents.

We cannot estimate the cost savings that would result from this proposal because we expect that implementation of this proposal would vary greatly among the states. Some states have already begun piloting telehealth technologies in their PASRR programs, so will not incur new cost savings as a result of this proposed regulation. Many states may be able to fulfill all of their evaluation obligations without needing telehealth technology and will not be impacted by this proposal. Of the states that might choose to decide to use telehealth technologies as a result of this proposal, the technologies that they use and the associated costs or savings will vary, as will the number of individuals reached via telehealth. We would note that the use of telehealth is not proposed as a requirement, but rather presented as an option for states to explore if the states individually determine that using telehealth technology would provide them with cost savings or other meaningful benefit. We welcome public comment on the potential costs and savings associated with this proposal.

5. Summary of Estimated Costs and Savings

TABLE 3—ESTIMATED COSTS AND SAVINGS

Provision under Title 42 of the CFR	Responsible entity	Total estimated annual cost	Total estimated annual savings
§§ 483.102, 483.128, 483.132, 483.134—Updating PASRR Level I and Level II forms.	State PASRR programs	$56,239 (one-time).	
§ 483.112—Level Is for exempted hospital discharges performed preadmission.	State's designated Level I entities	$13,167,244 (ongoing).	
§ 483.112—PASRR programs processing Level Is for exempted hospital discharges.	State PASRR programs	$451,957 (ongoing).	
§ 483.130(j)(i)—Reporting on timeliness	State PASRR programs	$10,545 (ongoing).	
§ 483.130(j)(ii)—Reporting on dispositions to PASRR program.	NFs	$348,564 (ongoing).	
§ 483.130(j)(ii)—Collecting information on dispositions.	State PASRR programs	$427,304 (ongoing).	
§ 483.130(j)(ii)—Reporting on dispositions to CMS.	State PASRR programs	$3,515 (ongoing).	

TABLE 3—ESTIMATED COSTS AND SAVINGS—Continued

Provision under Title 42 of the CFR	Responsible entity	Total estimated annual cost	Total estimated annual savings
§ 483104—State Plan changes	State PASRR programs		($14,060) (one-time).
§ 483.112—Provisional admissions	State PASRR programs		($19,050,240) (ongoing).
Total		$14,465,378	($19,064,300).
Net costs/savings (Year 1)			($4,598,922).
Net costs/savings (ongoing)			($4,641,101).

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, we estimate that many NFs are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). Many nursing facilities and hospitals are small entities, either by being nonprofit organizations or by meeting the Small Business Administration's (SBA) definition of a small business having revenues of less than $25.5 million in any 1 year (see the SBA's website at *http://www.sba.gov/content/small-business-size-standards*). However, while NFs would be subject to the proposed rule, we do not believe this proposed rule will have a significant economic impact on a substantial number of small entities. As noted above, the estimated total impact on NFs as a result of this rule is projected at an annual cost of $348,564, resulting from the proposed requirement that NFs confirm with state PASRR programs when PASRR-identified residents are discharged from the after the PASRR program has determined the resident no longer needs NF services. As noted in the analysis of this proposed cost, we believe the estimate of $348,564 to NFs is on the high end. (See discussion in the section on Estimated Costs of the Proposed Rule, above.) This total cost would be distributed among nearly 15,000 NFs. (According to recent data, there are 14,524 dually-certified nursing homes and 354 Medicaid-only nursing homes, all of which would be subject to PASRR requirements and would share in the total estimated annual costs associated with this proposed rule.) Because the Secretary certifies that rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not contain mandates that will impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, in excess of the threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule does not have a substantial direct cost impact on state or local governments, nor does it preempt state law.

D. Alternatives Considered

This proposed rule contains a range of other proposed policies. We have provided descriptions of the statutory provisions that are addressed, identified the proposed policies, and presented rationales for our decisions. We have attempted to make proposals that would adequately address the need to update the PASRR requirements, promote better oversight, and improve outcomes for PASRR-identified individuals. We solicit feedback on this proposed rule, including any alternative policies stakeholders identify that would support the principles of efficiency, accountability, quality, and self-direction in long-term care.

We did consider a specific alternative regarding inclusion of people with acquired and traumatic brain injury. We proposed updates to the definitions of mental illness, intellectual disability, and dementia in § 483.102. Sections 1919(e)(7)(G)(i) and 1919(e)(7)(G)(ii) of the Act provide broad definitions for PASRR-eligible mental illness and intellectual disability. We are aware that people who experience acquired or traumatic brain injuries sometimes require supports that overlap with those provided to people with intellectual disability. While individuals who acquire a brain injury prior to age 22 sometimes qualify for PASRR consideration due to having a ''related condition'' as defined in § 435.1010. We are aware, however, that individuals who have acquired brain injuries after the age 22 are typically regarded as ineligible for PASRR. We considered the possibility of explicitly expanding PASRR eligibility to individuals with acquired or traumatic brain injury (without an age restriction), but were not certain that this expansion would be supported by section 1919(e)(7) of the Act or the definition of ''related conditions'' provided in § 435.1010. We were also concerned that attempting to add traumatic brain injury to the definition of ''related conditions'' in § 435.1010 could have unintentional consequences for other programs or policies that rely on this definition.

We considered a specific alternative in the requirements relating to provisional admissions. We propose in § 483.112(b)(3) to create a set of conditions under which someone may be considered a provisional admission to a NF and does not require Preadmission Screening. Among these conditions we propose that individuals admitted for a convalescent care stay would be eligible for this Preadmission Screening exemption so long as the convalescent stay is not expected to exceed 30 days. (See discussion of this proposal in the discussion of § 483.112(b)(3).) We considered extending this length of time to 60 days, but were concerned that this might compromise the care for individuals admitted under this provisional admission. For individuals in need of specialized services, 60 days without these reports could may put the individuals at risk of decompensation or

functional loss. While we do not want to require unnecessary Level II evaluations for individuals staying in NFs for comparatively short periods, we also want to ensure that individuals with MI or ID receive appropriate supports in NFs.

E. Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule, if finalized, is expected to be an E.O. 13771 deregulatory action. We estimate that this rule generates $3.4 million in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated cost savings of this rule can be found in the preceding analyses.

F. Conclusion

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 441

Aged, Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority for part 431 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Section 431.200 is amended by revising paragraph (c)(2) to read as follows:

§ 431.200 Basis and scope.

* * * * *

(c) * * *

(2) Is adversely affected by the preadmission screening or the resident review that are required by section 1919(e)(7) of the Act and further described in part 483, subpart C of this chapter.

* * * * *

■ 3. Section 431.201 is amended by revising the definition of ''Date of action'' to read as follows:

§ 431.201 Definitions.

* * * * *

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 4. Section 431.206 is amended by revising paragraph (c)(4) to read as follows:

§ 431.206 Informing applicants and beneficiaries.

* * * * *

(c) * * *

(4) At the time an individual receives an adverse determination by the State with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 5. Section 431.213 is amended by revising paragraph (g) to read as follows:

§ 431.213 Exceptions from advance notice.

* * * * *

(g) The notice involves an adverse determination made with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter; or

* * * * *

■ 6. Section 431.220 is amended by revising paragraph (a)(3) to read as follows:

§ 431.220 When a hearing is required.

(a) * * *

(3) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

* * * * *

■ 7. Section 431.241 is amended by revising paragraph (c) to read as follows:

§ 431.241 Matters to be considered at the hearing.

* * * * *

(c) A State determination with regard to the preadmission screening and resident review requirements under part 483, subpart C of this chapter.

■ 8. Section 431.244 is amended by revising paragraph (f)(3)(i) to read as follows:

§ 431.244 Hearing decisions.

* * * * *

(f) * * *

(3) * * *

(i) For a claim related to eligibility described in § 431.220(a)(1), or any claim described in § 431.220(a)(2) (relating to a nursing facility) or § 431.220(a)(3) (related to preadmission screening and resident review), as expeditiously as possible and, effective no later than the date described in § 435.1200(i) of this chapter, no later than 7 working days after the agency receives a request for expedited fair hearing; or

* * * * *

§ 431.250 [Amended]

■ 9. Section 431.250 is amended in paragraph (f)(4) by removing the word ''annual''.

§ 431.621 [Amended]

■ 10. Section 431.621 is amended—

■ a. In paragraphs (a) and (c)(3), (6), and (7) by removing the term ''PASARR'' and adding in its place the term ''PASRR'';

■ b. In paragraphs (a) and (c)(4) by removing the word ''annual'';

■ c. In paragraphs (a), (b), (c) introductory text, and (c)(2), (5), and (6) by removing the phrase ''Intellectual Disability'' and adding in its place the phrase ''intellectual disability'';

■ d. In paragraph (c)(4) by removing the reference ''483.114(c)'' and adding in its place the reference ''§ 483.114(d)'';

■ e. In paragraphs (c)(4) and (5) by removing the word ''part'' and adding in its place the word ''chapter'';.

■ f. In paragraph (c)(6) by removing the phrase ''under its approved State plan''; and

■ g. In paragraph (c)(8) by removing the reference ''483.136'' and adding in its place the reference ''483.138 of this chapter''.

PART 433—STATE FISCAL ADMINISTRATION

■ 11. The authority citation for part 433 is revised to read as follows:

Authority: 42 U.S.C. 1302.

§ 433.15 [Amended]

■ 12. Section 433.15 is amended in paragraphs (b)(9) by removing the term ''PASARR'' and adding in its place the phrase ''PASRR''; and by removing the word ''annual''.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 13. The authority citation for part 435 is revised to read as follows:

Authority: 42 U.S.C. 1302.

§ 435.1010 [Amended]

■ 14. Section 435.1010 is amended in the definition of ''Persons with related conditions'' in paragraph (a)(2) by removing the phrase ''mentally retarded persons,'' and adding in its place the phrase ''people with intellectual disabilities,''.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 15. The authority citation for part 441 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 8. Section 441.303 is amended—
■ a. By revising paragraph (f)(4); and
■ b. In paragraph (f)(9) by removing the term ''PASARR'' and adding in its place the phrase ''PASRR''.

The revision reads as follows:

§ 441.303 Supporting documentation required.

* * * * *

(f) * * *

(4) In making estimates of average per capita expenditures for a separate waiver program that applies only to individuals with developmental disabilities who are identified through the preadmission screening and resident review (PASRR) process, residents of a NF, or require the level of care provided in an ICF/IID as determined by the State on the basis of an evaluation under § 441.303(c), the agency may determine the average per capita expenditures that would have been made in a fiscal year for those individuals based on the average per capita expenditures for residents in an ICF/IID. When submitting estimates of institutional costs without the waiver, the agency may use the average per capita costs of ICF/IID care even though the deinstitutionalized individuals with developmental disabilities were residents of NFs.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 16. The authority citation for part 483 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1395i, 1395hh and 1396r.

■ 17. Section 483.20 is amended—
■ a. In paragraphs (e) introductory text and (e)(1) by removing the term ''PASARR'' and adding in its place the term ''PASRR'';
■ b. In paragraph (e)(1) removing the word ''recommendations'' and adding in its place the word ''findings'', and by removing the phrase '', care planning, and transitions of care'';
■ c. By revising paragraph (e)(2);
■ d. In paragraph (k) subject heading, by adding ''and resident review'' after ''Preadmission screening'';
■ e. In paragraph (k) heading, by removing the phrase ''mental disorder'' and adding in its place the phrase ''mental illness'';
■ f. In paragraph (k)(1)(i) introductory text, by removing the phrase ''Mental disorder'' and adding in its place the phrase ''Mental illness'';
■ g. In paragraph (k)(2)(i) by adding the phrase ''Level I identification screening and Level II evaluations and'' before the word ''determinations'';
■ h. By revising paragraph (k)(2)(ii) introductory text;
■ i. By adding paragraph (k)(2)(iii);
■ j. In paragraphs (k)(3)(i), by removing the phrase ''mental disorder'' and adding in its place the phrase ''mental illness''; and
■ k. By revising paragraph (k)(4).

The revisions and additions read as follows:

§ 483.20 Resident assessment.

