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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AN90

High-3 Calculation for Certain Privatized Senate Restaurants and House Food Services Employees and Annuitants Covered Under the Civil Service Retirement System and Federal Employees' Retirement System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to implement statutory provisions that guide the way in which OPM must compute annuities of certain career civilian United States Senate Restaurants employees of the Architect of the Capitol and United States House Food Service employees who were permitted to retain Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS) coverage after they became employees of a private contractor when food services operations were converted to a private contract.

DATES: Effective April 14, 2020.

FOR FURTHER INFORMATION CONTACT: Jane Bancroft, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

Introduction

On January 6, 2020, OPM issued a proposed rule at 85 FR 467 for the purpose of proposing regulations meant to implement the provisions of Public Law 110–279,122 Stat. 2604 (2008) (codified at 2 U.S.C. 2051), as amended by Public Law 116–21, 133 Stat. 903 (2019), which allowed United States Senate Restaurants employees the ability to elect to retain CSRS and FERS coverage after the Architect of the Capitol transferred its food services functions to a private contractor. In 2019, Congress amended 2 U.S.C. 2051 by requiring that the basic pay paid by the food services contractor be treated as ''basic pay'' for purposes of retirement provisions. OPM is also correcting an oversight related to its publication of rules implementing the provisions of section 111 of Public Law 99–500, 100 Stat. 1783–348 (1986). The enactment of these provisions similarly allowed House of Representatives food services employees to elect to retain CSRS and FERS retirement coverage when the House transferred its food services functions to a private contractor. OPM's regulations implementing these provisions were published at 53 FR 10055 (1988) and were promulgated under 5 CFR 831.202. Although OPM's regulations provided rules associated with affected former House food services employees covered under CSRS, OPM did not publish regulations associated with affected former House food services employees under FERS. Because this rule proposes to amend OPM's preexisting House food services regulations at 5 CFR 831.202 to include affected former Senate Restaurants employees as a population subject to this regulation, and because OPM is proposing equivalent regulations affecting former Senate Restaurants employees covered under FERS at 5 CFR 842.110, OPM is proposing to clarify that affected former House food services employees covered under FERS is also a population subject to the regulations promulgated under 5 CFR 842.110.

The public comment period on the proposed rule ended March 6, 2020. OPM received one written comment from a private citizen. The commenter stated that he or she did not believe that employees of private companies who work in the Capitol building should be given public benefits not afforded other employees of private companies. Having considered the comment, OPM concluded that it may not adopt the commenter's suggestion. Because the retirement benefits afforded to parties in this circumstance are permitted by statute, OPM's rules implementing those provisions may not alter the statutory provisions enacted. As published January 6, 2020, (85 FR 467), the proposed rule contains an error that needs to be corrected. The percentage rate under Employee Deductions is changed from 1.8 percent to 1.3 percent because 1.8 percent is a typographical error.

We added ''Senate Restaurants employees will be covered by Civil Service Retirement System Offset for the period of employment with the contractor.'' to subpart B-Coverage, § 831.202(a). We wanted to add clarification that CSRS employees of the Senate Restaurants who went to work for the contractor would be treated as CSRS Offset employees for their period of employment with the contractor.

Background

On October 18, 1986, Congress enacted Public Law 99–500, 100 Stat. 1783–348 (1986), which allowed food service employees for the House of Representatives to elect to retain coverage under CSRS and FERS prior to becoming employees of a private contractor after the food services operations for the House was transferred to a private contract on January 3, 1987. Section 111(c)(1) of this Act provided that OPM must publish regulations to implement these provisions. As a result, on February 19, 1987, OPM published interim regulations associated with this Act at 52 FR 5069 (1987) (promulgated under 5 CFR 831.307). OPM did not receive comments on this interim rule, and on March 29, 1988, it issued a final rule adopting its interim rule (53 FR 10055 (1988)). While OPM's rule promulgated regulations related to former House food services employees covered under CSRS, it did not provide equivalent regulations for former House food services employees covered under FERS.

Similarly, on September 16, 2008, Senate Restaurants employees of the Architect of the Capitol became employees of a private corporation after the food services operations for the Senate Restaurants were transferred to a private contract. Prior to this transfer, Congress enacted Public Law 110–279, 122 Stat. 2604 (2008) (codified at 2 U.S.C. 2051), which allowed Senate Restaurants employees to elect to retain coverage under CSRS and FERS upon transfer. Unlike the 1987 House food service employee provisions, the Senate Restaurants employees' provisions capped the rate of basic pay of affected Senate Restaurants employees at the rates of basic pay they were paid by the

Architect of the Capitol prior to transfer to the private contract in 2008.

On June 12, 2019, Congress enacted technical corrections to the 2008 Act related to Senate Restaurants employees, removing language from 2 U.S.C. 2051(c)(2)(A)(ii) that required OPM to cap the basic pay at the rate employees received prior to transfer in 2008. See Public Law 116–21, 133 Stat. 903 (2019). The 2019 provisions required OPM to begin treating the payments made by the food service contractor as ''basic pay'' for purposes of retirement provisions.

On January 6, 2020, OPM published a proposal to ensure implementation of Public Law 110–279, 122 Stat. 2604 (2008) and Public Law 116–21,133 Stat. 903 (2019). Additionally, OPM is clarifying that affected former House food services employees covered under FERS are also included as an affected population in accordance with Public Law 99–500, 100 Stat. 1783–348 (1986).