* * * * *

(e) * * *

(2) Referring all residents with newly evident or possible mental illness or an intellectual disability or related condition for Level II resident review within 72 hours of when the facility identifies conditions indicating possible mental illness or intellectual disability or related condition as described in § 483.126.

* * * * *

(k) * * *

(2) * * *

(ii) The State must apply Level I identification screening, but may choose not to apply Level II preadmission screening under paragraph (k)(1) of this section, to the admission to a nursing facility of an individual—

* * * * *

(iii) The State must apply Level I identification screening, but may choose not to apply the Level II preadmission screening program under paragraph (k)(1) of this section, to the admission to a nursing facility of an individual who qualifies as a ''provisional admission'' in accordance with § 483.112(b)(3).

* * * * *

(4) Residents with mental illness or intellectual disability who are experiencing a significant change in physical or mental condition (as defined in paragraph (b)(2)(ii) of this section) must be referred by the nursing facility within 72 hours of the significant change to the state mental health authority or state intellectual disability authority, as applicable, for a resident review.

■ 18. Section 483.21 is amended—
■ a. In paragraph (a)(1)(ii)(F) by removing the term ''PASARR'' and adding in its place the term ''PASRR''; and
■ b. Revising paragraph (b)(1)(iii).

The revision reads as follows:

§ 483.21 Comprehensive person-centered care planning.

* * * * *

(b) * * *

(1) * * *

(iii) Any specialized services (provided or arranged for by the state) or specialized rehabilitative services (provided by the nursing facility) as a result of PASRR recommendations. If a facility disagrees with the PASRR recommendations, it may request a Level II resident review. Changes to PASRR recommendations in the plan of care must be authorized by the PASRR program as part of a Level II determination in accordance with § 483.130.

* * * * *

Subpart C—Preadmission Screening and Resident Review for Individuals with Mental Illness or Intellectual Disability

■ 19. The heading for subpart C is revised to read as set forth above.

§ 483.100 [Amended]

■ 20. Section 483.100 is amended—
■ a. By removing the term ''annual''; and
■ b. By removing the term ''PASARR'' and adding in its place the term ''PASRR''.
■ 21. Section 483.102 is amended—
■ a. By revising paragraphs (b)(1) and (2) and (b)(3)(i);

■ b. In paragraph (b)(3) introductory text by adding a subject heading; and
■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 483.102 Applicability and definitions.

* * * * *

(b) * * *

(1) *Mental illness.* An individual is considered to have a mental illness (MI) if:

(i) The individual has within the past year had a serious and persistent mental disorder meeting the criteria specified within the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (2013), incorporated by reference in paragraph (c) of this section, with the exception of conditions that would fall under DSM–5 ''V'' codes, substance use or substance/medication-induced disorders, neurodevelopmental disorders, and neurocognitive disorders;

(ii) The disorder has been determined by a qualified clinician to be acute or in partial remission, have recurrent or persistent features and, if the DSM includes a severity scale for the disorder, the severity level of the disorder is moderate to severe;

(iii) The disorder has resulted in functional impairment which has substantially interfered with or limited one or more major life activity (including activities of daily living; instrumental activities of daily living; or functioning in social, family, and academic or vocational contexts), or would have caused functional impairment without the benefit of treatment or other support services; and

(iv) A qualified clinician has found that the mental illness is not a secondary characteristic of a primary diagnosis of dementia (or neurocognitive disorder due to Alzheimer's disease or related conditions), as defined in paragraph (b)(2) of this section.

(2) *Dementia.* An individual is considered to have dementia if he or she has a primary diagnosis of a major neurocognitive disorder (other than delirium) as described in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition, revised in 2013. An individual with co-occurring diagnoses of MI and major neurocognitive disorder would not be automatically considered to have ''primary dementia'' unless a qualified clinician has confirmed that the individual's primary diagnosis is a major neurocognitive disorder.

(3) *Intellectual Disability.* * * *

(i) A disability, with onset before age 18, which is characterized by significant limitations in both intellectual functioning and adaptive behavior, as described in the American Association on Intellectual and Developmental Disabilities' Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition (2010), incorporated by reference in paragraph (c) of this section; or

* * * * *

(c) *Incorporation by reference.* The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain the material from the sources listed below. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the **Federal Register** to announce the changes.

(1) Diagnostic and Statistical Manual of Mental Disorders, 5th edition (2013).

(2) Association on Intellectual and Developmental Disabilities' Intellectual Disability: Definition, Classification, and Systems of Support, 11th edition (2010).

§ 483.104 [Amended]

■ 22. Section 483.104 is amended by removing the word ''annual''.

■ 23. Section 483.106 is revised to read as follows:

§ 483.106 Basic rules and responsibilities.

(a) *Purpose.* The preadmission screening and resident review process must result in determinations based on a physical and mental evaluation of each individual with MI or ID, that are described in §§ 483.112 and 483.114.

(b) *Requirement.* The State PASRR program must require:

(1) Identification of all applicants for admission to and residents of Medicaid certified NFs who have possible MI or ID;

(2) Preadmission screening of all eligible new admissions with MI or ID who apply to Medicaid NFs and tracking of individuals with possible MI or ID admitted under preadmission screening exceptions, in accordance with § 483.112; and

(3) Resident review of eligible residents with MI or ID in accordance with § 483.114.

(c) *State Medicaid agency responsibilities.* The State Medicaid agency is responsible for:

(1) Ensuring that the PASRR process is in compliance with this subpart;

(2) Executing and enforcing written interagency agreements with the State mental health and intellectual disability authorities as required at § 431.621 of this chapter;

(3) Designating an entity to perform evaluations of individuals with MI;

(4) Ensuring timely and accurate reporting of data in accordance with § 483.130(j); and

(5) All PASRR functions not otherwise assigned to another entity by statute or regulation.

(d) *Responsibility for evaluations and determinations.* The PASRR determinations of whether an individual requires NF level of services and whether specialized services are needed—

(1) For individuals with MI, must be made by the State mental health authority and be based on a physical and mental evaluation performed by a person or entity that is independent from the State mental health authority; and

(2) For individuals with ID, must be made by the State intellectual disability authority based on a physical and mental evaluation performed by the State intellectual disability authority or its designee.

(e) *Delegation of responsibility.* The State Medicaid agency and the State mental health and intellectual disability authorities may delegate by subcontract or otherwise the functions for which they are responsible to another entity only if:

(1) The State Medicaid agency and the State mental health and intellectual disability authorities retain ultimate control and responsibility for the performance of their statutory obligations;

(2) The entity to which the State Medicaid agency delegates the evaluation function for individuals with MI is independent from the State mental health authority; and

(3) The entity to which the delegation is made for evaluation and determinations is not a NF or an entity that has a direct or indirect affiliation or relationship with a NF.

(f) *Adaptation to culture, language, ethnic origin.* Evaluations performed under PASRR and PASRR-related communications must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated. At no cost to the individual, evaluations should include as needed qualified

interpreters as required by section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964, and qualified sign language interpreters and auxiliary aids as required by section 1557 of the Affordable Care Act and section 504 of the Rehabilitation Act of 1973, to ensure there is effective communication.

■ 24. Section 483.108 is amended—

■ a. By revising the section heading.

■ b. In paragraph (a) by removing the term ''PASARR'' each time it appears and adding in its place the term ''PASRR''; and

■ c. By revising paragraphs (b) and (c).

The revisions read as follows:

§ 483.108 Relationship of PASRR to other Medicaid processes.

* * * * *

(b) In making their determinations, however, the State mental health and intellectual disability authorities must not use criteria relating to the need for NF level of services or specialized services that are inconsistent with this regulation and any supplementary criteria adopted by the State Medicaid agency.

(c) To the maximum extent practicable, in order to avoid duplicative testing and effort, information gathered by the PASRR process must be incorporated into the routine resident assessments required by § 483.20(b), whenever possible.

■ 25. Section 483.110 is revised to read as follows:

§ 483.110 Out-of-state arrangements.

The State in which the individual is a State resident (or would be a State resident at the time he or she becomes eligible for Medicaid), as defined in § 435.403 of this chapter, must pay for the PASRR and make the required determinations, in accordance with § 431.52(b) of this chapter.

■ 26. Section 483.112 is revised to read as follows:

§ 483.112 Preadmission screening of applicants for admission to NFs.

(a) *Preadmission Level I.* All individuals applying to Medicaid certified NFs as new admissions as defined in paragraph (b)(1) of this section, must receive a Level I identification screen (pursuant to § 483.126) prior to admission to a Medicaid certified NF.

(b) *Who must receive Level II preadmission screening.* New admissions with positive Level I screens (as described in § 483.126) who are applying to become a new resident of a Medicaid certified NF must receive preadmission screening prior to admission. Preadmission screening, also referred to in these regulations as Level II preadmission screening, consists of a Level II evaluation and determination in accordance with §§ 483.128 and 483.130.

(1) *New admission.* An individual is a new admission if he or she is admitted to any NF for the first time or does not qualify as a readmission as described in paragraph (b)(4) of this section or inter-facility transfer as described in paragraph (b)(5) of this section. With the exception of certain hospital discharges described in paragraph (b)(2) of this section or provisional admission described in paragraph (b)(3) of this section, new admissions are subject to Level II preadmission screening (as defined in paragraph (b) of this section).

(2) *Exempted hospital discharge.* Exempted hospital discharges are considered new admissions and require Level I identification screening (as described in § 483.126), but are exempted from Level II preadmission screening (as defined in paragraph (b) of this section).

(i) An exempted hospital discharge means an individual—

(A) Who is admitted to any NF directly from a hospital after receiving acute inpatient care at the hospital;

(B) Who requires NF services for the condition for which he or she received care in the hospital; and

(C) Whose attending physician has certified before admission to the facility that the individual is likely to require less than 30 days of nursing facility services.

(ii) If an individual with possible MI or ID (as identified by the Level I identification process) who enters a NF as an exempted hospital discharge is later found to require more than 30 days of NF care, the State PASRR program must complete a resident review within 40 calendar days of admission.

(3) *Provisional admissions.* Provisional admissions are considered new admissions and require Level I identification screening (as described in § 483.126), but are not considered new residents, and may be exempted from Level II preadmission screening (as defined in paragraph (b) of this section).

(i) A provisional admission means an individual is being admitted to a NF for a short, time-limited stay. Provisional admissions are admissions for:

(A) Emergency stays due to emergency evacuations or protective services placements, with placement in the NF not to exceed 14 days;

(B) Delirium, where an accurate diagnosis cannot be made until the delirium clears, but is expected to clear within 14 days;

(C) Respite stays of up to 30 consecutive days to provide respite to in-home caregivers; or

(D) Convalescent stays of up to 30 days in which an applicant:

(*1*) Requires a stay in the NF to recover from an acute physical illness that required hospitalization; and

(*2*) Does not meet all the criteria for an exempted hospital discharge described in paragraph (b)(2) of this section.

(ii) If an individual with possible MI or ID (as identified by the Level I identification process) who enters a NF as a provisional admission is later found to require more than 14 days of NF care (for emergency admissions or delirium) or more than 30 days of NF care (for respite or convalescent stay admissions), the State PASRR program must complete a resident review in accordance with § 483.114 within 24 calendar days of admission (for emergency admissions or delirium) or within 40 calendar days of admission (for respite or convalescent stay admissions).

(4) *Readmissions.* An individual's status is deemed to be a ''readmission'' if he or she was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions who received Level I identification screens and Level II evaluation and determinations (if applicable) as new admissions do not need to repeat these processes upon readmission. Readmissions may still be subject to resident review as needed, in accordance with § 483.114.

(5) *Inter-facility transfers.* (i) An inter-facility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. With the exceptions noted in paragraphs (b)(5)(ii) and (iii) of this paragraph, residents receiving inter-facility transfers who previously received Level I identification screens as new admissions and Level II preadmission screening or resident review (if applicable) do not need a new Level I identification screen or Level II preadmission screening upon inter-facility transfer.