Employee Deductions

As employees of a private contractor, House food services and Senate Restaurants employees are covered under Social Security. Therefore, for those employees covered under CSRS, retirement deductions for the Civil Service Retirement and Disability Fund are reduced so that the total contribution to the Old-Age, Survivors and Disability Insurance (OASDI) portion of Social Security and the Civil Service Retirement and Disability Fund does not exceed what affected individuals would be contributing as Congressional employees. For calendar year 2019, the employee deduction rate for CSRS Offset Congressional employees is 1.3 percent of basic pay. FERS-covered employees continue to have OASDI taxes as well as the FERS employee deduction for Congressional employees withheld from basic pay.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which directs 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). This rule is not a ''significant regulatory action,'' under Executive Order 12866.

Reducing Regulation and Controlling Regulatory Costs

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

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

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

Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

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

Paperwork Reduction Act

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

List of Subjects

5 CFR Part 831

Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR parts 831 and 842, as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 831.202 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 831.204 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Pub. L. 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Pub. L. 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Pub. L. 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337, and under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Pub. L. 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164; Subpart P also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Subpart Q also issued under 5 U.S.C. 8336a; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Pub. L. 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Pub. Law 101–508, 104 Stat. 1388–328.

■ 2. Amend § 831.202 by:
■ a. Revising the section heading;
■ b. Revising paragraphs (a), (b)(1) and (3); and
■ c. Adding paragraphs (e) and (f).

The additions and revisions to read as follows:

§ 831.202 Continuation of coverage for food service employees of the House of Representatives and the Senate Restaurants.

(a) Congressional employees who were covered by the Civil Service Retirement System and provide food service operations for the House of Representatives or the Senate Restaurants can elect to continue their retirement coverage under subchapter III of chapter 83 of title 5, United States Code, when such food service operations are transferred to a private contractor. Senate Restaurants employees will be covered by Civil Service Retirement System Offset for the period of employment with the contractor. These regulations also apply to any successor contractors.

(b) * * *

(1)(i) Be a Congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol, or

(ii) Be a Senate Restaurants employee who is an employee of the Architect of the Capitol on July 17, 2008;

* * * * *

(3) Elect to remain covered under civil service retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives or the Senate Restaurants to a private contractor; and

* * * * *

(e) Beginning with annuity payments commencing on or after April 14, 2020, the rate of basic pay paid by a Contractor (defined by 2 U.S.C. 2051(a)(2)) to a covered former Senate Restaurants Employee (defined by 2 U.S.C. 2051(a)(1)) for any period of continuous service performed as an employee of the contract shall be deemed to be basic pay for purposes of 5 U.S.C. 8331(3) and (4).

(f) The agency contributions and employee deductions that must be paid in accordance with 5 U.S.C. 8423 and 2 U.S.C. 2051(c)(6)(A)(ii) for the period on or after June 12, 2019, until April 14, 2020 must be treated in accordance with § 831.111 of this chapter.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM-BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 842.110 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106 and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Pub. L. 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042.

■ 4. Add § 842.110 to subpart A to read as follows:

Subpart A—Coverage

§ 842.110 Continuation of coverage for food service employees of the House of Representatives or the Senate Restaurants.

(a) *Election.* Congressional employees who were covered by FERS and provide food service operations for the House of Representatives or the Senate Restaurants can elect to continue their FERS retirement coverage when such food service operations are transferred to a private contractor. These regulations also apply to any successor contractors.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must:

(1)(i) Be a Congressional employee (as defined in sec. 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol; or

(ii) Be a Senate Restaurants employee who is an employee of the Architect of the Capitol on July 17, 2008;

(2) Be subject to FERS;

(3) Elect to remain covered under FERS retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives or the Senate Restaurants to a private contractor; and

(4) Become employed to provide food services under contract without a break in service. A ''break in service'' means a separation from employment of at least three calendar days.

(c) *Employee deductions.* An employee who elects to continue coverage under FERS is deemed to consent to deductions from his or her basic pay for the Civil Service Retirement and Disability Fund in the amount determined in accordance with 5 U.S.C. 8422. The employer providing the food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The employer providing food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions under 5 U.S.C. 8423 that would be required if the individual were a Congressional employee covered by the Federal Employees Retirement System.

(e) *Basic pay of covered former Senate Restaurants Employees.* Beginning with annuity payments commencing on or after April 14, 2020, the rate of basic pay paid by a Contractor (defined by 2 U.S.C. 2051(a)(2)) to a covered former Senate Restaurants Employee (defined by 2 U.S.C. 2051(a)(1)) for any period of continuous service performed as an employee of the contract shall be deemed to be basic pay for purposes of 5 U.S.C. 8401(3)–(4).

(f) *Retroactive agency contributions and employee deductions related to covered former Senate Restaurants Employees.* The agency contributions and employee deductions that must be paid in accordance with 5 U.S.C. 8423 and 2 U.S.C. 2051(c)(6)(A)(ii) for the period on or after June 12, 2019, until April 14, 2020 must be treated in accordance with § 841.505 of this part.

[FR Doc. 2020–07100 Filed 4–13–20; 8:45 am]

BILLING CODE 6325–23–P

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulations Q; Docket No. R–1707]

RIN 7100–AF81

Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks From the Supplementary Leverage Ratio

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule and request for comment.

SUMMARY: In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 (COVID–19) and current strains in U.S. financial markets, the Board is issuing an interim final rule that revises, on a temporary basis for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations, the calculation of total leverage exposure, the denominator of the supplementary leverage ratio in the Board's capital rule, to exclude the on-balance sheet amounts of U.S. Treasury securities and deposits at Federal Reserve Banks. This exclusion has immediate effect and will remain in effect through March 31, 2021. The Board is adopting this interim final rule to allow bank holding companies, savings and loan holding companies, and intermediate holding companies subject to the supplementary leverage ratio increased flexibility to continue to act as financial intermediaries. The tier 1 leverage ratio is not affected by this rulemaking.