(ii) In cases of transfer of a resident to another NF, with or without an intervening hospital stay, the receiving NF is responsible for ensuring that copies of the resident's most recent Level I and, if applicable, Level II PASRR documentation accompany the transferring resident. If such paperwork is missing, or does not reflect the individual's current physical and mental condition, the individual must be treated as a new admission.

(iii) Individuals who are transferred from one NF to another with an intervening stay in an inpatient facility in which the individuals received inpatient psychiatric treatment or active treatment (as defined at § 483.440(a) of this part) must be treated as new admissions.

(c) *Timeliness of determination.* A preadmission Level II determination must be made electronically or in writing within an annual average of 9 calendar days of referral of the individual with possible MI or ID by whatever agent performs the Level I identification, under § 483.126, to the State PASRR program for preadmission screening. Level II preadmission screening determinations must be completed prior to the individual's admission to the NF.

(d) *Preadmission screening determinations.* NF applicants referred to the State PASRR program for determination must receive a determination of need for NF level of services and, if found to require NF level of services, a determination of need for specialized services, in accordance with § 483.130.

■ 27. Section 483.114 is revised to read as follows:

§ 483.114 Review of NF residents.

(a) *Referral for resident review.* Referral for resident review of NF residents is required:

(1) When a resident previously confirmed by a Level II evaluation and determination as having MI or ID experiences a possible significant change in physical or mental condition, as defined in § 483.20(b)(2)(ii);

(2) Upon the expiration of an exempted hospital discharge or provisional admission, as described in § 483.112(b)(2) and (3);

(3) When the NF identifies, through any means not otherwise described in this section, that a resident has a possible MI or ID (as described in § 483.126) that was not previously identified by a preadmission screen or resident review; or

(4) Upon other conditions designated by the State.

(b) *Level II resident review.* Resident review consists of a Level II evaluation and determination (also referred to in these regulations as Level II resident review), as described in §§ 483.128 and 483.130. The purpose of a resident review is to provide:

(1) First-time Level II evaluation and determination for residents with possible MI or ID who had not previously received Level II evaluation and determination, in order to make the determination required in § 483.114(e); or

(2) A new Level II evaluation and determination for residents who have previously been confirmed by Level II determination to have MI and ID, but are experiencing a significant change in physical or mental condition (as defined in § 483.20(b)(2)(ii)) such that the PASRR program will need to revise the findings of the previous Level II determination.

(c) *Timing for referral from NF.* NFs must notify the State PASRR program of the need for resident review within—

(1) 72 hours of when a resident experiences one of the conditions described in paragraphs (a)(1) or (3) of this section.

(2) 24 hours of the expiration of an exempted hospital discharge or provisional admission, as described in paragraph (a)(2) of this section.

(d) *Timeliness of determination.* A Level II resident review determination must be made electronically or in writing within an annual average of 9 calendar days from the date the resident was referred to the State PASRR program for resident review.

(e) *Resident review determinatio*n. NF residents referred to the State PASRR program for determination must receive a determination of need for NF level of services (or the need for the level of services provided by an resident psychiatric hospital for individuals under age 21, an institution providing medical assistance for individuals over age 65, or an ICF/IID), and a determination of need for specialized services, in accordance with § 483.130.

§ 483.116 [Amended]

■ 28. Section 483.116 is amended in paragraph (b) introductory text by removing ''for the mental illness or intellectual disability''.

■ 29. Section 483.118 is amended—

■ a. In the paragraph (b) subject heading, paragraph (b) introductory text, and the paragraph (c) subject heading by removing the phrase ''for MI or IID'';

■ b. By revising paragraph (c)(1) introductory text;

■ c. In paragraph (c)(1)(iv) by removing the phrase ''for the mental illness or intellectual disability'' '

■ d. By revising paragraph (c)(2) introductory text; and

■ e. In paragraph (c)(2)(iii) by removing the phrase ''for the mental illness or intellectual disability''.

The revisions read as follows:

§ 483.118 Residents and applicants determined not to require NF level of services.

* * * * *

(c) * * *

(1) *Long term residents.* For any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services as defined in § 483.120, the State must, in consultation with the resident's family or legal representative and caregivers.

* * * * *

(2) *Short term residents.* For any resident who requires only specialized services as defined in § 483.120 and who has not continuously resided in a NF for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and caregivers—

* * * * *

■ 30. Section 483.120 is revised to read as follows:

§ 483.120 Specialized services and NF services.

(a) *Definition.* Specialized services are State-defined services for NF residents with MI or ID as determined by the Level II process. These services must be—

(1) Developed by an interdisciplinary team, which includes, at minimum, a physician and a mental health or intellectual disability or developmental disability professional, as appropriate;

(2) Designed to address needs related to MI or ID;

(3) Of greater intensity, frequency or customization than the NF services for MI or ID mandated in subpart B of this part;

(4) Designed in a person-centered manner to promote self-determination and independence;

(5) Designed to prevent or delay loss of or support increase in functional abilities; and

(6) If applicable, designed to support the individual's goals of transition to the most integrated setting, if the individual is admitted to or remains in an institutional setting (including a NF, ICF/IID, inpatient psychiatric facility for individuals under age 22, or an IMD for individuals over 65).

(b) *Provision of specialized services.* The State must provide or arrange for the provision of specialized services, in accordance with this subpart, to all NF residents with MI or ID determined to need specialized services in accordance with §§ 483.130 and 483.134. The State must ensure that the services are provided by qualified personnel, and must periodically review the specialized services to ensure that they continue to be effective for the individual.

(c) *Provision of NF services.* The NF must provide mental health or intellectual disability services which are

of a lesser intensity than specialized service to all residents who need such services.

(d) *Duplication with NF services prohibited.* Specialized services delivered to NF residents may not duplicate NF services as described in subpart B of this part.

(e) *Coordination with plan of care.* For individuals who are admitted to or retained by a NF, NF services and specialized services recommended by the PASRR program must be coordinated with the individual's care plan, as required at § 483.21(b)(1)(iii).

(f) *Coordination with other program services.* If an individual requiring specialized services is discharged to another institutional setting or to a community program in which the individual is receiving long-term services and supports, services offered in those settings may satisfy the specialized services requirement.

■ 31. Section 483.122 is amended—

■ a. By revising paragraph (a) introductory text;

■ b. In paragraph (a)(1) by removing the phrase ''NF care'' and adding in its place the phrase ''NF level of services'';

■ c. In paragraph (a)(2) by removing the phrase ''NF services'' and adding in its place the phrase ''NF level of services'';

■ d. In paragraph (b) by removing the phrase ''annual review'' ' and adding in its place ''resident review''; and

■ e. In paragraph (b) by removing the reference ''§ 483.114(c)'' and adding in its place the reference ''§ 483.114(d)''.

The revision reads as follows:

§ 483.122 FFP for NF services.

(a) Basic rule. FFP is available in State expenditures for NF services provided to a Medicaid eligible individual subject to the requirements of this part only if the individual has been determined—

* * * * *

■ 32. Section 483.124 is revised to read as follows:

§ 483.124 FFP for specialized services.

(a) FFP is available for specialized services furnished to NF residents so long as the services:

(1) Have been described by the State in its approved State plan; and

(2) Do not duplicate NF services included in payments to the NF.

(b) [Reserved]

■ 33. Section 483.126 is revised to read as follows:

§ 483.126 Level I identification criteria.

(a) *Level I identification of individuals with possible MI or ID.* The State's PASRR program must have a Level I identification screening process to identify all individuals with possible MI or ID (as defined in paragraphs (b) and (c) in this section) who require Level II preadmission screening or Level II resident review.

(b) *Possible MI.* An individual may be considered to have a positive Level I identification screen for possible MI if any of the following criteria are met:

(1) The individual has received a diagnosis of MI that appears to meet the definition of MI in § 483.102(b)(2); or

(2) Within the last 12 months the individual has experienced significant challenges to interpersonal or cognitive functioning, such as hallucinations or delusions, attempts to harm self or others, or suicidal ideation; or

(3) Within the last 12 months the individual has required psychiatric treatment including residential treatment, partial hospitalization, or inpatient hospitalization; or

(4) The Level I identification screener cannot rule out possible MI based on the available data.

(c) *Possible ID.* A person is considered to have a positive Level I identification screen for possible ID if:

(1) The individual has received a diagnosis of ID or a related condition that appears to meet the definition of ID in § 483.102(b)(3); or

(2) Within the past 12 months the individual has received active treatment (as defined in § 483.440(a)) in an intermediate care facility for individuals with intellectual disabilities; or

(3) The Level I identification screener cannot rule out possible ID or related condition based on the available data.

(d) *Personnel.* The State may designate who can perform a Level I identification screen.

(e) *Data.* Level I identification screeners may conduct the screen using existing data, including hospital records, physicians' evaluations, election of hospice status, school records, records of community mental health centers or community intellectual disability or developmental disability providers, and other information provided by the individual or the individual's legally authorized representative. Level I identification screeners must certify that the data supports the screener's conclusion regarding whether the individual has possible MI or ID and, if applicable, whether the individual qualifies for an exempted hospital discharge or provisional admission, as defined in § 483.112.

(f) *Referral after positive identification.* Individuals with possible MI or ID must be referred to the State PASRR program for Level II preadmission screening or resident review. Individuals who qualify for a preadmission screening exception per § 483.112 must still be referred to the Level II authority so it may track the individual's need for a resident review, as described in § 483.112(b)(2) and (3).

(g) *Documentation of completed identification screen.* The State's performance of the Level I identification function must provide a copy of the completed Level I identification screen to the individual, the individual's legal representative and the admitting or retaining NF (if applicable). The Level I identification screen must clearly indicate whether the individual is being referred to the State PASRR program for Level II evaluation and determination.

■ 34. Section 483.128 is revised to read as follows:

§ 483.128 Level II PASRR evaluation criteria.

(a) *Purpose.* The purpose of the evaluation is to provide the SMHA or SIDA with enough information to:

(1) Confirm the individual has MI or ID, as defined in § 483.102, or has experienced a qualifying significant change in physical or mental condition, as defined in § 483.114(b)(2); and

(2) Make the determinations regarding need for NF level of services and specialized services as required by § 483.130(c) and (d).

(b) *Personnel.* The State may designate the mental health or intellectual or developmental disability professionals who perform the evaluations. The State must ensure that:

(1) Evaluators are qualified to make or confirm clinical diagnoses; and

(2) Evaluations are conducted by appropriate personnel in accordance with § 483.106(d).

(c) *Interdisciplinary coordination.* When parts of a PASRR evaluation are performed by more than one evaluator, or are performed for individuals with co-occurring possible or known MI and ID, the State must ensure that there is interdisciplinary coordination among the evaluators.

(d) *Data to confirm Level I identification and significant change in condition.* (1) For individuals with positive Level I screens for possible MI or ID, including individuals receiving resident review after an expired exempted hospital discharge or provisional admission as described in § 483.112(b), evaluators must collect and review data reflecting the individual's current condition in order to confirm that the individual has MI or ID. This data at a minimum must include-

(i) A review of current medical and psychiatric conditions and current medications;

(ii) A medical history and physical exam that has been performed by a qualified clinician as identified by the state;

(iii) A history of medication and prescription and illegal drug use;

(iv) For MI evaluations, an evaluation of psychiatric history performed by a qualified mental health professional;

(v) For ID evaluations, an evaluation of intellectual functioning performed by a licensed psychologist or psychiatrist; and

(vi) Other documentation or information provided to or gathered by the evaluator deemed necessary to confirm a diagnosis.

(2) For individuals identified as needing a Level II resident review due to a significant change of physical or mental condition(s) (as defined in § 483.114(b)(2)) evaluators must collect and review at a minimum recent medical, psychiatric and medication records, recent resident assessments performed under § 483.20(b), and other documents or information provided to or gathered by the evaluator deemed necessary to confirm the significant change.

(e) *Data for evaluations needed for NF level of services and specialized services.* The data relied on for evaluations for the NF level of services and specialized services, described in §§ 483.132 and 483.134, respectively, should include:

(1) Review of the relevant history of the physical status.