DATES: This rule is effective April 14, 2020. Comments on the interim final rule must be received no later than May 29, 2020.

ADDRESSES: You may submit comments, identified by Docket No. R–1707; RIN 7100–AF81, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, Associate Director, (202) 530–6360; Constance Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6316; Sviatlana Phelan, Lead Financial Institution Policy Analyst, (202) 912–4306; or Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973–6862, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–5270; Andrew Hartlage, Counsel, (202) 452–6483; Jeffery Zhang, Attorney, (202) 736–1968; or Jasmin Keskinen, Legal Assistant, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Background

Recent events have significantly and adversely impacted global financial markets. The spread of the Coronavirus Disease 2019 (COVID–19) has slowed economic activity in many countries, including the United States. In particular, sudden disruptions in financial markets have caused banking organizations' balance sheets to expand due to customer draws on credit lines, acquisition of significant amounts of U.S. Treasury securities (Treasuries), as well as other financial intermediary activities. As a result, banking organizations have been making substantial deposits in their accounts at Federal Reserve Banks (deposits at Federal Reserve Banks) and these trends are expected to continue to increase temporarily while banking organizations respond to disruptions in the financial markets.

For a bank holding company, savings and loan holding company, or U.S. intermediate holding company required to be established or designated under section 252.153 of the Board's Regulation YY (holding company) that is a global systemically important bank holding company (GSIB) or subject to Category II or Category III capital standards, the capital rule requires a minimum supplementary leverage ratio of 3 percent, measured as the ratio of a banking organization's tier 1 capital to its total leverage exposure.[1] Total leverage exposure, the denominator of the supplementary leverage ratio, includes certain off-balance sheet exposures in addition to on-balance sheet assets.

GSIBs also are subject to enhanced supplementary leverage ratio (eSLR) standards.[2] Under the eSLR, GSIB top-tier bank holding companies must maintain a supplementary leverage ratio greater than 3 percent plus a leverage buffer of 2 percent to avoid limitations on the banking organization's capital distributions and certain discretionary bonus payments.[3]

II. The Interim Final Rule

In contrast to the risk-based capital requirements, a leverage ratio does not differentiate the amount of capital required by exposure type. Rather, a leverage ratio puts a simple and transparent lower bound on banking organization leverage. A leverage ratio

[1] *See* 84 FR 59230 (Nov. 1, 2019). Holding companies that are subject to Category II standards include those with: (1) At least $700 billion in total consolidated assets or (2) at least $75 billion in cross-jurisdictional activity and at least $100 billion in total consolidated assets. Depository institution holding companies that are subject to Category III standards include those with: (1) At least $250 billion in average total consolidated assets or (2) at least $100 billion in average total consolidated assets and at least $75 billion in average total nonbank assets, average weighted short-term wholesale funding; or average off-balance sheet exposure. *See* 12 CFR 217.2. Depository institutions may also be subject to the supplementary leverage ratio.

[2] *See* 79 FR 24528 (May 1, 2014); 80 FR 49082 (August 14, 2015).

[3] GSIB depository institution subsidiaries must maintain a 6-percent supplementary leverage ratio to be considered ''well capitalized'' under the Board's prompt corrective action (PCA) framework. 79 FR 24528.

protects against underestimation of risk both by banking organizations and by risk-based capital requirements and serves as a complement to risk-based capital requirements. Under the supplementary leverage ratio, banking organizations include all their on-balance sheet assets, including Treasuries and deposits at Federal Reserve Banks, in total leverage exposure.

The ability of institutions to hold certain assets, most notably deposits held at a Reserve Bank for a depository institution and Treasury securities, is essential to market functioning, financial intermediation, and funding market activity, particularly in periods of financial uncertainty. In response to volatility and market strains in recent weeks, the Federal Reserve has taken several actions to support market functioning and the flow of credit to the economy. The response to COVID–19 has notably increased the size of the Federal Reserve's balance sheet and resulted in a large increase in the amount of reserves in the banking system. The Federal Reserve's balance sheet will continue to expand in the near term, as asset purchases continue and recently-announced facilities to support the flow of credit to households and business begin operations. In addition, market participants have liquidated a high volume of assets and deposited the cash proceeds with banking organizations in recent weeks, further increasing the size of banking organizations' balance sheets.

Absent any adjustments, the resulting increase in the size of banking organizations' balance sheets may cause a sudden and significant increase in the regulatory capital needed to meet a holding company's supplementary leverage ratio requirement. This is particularly the case for many holding companies subject to the supplementary leverage ratio, which are significant participants in financial intermediation services, including as primary dealers in the open market operations of the Federal Open Market Committee (FOMC) and as major custodians of securities.

The Federal Reserve's role in conducting monetary policy includes achieving rate control through open market operations of Treasury securities and supporting Treasury market functioning more broadly. A liquid and smooth functioning of the Treasury market is important to monetary policy implementation and financial stability. Open market operations have long been used to supply reserves to the banking system and to help control the federal funds rate and keep it in the target range set by the FOMC. Part of the crisis response in recent weeks has been a substantial increase in the size and frequency of open market operations.

In order to facilitate holding companies' significant increase in reserve balances resulting from the Federal Reserve's asset purchases and the establishment of various programs to support the flow of credit to the economy, as well as the need for these institutions to continue to accept exceptionally high levels of customer deposits, the Board is issuing this interim final rule to temporarily exclude Treasuries and deposits at Federal Reserve Banks from total leverage exposure for these institutions through March 31, 2021, as calculated under the Board's capital rule.[4] For purposes of reporting the supplementary leverage ratio as of June 30, 2020, banking organizations subject to this interim final rule must reflect the exclusion of Treasuries and deposits at Federal Reserve Banks from total leverage exposure, as if this interim final rule had been in effect for the entire second quarter of 2020. This will have the effect of reducing any constraint imposed by the supplementary leverage ratio on these exposures as these banking organizations respond to market disruptions. The Board is providing the temporary exclusion contained in the interim final rule in order to allow banking organizations to expand their balance sheets as appropriate to continue to serve as financial intermediaries, rather than to allow banking organizations to increase capital distributions, and will administer the interim final rule accordingly. This interim final rule does not affect the tier 1 leverage ratio, which will continue to serve as a backstop for all banking organizations subject to the capital rule. [5]

The interim final rule revises the measure of total leverage exposure on a temporary basis for the limited purposes of the Board's capital rule and reporting the supplementary leverage ratio on FR Y–9C only.[6] Currently, holding companies report their supplementary leverage ratios on Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), Schedule A; and the Board's FR Y–9C report, Schedule HC–R.[7] This rule does not affect the reporting of the supplementary leverage ratio on the interagency FFIEC reporting schedules. The Board is making conforming changes to the Board's Y–9C to reflect the interim final rule's revisions to the supplementary leverage ratio. In addition, the interim final rule provides for the necessary modifications of the disclosure requirements of section 173 of the capital rule, as applicable to holding companies, to reflect the exclusion provided by the interim final rule. The Board also is revising the FR Y–15 to prevent the interim final rule's temporary exclusions from total leverage exposure from impacting the measurement of the size systemic indicator. The changes to the Board's information collections are described in the Paperwork Reduction Act discussion below.

The Board seeks comment on all aspects of this interim final rule.

Question 1: Discuss the advantages and disadvantages of removing Treasuries and deposits at Federal Reserve Banks from total leverage exposure. How does the interim final rule support the objectives of facilitating financial intermediation by banking organizations? What other steps could be taken to support this objective in the current environment? How does the interim final rule impact the concurrent objective of safety and soundness? Is the end date of March 31, 2021, for the exclusion under the interim final rule consistent with the objectives of the rule or should an earlier or a later end date be used instead, and, if so, why?

Question 2: What additional assets or exposure types should the Board

[4] The Board, together with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, recently issued a final rule, effective April 1, 2020 (85 FR 4569 (Jan. 27, 2020)), which implements section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act by amending the capital rule to allow a banking organization that qualifies as a custodial banking organization to exclude from total leverage exposure deposits at qualifying central banks, subject to limits (402 rule). The 402 rule came into effect on April 1, 2020. Holding companies will be able to exclude deposits at Federal Reserve Banks from total leverage exposure under this interim final rule and those that are also custodial banking organizations will also be able to exclude the lesser of deposits at foreign qualifying central banks and amount of funds in deposit accounts at the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts at the custodial banking organization.

[5] The tier 1 leverage ratio measures the ratio of tier 1 capital to average total consolidated assets. Banking organizations subject to the capital rule must maintain a minimum tier 1 leverage ratio of 4 percent.

[6] This interim final rule will also impact the requirements of the Board's total loss-absorbing capacity rule. Specifically, the minimum total loss-absorbing capacity and long-term debt requirements based on total leverage exposure will be impacted by the interim final rule's exclusion of assets from total leverage exposure. *See* 12 CFR part 252, subparts G and P.

[7] Banking organizations that are required to submit the FR Y–14A on April 6, 2020, have the option to include these changes in their stress test results, for purposes of their projections in the second quarter of 2020 through the first quarter of 2021.

consider to exclude temporarily from total leverage exposure in order to achieve the interim final rule's objectives? For example, should the Board exclude deposits at certain foreign central banks, foreign sovereign debt instruments, or exposures guaranteed by the U.S. federal government and, if yes, why? Should the Board exclude any specific repo-style transactions that would support banking organizations' role as financial intermediaries, and, if yes, why?

Question 3: The interim final rule modifies the supplementary leverage ratio for purposes of the Board's capital rule and, indirectly, other rules including the Board's total loss-absorbing capacity rule, but includes revisions to the Board's FR Y–15 so that the size systemic indicator is not impacted by this interim final rule. What would be the advantages and disadvantages of the Board temporarily excluding Treasuries and deposits at Federal Reserve Banks from the size systemic indicator on the FR Y–15?

III. Impact Assessment

In the past, the supplementary leverage ratio requirement has not prevented banking organizations from supporting the orderly functioning of the Treasury market or serving as financial intermediaries. However, as a result of the ongoing COVID–19 crisis, stress has materialized in numerous financial markets. In particular, liquidity conditions in the Treasury market have deteriorated in past weeks, evidenced by widening bid-ask spreads that remain elevated despite increased open market operations by the Federal Reserve. Large holding companies have cited balance sheet constraints for their broker-dealer subsidiaries as an obstacle to supporting the Treasury market. Specifically, the supplementary leverage ratio can limit holding companies' ability to own Treasuries outright as well as to increase deposits at the Federal Reserve Banks.