(2) Focused relevant physical examination (either as recorded in chart or conducted by the evaluator).

(3) Review of relevant psychiatric history including diagnoses, date of onset, treatment history.

(4) Focused relevant mental status examination, including observations and professional opinion regarding intellectual and memory functioning, impulse control, irritability and ability to be redirected, likelihood that individual may pose a threat to self or others, agreeableness to participate in activities of daily living (that is, how likely the patient is to resist activities such as bathing, eating, grooming, etc.).

(5) Functional assessment (activities of daily living and instrumental activities of daily living).

(6) Psychosocial evaluation (for example, living arrangements, paid and unpaid supports);

(7) Social, academic and vocational history;

(8) Service plans from community-based providers, if applicable;

(9) Relevant sections of the individual's plan of care (as defined in § 483.21(b)) if the individual is a NF resident; and

(10) Person-centered interviews including—

(i) The individual being evaluated;

(ii) The individual's legal representative, if one has been designated under State law; and

(iii) The individual's family, friends or caregivers, at the individual's discretion.

(f) *Face-to-face interviews.* The person-centered interviews required in paragraph (e)(10) of this section must be conducted face-to-face. Telehealth evaluations conducted via live videoconferencing may be performed if conducting a face-to-face interview would, due to resource limitations, geographical distances, or other circumstances, prevent completion of the determination within the timeframe required by §§ 483.112(c) and 483.114(e).

(g) *Preexisting data.* Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, to supplement and verify the currency and accuracy of existing data, the State's PASRR program may need to gather additional information necessary to assess proper placement and treatment.

(h) *Findings.* Findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(i) *Evaluation report.* The evaluation findings and recommendations must be issued in the form of a written evaluative report which—

(1) Identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including any specific intellectual disability or mental health services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs;

(4) If specialized services are recommended, identifies the specific intellectual disability or mental health services required to meet the evaluated individual's needs; and

(5) Includes the bases for the report's conclusions.

(j) *Evaluation report: Terminated evaluations.* If an evaluator terminates an evaluation pursuant to § 483.128(m) of this section, findings must be issued in the form of an abbreviated written evaluative report which—

(1) Identifies the name and professional title of the person performing the evaluation;

(2) Explains the reason for the termination of the evaluation;

(3) Identifies, to the extent possible, based on the available data, NF services, including any behavioral health or specialized psychiatric rehabilitative services (as described in §§ 483.40 and 483.65, respectively), that may be needed; and

(4) Includes the bases for the report's conclusions.

(k) *Interpretation of findings to individual.* The findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

(l) *Evaluation report submission.* The evaluator must send a copy of the evaluation report to the State mental health or intellectual disability authority, as appropriate, in sufficient time for the State authorities to meet the times identified in § 483.112(c) for preadmission screens and § 483.114(d) for resident reviews;

(m) *Termination before evaluations for NF level of services and specialized service*s. The evaluation may be terminated without further evaluation of the need for NF level of services or specialized services (as described in §§ 483.132 and 483.134) and an abbreviated evaluation report issued per paragraph (j) of this section if the evaluator finds that the individual being evaluated—

(1) Does not have MI or ID within the definition of § 483.102;

(2) Did not experience a qualifying significant change in physical or mental condition as defined in § 483.114(b)(2); or

(3) Has a severe physical illness (such as ventilator dependency, advanced Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis; or is comatose or functioning at a brain stem level), a terminal illness (as defined in § 418.3 of this chapter) or dementia (as defined in § 483.102(b)(2)), which results in a level of impairment so severe that the individual could not be effectively evaluated for the need for NF level of services or for specialized

services as required in §§ 483.132 and 483.134.

■ 35. Section 483.130 is revised to read as follows:

§ 483.130 Level II PASRR determination criteria.

(a) *Basis for determinations.* Determinations made by the State mental health or intellectual disability authority as to whether NF level of services and specialized services are needed must be based on an evaluation of data concerning the individual, as specified in § 483.128(e) of this section.

(b) *Personnel.* The State may designate the medical, mental health, intellectual disability, or developmental disability professionals who perform the determinations. Personnel cannot have a direct or indirect relationship with a NF.

(c) *Determination of need for NF level of services.* An individual with MI or ID shall be determined to need NF level of services only when:

(1) The individual meets the State's criteria for NF admission;

(2) The individual's total needs do not exceed the services which can be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services; and

(3) Placement in a home and community based program cannot be achieved because:

(i) The individual's total needs pursuant to § 483.128(e) exceed or cannot currently be accommodated by the State's home and community based programs: or

(ii) The individual does not want community placement.

(d) *Determination of need for specialized services.* An individual with MI or ID shall be determined to need specialized services if the individual's total needs are such that services described in § 483.120(a) are necessary to maintain the individual in or transition the individual to the most integrated setting possible, and the individual would benefit from such services.

(e) *Recording determinations.* All determinations made by the State mental health and intellectual disability authority must be recorded in the individual's record.

(f) *Notice of determination.* The State mental health or intellectual disability authority must notify in writing or electronically the following entities of a determination made under this subpart:

(1) The evaluated individual and his or her legal representative;

(2) The admitting or retaining NF;

(3) The physician most involved in the individual's medical care, as identified by the individual; and

(4) The discharging hospital, unless the individual is exempt from preadmission screening as provided for at § 483.106(b)(2).

(g) *Contents of notice.* Each notice of the determination made by the State mental health or intellectual disability authority must include—

(1) Whether the individual was found to have MI or ID (as defined in § 483.102 of this subpart) or a significant change of physical or mental condition (as described in § 483.114(b)(2) of this subpart);

(2) If the individual was found to have MI or ID or a significant change in physical or mental condition—

(i) Whether a NF level of services is needed;

(ii) Whether specialized services are needed;

(iii) The placement options that are available to the individual consistent with these determinations, as described in §§ 483.116 and 483.118;

(3) The rights of the individual to appeal the determination under subpart E of this part; and

(4) A copy of the evaluation report generated in accordance with § 483.128(i) or (j), as appropriate.

(h) *Record retention.* The State PASRR system must maintain records of evaluations and determinations in order to support its determinations and actions and to protect the individual's appeal rights related to PASRR determinations.