Temporarily excluding Treasuries and deposits at Federal Reserve Banks from the denominator of the supplementary leverage ratio increases leverage exposure capacity of a banking organizations. In particular, using data from the fourth quarter of 2019, the Board expects that the interim final rule would temporarily decrease binding tier 1 capital requirements by around $17 billion for bank holding companies.[8] This impact assessment does not take into account the exclusion of qualifying central bank deposits for custodial banking organizations as outlined in Section 402 in EGRRCPA.[9] Beginning April 1, 2020, custodial banking organizations will also be able to exclude deposits with qualifying foreign central banks subject to the limits in Section 402, in addition to the deductions under this rule. In light of the proposed exclusions under this rule, this temporary reduction in capital requirements is expected to increase leverage exposure capacity at holding companies by around $1.6 trillion. In particular, the Board expects that the increase in leverage exposure capacity will facilitate intermediation by broker-dealer subsidiaries of bank holding companies and therefore increase liquidity in stressed financial markets. Similarly, the Board expects that the increase in leverage exposure capacity will facilitate increases in customer deposits at banking organizations subject to the interim final rule, and therefore ensure that these banking organizations remain able to fulfill this important function.

Aside from increases in balance sheets caused by the recent volatility in Treasury markets, the balance sheets of banking organizations also have increased as households and businesses draw down credit lines and customer deposits increase. If holding companies become constrained by supplementary leverage ratio requirements, this could adversely affect their ability to intermediate financial markets and hamper their ability to provide lines of credit to households and businesses. Therefore, the temporary increase in leverage exposure capacity should have countercyclical benefits as it supports financial market liquidity and increases these banking organizations' lending capacities in a time of unprecedented economic distress.

Although a temporary increase in leverage exposure capacity could lead to an increase in overall leverage in the banking system, the exclusion of Treasuries and deposits at Federal Reserve Banks will help alleviate ongoing stresses on the financial system and the real economy arising from COVID–19. As Treasuries and deposits at Federal Reserve banks are free of credit risk, their exclusion will also not incentivize risk-taking by banking organizations. The Board will closely monitor the balance sheets of banking organizations subject to the interim final rule in the coming months with a particular view toward any resulting increase in risks. In addition, the tier 1 leverage ratio will continue to act as a backstop for all bank holding companies and savings and loan holding companies subject to the capital rule.

IV. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[10] Pursuant to section 553(b)(3)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11]

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**. As discussed above, the spread of COVID–19 has slowed economic activity in many countries, including the United States. Specifically, the significant and sudden disruptions in financial markets have caused banking organizations to receive inflows of deposits—contributing to the increase of deposits at Federal Reserve Banks—and to acquire significant amounts of Treasuries. These deposits at Federal Reserve Banks and Treasuries are essential to the normal functioning of the financial sector, especially in times of stress. If holding companies cannot sustain the rapid increase in deposits at Federal Reserve Banks and Treasuries, the financial sector would experience a marked decline in financial intermediation and a further increase in general market volatility. Because the rule will mitigate these potential negative effects, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[12]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[13] Because the rules relieve a restriction, the interim final rule is

[8] The interim final rule would reduce the amount of tier 1 capital required to meet the supplementary leverage ratio requirements by around $76 billion at holding companies.

[9] 85 FR 4569 (January 27, 2020).

[10] 5 U.S.C. 553.

[11] 5 U.S.C. 553(b)(3)(B).

[12] 5 U.S.C. 553(b)(3)(B); 553(d)(3).

[13] 5 U.S.C. 553(d).

exempt from the APA's delayed effective date requirement.[14]

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[15] If a rule is deemed a ''major rule'' by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[16]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States–based enterprises to compete with foreign-based enterprises in domestic and export markets.[17]

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[18] In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[14] 5 U.S.C. 553(d)(1).

[15] 5 U.S.C. 801 *et seq.*

[16] 5 U.S.C. 801(a)(3).

[17] 5 U.S.C. 804(2).

[18] 5 U.S.C. 808.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The Board has reviewed this interim final rule pursuant to authority delegated by the OMB.

The Board has temporarily revised certain reporting forms to accurately reflect various aspects of this interim final rule. These reporting forms are the Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), the Capital Assessments and Stress Testing reports (FR Y–14A/Q/M; OMB No. 7100–0341), and the Banking Organization Systemic Risk Report (FR Y–15, OMB No. 7100–0352). The Board also has temporarily revised the Recordkeeping and Disclosure Requirements Associated with Regulation Q (FR Q; OMB No. 7100–0313). On June 15, 1984, OMB delegated to the Board authority under the PRA to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment to extend information collections for a period not to exceed three years. Therefore, the Board is inviting comment to extend each of these information collections for three years, with the revisions discussed below.

The Board invites public comment on the following information collections, which are being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before June 15, 2020. Comments are invited on the following:

a. Whether the collections of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the collection.

Final Approval Under OMB Delegated Authority of the Temporary Revision of, and Proposal To Extend for Three Years, With Revision, of the Following Information Collections

Report Title: Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective Date: June 30, 2020.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies, securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets): 155; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 189; FR Y–9C (advanced approaches HCs): 19; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response:

Reporting

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets): 40.48 hours; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 46.45 hours; FR Y–9C (advanced approaches HCs): 48.59 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets), FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets), FR Y–9C (advanced approaches HCs), and FR Y–9LP: 1.00 hour; FR Y–9SP, FR Y–9ES, and FR Y–9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total

assets): 25,098 hours; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 35,116 hours; FR Y–9C (advanced approaches HCs): 3,693 hours; FR Y–9LP: 9,149 hours; FR Y–9SP: 42,768 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets): 620 hours; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 756 hours; FR Y–9C (advanced approaches HCs): 76 hours; FR Y–9LP: 1,736 hours; FR Y–9SP: 3,960 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

General description of report:

The FR Y–9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.[19] The FR Y–9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.[20]

The FR Y–9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs.[21] The report consists of standardized financial statements.

The FR Y–9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y–9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y–9CS is a free-form voluntary supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data items included on the FR Y–9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the Y–9 family of reports on bank holding companies (''BHCs'') pursuant to section 5 of the Bank Holding Company Act (''BHC Act'') (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)); on U.S. intermediate holding companies (''U.S. IHCs'') pursuant to section 5 of the BHC Act (12 U.S.C 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The FR Y–9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y–9CS, which is voluntary.

With respect to the FR Y–9C, Schedule HI's memoranda item 7(g), Schedule HC–P's item 7(a), and Schedule HC–P's item 7(b) are considered confidential commercial and financial information under exemption 4 of the Freedom of Information Act (''FOIA'') (5 U.S.C. 552(b)(4)), as is Schedule HC's memorandum item 2.b. for both the FR Y–9C and FR Y–9SP reports.

Aside from the data items described above, the remaining data items on the FR Y–9 reports are generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent that the instructions to the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports each respectively direct a financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information may be considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

Current Actions: The Board has temporarily revised the instructions to FR Y–9C report to accurately reflect the calculation of the supplementary leverage ratio pursuant to this interim final rule. Specifically, the Board has revised the instructions for FR Y–9C, Schedule HC–R, Line Item 45 (Advanced approaches holding companies only: Supplementary leverage ratio) to state that respondents must report the supplementary leverage ratio in a manner consistent with this interim final rule.

The Board has determined that the revisions to the FR Y–9 reports described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–9 reports for three years, with the revisions described above. These revisions would be effective for FR Y–9 reports as of dates up to and including March 31, 2021, the date after which the exclusions in this interim final rule will no longer be effective.

(2) *Report title:* Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Effective date: December 31, 2019.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to BHCs, U.S. IHCs, and savings and loan holding companies (SLHCs) [22] (collectively, ''holding companies'') with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported

[19] The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

[20] Under certain circumstances described in the FR Y–9C's General Instructions, HCs with assets under $3 billion may be required to file the FR Y–9C.

[21] A top-tier HC may submit a separate FR Y–9LP on behalf of each of its lower-tier HCs.

[22] SLHCs with $100 billion or more in total consolidated assets become members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and the FR Y–14A panel effective December 31, 2020. *See* 84 FR 59032 (November 1, 2019).

quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[23]

Estimated average hours per response: FR Y–14A: 1,085 hours; FR Y–14Q: 1,920 hours; FR Y–14M: 1,072 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 39,060 hours; FR Y–14Q: 276,480 hours; FR Y–14M: 437,376 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

The annual [24] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[25]

The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.

The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Compliance with the information collection is mandatory.

Current actions: The Board has temporarily revised the instructions to FR Y–14A report to give each banking organization that is required to submit the FR Y–14A on April 6, 2020, and April 5, 2021, the option to calculate the supplementary leverage ratio in its stress test results in accordance with this interim final rule. Please note that this revision does not require actual changes to the current FR Y–14A form and instructions.

The Board has determined that the revision to the FR Y–14A/Q/M reports described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revision would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–14A/Q/M for three years, with the revision described above. This revision would be effective for FR Y–14A reports as of December 31, 2019, and as of December 31, 2020, after which the exclusions in this interim final rule will no longer be effective.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y–14 reports pursuant to section 5(c) of the BHC Act, 12 U.S.C. 1844(c), and pursuant to section 165(i) of the Dodd-Frank Act, 12 U.S.C. 5365(i). The Board has authority to require SLHCs to file the FR Y–14 reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)). Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y–14 reports pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act, 12 U.S.C. 5311(a)(1) and 5365. In addition, section 401(g) of EGRRCPA, 12 U.S.C. 5365 note, provides that the Board has the authority to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more, and clarifies that nothing in section 401 ''shall be construed to affect the legal effect of the final rule of the Board... entitled 'Enhanced Prudential Standard for [BHCs] and Foreign Banking Organizations' (79 FR 17240 (March 27, 2014)), as applied to foreign banking organizations with total consolidated assets equal to or greater than $100 million.'' [26] The FR Y–14 reports are mandatory. The information collected in the FR Y–14 reports is collected as part of the Board's supervisory process, and therefore, such information is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). In addition, confidential commercial or financial information, which a submitter actually and customarily treats as private, and which has been provided pursuant to an express assurance of confidentiality by the Board, is considered exempt from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(3) *Report title:* Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100–0352.

Effective Date: June 30, 2020.

Frequency: Quarterly.

Respondents: The FR Y–15 panel is currently comprised of top-tier bank holding companies (BHCs), covered savings and loan holding companies (SLHCs), and intermediate holding companies (IHCs) with $50 billion or more in total consolidated assets, and any BHC designated as a global systemically important bank holding company (GSIB) [27] based on its method 1 score calculated as of December 31 of the previous calendar year that does not

[23] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

[24] In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. *See* 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[25] On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. *See* 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y–14 substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its supervised firms. However, as noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y–14 forms as part of a separate proposal. *See* 84 FR 59032, 59063.

[26] The Board's Final Rule referenced in section 401(g) of EGRRCPA specifically stated that the Board would require IHCs to file the FR Y–14 reports. *See* 79 FR 17240, 17304 (March 27, 2014).

[27] *See* 12 CFR 217.402.

otherwise meet the consolidated assets threshold for BHCs.[28] Pursuant to separate revisions to the FR Y–15 recently made by the Board, the reporting panel for the FR Y–15 will, effective June 30, 2020, consist of U.S. BHCs and SLHCs with $100 billion or more in consolidated assets, foreign banking organizations with $100 billion or more in combined U.S. assets, and any BHC designated as a GSIB.[29]

Estimated number of respondents: 43.

Estimated average hours per response: Reporting—404, Recordkeeping—1.