(i) *Tracking system.* The State PASRR system must establish and maintain a tracking system for all individuals with MI or ID in NFs to ensure that appeals and future reviews are performed in accordance with this subpart and subpart E of this part.

(j) *Reporting.* The State must report to the Secretary on an annual basis:

(1) The annual averages for completing determinations as required in §§ 483.112(c) and 483.114(d).

(2) The number of people with MI or ID as defined in § 483.102 who are diverted and who are discharged from NFs each year in accordance with § 483.118 because the PASRR program has determined that the individual:

(i) Does not meet, or no longer meets, the State's criteria for NF admission,

(ii) Requires the level of services offered in another institutional setting; or

(iii) Elects to receive services in a non-institutional setting.

(3) The State may report separate annual averages for the determinations made by the State mental health and intellectual disability authorities as required in paragraph (j)(1) of this section and report separately for persons with MI and ID the outcomes required in paragraph (j)(2) of this section.

(4) The Secretary may grant an exception to the timeliness standard of §§ 483.112(c) and 483.114(d) or of the annual reporting requirement as described in this section at the Secretary's discretion.

(5) Reports should be submitted to the Secretary on March 1 of each year, and report on data for previous calendar year.

■ 36. Section 483.132 is revised to read as follows:

§ 483.132 Evaluating the need for NF level of services.

(a) *Evaluation for appropriate settings.* For each NF applicant for admission to a NF and each NF resident who has MI or ID, the evaluator must assess whether—

(1) The individual has the option of placement in a home and community based services program and a non-institutional placement is desired, or

(2) The individual's total needs are such that they can be met only on an inpatient basis and

(i) The NF (with or without specialized services) is an appropriate institutional setting for meeting those needs; or

(ii) The NF is not the appropriate setting for meeting the individual's needs and another institutional setting is an appropriate setting for meeting those needs.

(b) *Evaluation of preferences.* The evaluator must assess the individual's preferences for where the individual may receive long term services and supports, including whether the individual and the individual's legal representative, if applicable, have received information about the types of long term care setting options available to the individual.

(c) *Evaluation for NF services.* For individuals for whom NF placement is considered an appropriate option by the evaluator (per the evaluation in paragraphs (a) and (b)) of this section), the evaluator must assess what services for MI or ID the individual may need which are offered as part of standard NF services, including behavioral health services and specialized rehabilitative services described at §§ 483.40 and 483.65, respectively.

(d) *Data.* At a minimum, the data relied on to perform the evaluation must include the data listed in § 483.128(e).

(e) *Relationship to NF level of care.* Evaluations to determine whether an individual meets the State's NF level of

care criteria are not part of the PASRR process, but PASRR evaluators should confirm that the individual has been accurately assessed as meeting the State's NF level of care, and may consider the individual's level of care assessment as part of the analysis of the individual's total needs as described in this section.

■ 37. Section 483.134 is revised to read as follows:

§ 483.134 Evaluating the need for specialized services.

(a) *Basic rule.* For each NF applicant with MI or ID who is recommended for NF placement per § 483.132, and each NF resident with MI or ID, the evaluator must assess:

(1) The individual's ability to engage in:

(i) Activities of daily living; and

(ii) Instrumental activities of daily living.

(2) The level of support that would be needed to assist the individual to perform these activities successfully in the NF or while living in the community; and

(3) Whether the level of support needed can be provided by standard NF services or whether specialized services, as defined at § 483.120, are required.

(b) *Review of specialized services.* If specialized services are already being provided to a NF resident, the evaluator must assess whether changes need to be made to the specialized services included in the resident's care plan.

(c) *Data.* At a minimum, the data relied on to perform the evaluation must include the data listed in § 483.128(e).

§ 483.136 [Removed and Reserved]

■ 38. Section 483.136 is removed and reserved.

Subpart E—Appeals of Discharges, Transfers, and Preadmission Screening and Resident Review (PASRR) Actions

■ 39. The heading for subpart E is revised to read as set forth above.

■ 40. Section 483.204 is amended by revising paragraph (a)(2) to read as follows:

§ 483.204 Provision of a hearing and appeal system.

(a) * * *

(2) An individual who has been adversely affected by any Level I identification or Level II PASRR determination made by the State under subpart C of this part to appeal that Level I identification screen or Level II determination.

* * * * *

Dated: January 8, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: January 24, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–03081 Filed 2–14–20; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 34 February 20, 2020

Part IV

The President

Executive Order 13906—Amending Executive Order 13803—Reviving the National Space Council

Federal Register
Vol. 85, No. 34
Thursday, February 20, 2020

Presidential Documents

Title 3—

The President

Executive Order 13906 of February 13, 2020

Amending Executive Order 13803—Reviving the National Space Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Membership of the Council.* Section 2(b) of Executive Order 13803 of June 30, 2017 (Reviving the National Space Council) is hereby amended to read as follows:

''(b) The Council shall be composed of the following members:

(i) The Vice President, who shall be Chair of the Council;

(ii) The Secretary of State;

(iii) The Secretary of Defense;

(iv) The Secretary of Commerce;

(v) The Secretary of Transportation;

(vi) The Secretary of Energy;

(vii) The Secretary of Homeland Security;

(viii) The Director of National Intelligence;

(ix) The Director of the Office of Management and Budget;

(x) The Assistant to the President for National Security Affairs;

(xi) The Assistant to the President for Economic Policy;

(xii) The Assistant to the President for Domestic Policy;

(xiii) The Administrator of the National Aeronautics and Space Administration;

(xiv) The Director of the Office of Science and Technology Policy;

(xv) The Chairman of the Joint Chiefs of Staff; and

(xvi) The heads of other executive departments and agencies (agencies) and other senior officials within the Executive Office of the President, as determined by the Chair.''

Sec. 2. *Revocation of Quarterly Reporting Requirement.* The first sentence of section 4(c) of Executive Order 13803 is hereby revoked.

Sec. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 13, 2020.

[FR Doc. 2020–03556
Filed 2–19–20; 11:15 am]
Billing code 3295–F0–P

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