Estimated annual burden hours: Reporting—69,488, Recordkeeping—172.

General description of report: Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [30] directs the Board to establish enhanced prudential standards, including risk-based capital requirements, for certain large financial institutions. These standards must be more stringent than the standards applicable to other financial institutions that do not present similar risks to U.S. financial stability. Additionally, these standards must increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Board must take into account the differences among bank holding companies and nonbank financial companies.

Pursuant to the requirement to establish enhanced risk-based capital standards under section 165 of the Dodd-Frank Act, the Board published a final rule establishing a GSIB surcharge on the largest, most interconnected U.S. BHCs in August 2015.[31] The GSIB surcharge is calculated using an indicator-based approach that focuses on those aspects of a BHC's operations that are likely to generate negative externalities in the case of its failure or distress. The rule's methodologies assess six components of a BHC's systemic footprint: Size, interconnectedness, substitutability, complexity, cross-jurisdictional activity, and reliance on short-term wholesale funding. The indicators comprising these six components are reported on the FR Y–15. More generally, the FR Y–15 report is used to monitor the systemic risk profile of the institutions that are subject to enhanced prudential standards under section 165.

Additionally, section 604 of the Dodd-Frank Act requires that the Board consider the extent to which a proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system as part of its review of certain banking applications.[32] The data reported on the FR Y–15 are used by the Board to analyze the systemic risk implications of such applications.

The FR Y–15 consists of the following schedules:

- Schedule A—Size Indicator
- Schedule B—Interconnectedness Indicators
- Schedule C—Substitutability Indicators
- Schedule D—Complexity Indicators
- Schedule E—Cross-Jurisdictional Activity Indicators
- Schedule F—Ancillary Indicators
- Schedule G—Short-term Wholesale Funding Indicator

Some of the reporting requirements within the schedules overlap with data already collected in the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), the Country Exposure Report (FFIEC 009; OMB No. 7100–0035), and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100–0319). Where relevant data are already collected by those reports, the FR Y–15 automatically populates items based on the source form so that the information does not need to be reported twice. Automatically retrieved items are listed in the general instructions of the FR Y–15, under section H, titled ''Data Items Automatically Retrieved from Other Reports.''

Legal authorization and confidentiality: The Board has the authority to require BHCs, SLHCs, FBOs and IHCs, to file the FR Y–15 pursuant to, respectively, section 5 of the BHC Act (12 U.S.C. 1844), section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)), and section 5 of the BHC Act, in conjunction with section 8 of the International Banking Act (12 U.S.C. 3106). The FR Y–15 reports are mandatory. The data collected on the FR Y–15 are made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained. Such information will be accorded confidential treatment under exemption 4 of the Freedom of Information Act (FOIA) if the submitter substantiates its assertion that disclosure would likely cause substantial competitive harm. A number of the items in the FR Y–15 are retrieved from the FR Y–9C, FFIEC 101, and FFIEC 009. Confidential treatment also will extend to any automatically calculated items on the FR Y–15 that have been derived from confidential data items and that, if released, would reveal the underlying confidential data. To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

Current actions: The Board has temporarily revised the instructions to the FR Y–15 to ensure that the FR Y–15 is not impacted by the revised calculation of the supplementary leverage ratio pursuant to this interim final rule. Specifically, the Board has deleted from the FR Y–15 instructions a statement indicating that Schedule A, item 3(a), ''Other on-balance sheet assets'' will be automatically populated for banking organizations that file the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 7100–0319) for the same reporting period from FFIEC 101, Schedule A, item 2.1. Instead, all FR Y–15 respondents will be required to report Schedule A, item 3(a) according to the instructions for that item. The purpose of this temporary revision is to ensure that the systemic risk indicators reported on the FR Y–15 are not affected by the changes to the capital rule included in this interim final rule, regardless of whether conforming revisions are subsequently made to the FFIEC 101 report. This revision ensures that the size indicator continues to capture all on-balance sheet assets, consistent with the intent of the indicator.

The Board has determined that the revisions to the FR Y–15 described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–15 for three years, with the revisions described above.

(3) *Title of Information Collection:* Recordkeeping and Disclosure

[28] According to the Board's statement issued in July 2018, the Board will take no action to require BHCs and covered SLHCs with less than $100 billion in total consolidated assets to file the FR Y–15, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). *See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706b1.pdf.*

[29] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[30] Public Law 111–203 (2010); 12 U.S.C. 5365.

[31] 80 FR 49082 (August 14, 2015).

[32] Public Law 111–203, 604(d), (f); 12 U.S.C. 1842(c)(7), 1843(j)(2)(A), and 1828(c)(5).

Requirements Associated with Regulation Q.

Agency form number: FR Q.

OMB control number: 7100–0313.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

Legal authorization and confidentiality: This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).

Estimated number of respondents: 1,431 (of which 19 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—328.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—41.

Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs

Recordkeeping (Ongoing)—0.5.

Total estimated annual burden: 1,136 hours initial setup, 80,173 hours for ongoing.

Current actions: The Board has temporarily revised the FR Q information collection to reflect a revision to the disclosure requirements contained in the Board's Regulation Q. Generally, section 217.173 of the Board's Regulation Q requires each advanced approaches Board-regulated institution and a Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to section 217.172(d) of Regulation Q to make certain disclosures, which are listed in Table 13 of section 217.173. Pursuant to this interim final rule, a Board-regulated institution that is required to make such disclosures will be required exclude the balance sheet carrying value of U.S. Treasury securities funds on deposit at a Federal Reserve Bank from its disclosures under Table 13 of section 217.173.

The Board has determined that the revision to the FR Q described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–Q for three years, with the revision described above. This revision would be effective for FR Q as of dates up to and including March 31, 2021, the date after which the exclusions in this interim final rule will no longer be effective.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [33] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[34] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(3)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

[33] 5 U.S.C. 601 *et seq.*

[34] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[35] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[36] For the reasons described above, the Board finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective on immediately. Nevertheless, the Board seeks comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [37] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation

[35] 12 U.S.C. 4802(a).

[36] 12 U.S.C. 4802.

[37] 12 U.S.C. 4809.

easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

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

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

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371 and 5371 note.

Subpart G—Transition Provisions

■ 2. Add § 217.303 to read as follows:

§ 217.303 Temporary exclusions from total leverage exposure.

(a) *In general.* Subject to the limitations in paragraphs (b) and (c) of this section and notwithstanding any other requirement in this part, a Board-regulated institution that is a depository institution holding company or a U.S. intermediate holding company, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the Board-regulated institution's total leverage exposure under § 217.10(c)(4), must exclude the balance sheet carrying value of the following items:

(1) U.S. Treasury securities; and

(2) Funds on deposit at a Federal Reserve Bank.

(b) *Termination of exclusions.* The exclusions required pursuant to paragraph (a) of this section terminate after the calendar quarter ending on March 31, 2021.

(c) *Custodial banking organizations.* A custodial banking organization that is a depository institution holding company or a U.S. intermediate holding company must reduce the amount in § 217.10(c)(4)(ii)(J)(*1*) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(d) *Disclosure.* Notwithstanding Table 13 to § 217.173, a Board-regulated institution that is a depository institution holding company or a U.S intermediate holding company that is required to make the disclosures pursuant to § 217.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to § 217.173.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–07345 Filed 4–13–20; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600 and 604

RIN 3052–AD17

Organization and Functions; Farm Credit Administration Board Meetings

AGENCY: Farm Credit Administration.

ACTION: Notification of effective date.

SUMMARY: The Farm Credit Administration (FCA), on February 5, 2020, issued a final rule amending its regulations to reflect changes in FCA's organizational structure and to correct the mailing address for the McLean office. In accordance the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: The regulation amending 12 CFR part 600 and 604 published on February 5, 2020 (85 FR 6421) is effective April 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Technical information: Paul K. Gibbs, Associate Director, Office of Regulatory Policy, (703) 883–4203, TTY (703) 883–4056, gibbsp@fca.gov.

Legal information: Autumn R. Agans, Senior Attorney, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, *agansa@fca.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2019, the FCA Board approved an organizational chart that created the Office of Data Analytics and Economics. Further, a street address has been added to 12 CFR 604.425(a) and 604.440, which list the address of the FCA Board.

In accordance with 12 U.S.C. 2252(c)(1), the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is April 1, 2020.

Dated: April 2, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–07321 Filed 4–13–20; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0760; Project Identifier 2019–NE–18–AD; Amendment 39–21108; AD 2020–08–02]

RIN 2120–AA64

Airworthiness Directives; Thales AVS France SAS Global Positioning System/Satellite Based Augmentation System Receivers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Thales AVS France SAS (Thales) Global Positioning System/Satellite Based Augmentation System (GPS/SBAS) receivers installed on airplanes and helicopters. This AD was prompted by reports that Thales GPS/SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. This AD requires the installation of a software update to the aircraft navigation database and insertion of a change to the applicable airplane flight manual (AFM). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 19, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 19, 2020.

ADDRESSES: For service information identified in this final rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com;* Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Mérignac—France, Tel: +33 (0)5 24 44 77 40, *www.thalesgroup.com;* or ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email

continued.airworthiness@atr-aircraft.com. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7190; fax: 781–238–7199; email: *kirk.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Thales GPS/SBAS receivers installed on airplanes and helicopters. The NPRM published in the **Federal Register** on January 31, 2020 (85 FR 5584). The NPRM was prompted by reports that Thales GPS/SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. The NPRM proposed to require the installation of a software update to the aircraft navigation database and insertion of a change to the applicable AFM. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2019–0004, dated January 11, 2019, corrected on January 17, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> It has been determined that, in SBAS areas, in specific conditions of the GPS satellite constellation in line of sight to the aircraft, the Thales Topstar 200 LPV GPS/SBAS receiver may provide an erroneous position on its outputs, which may not be detected by the integrity check. Depending on the aircraft installation, this error may not be noticed by the flight crew.
>
> This condition, if not corrected, could possibly compromise the safety margins when the receiver is used for Localizer Performance with Vertical guidance (LPV) and/or RNP–AR (Required Navigation Performance—Authorization Required) operations.
>
> For the reasons described above, this [EASA] AD requires removal from the navigation database of LPV procedures and all RNP–AR procedures in SBAS areas, listed in the SIL. To ensure a reset of all the GPS computations which may contribute to the erroneous GPS position output, this [EASA] AD also requires, for certain ATR aeroplanes (see Note 1 of this [EASA] AD), amendment of the applicable AFM.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Task 31–61–00–800–802, ''2. FMS Database Update for Multifunction Display (MFD)'' of the Sikorsky Aircraft Corporation, Aircraft Maintenance Manual (AMM) SA S76D–AMM–000, 31–61–00, dated November 30, 2017. This Task provides instructions for updating the MFD on affected Sikorsky aircraft.

The FAA also reviewed ATR72 AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated June 1, 2018, and ATR42–400/500 Series AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated July 1, 2018. These service documents provide instructions on updating the navigation databases installed on affected ATR airplanes.

The FAA also reviewed Thales Service Information Letter (SIL) Doc. No. THAV/SIL–1308, Issue 7, dated September 28, 2018. The SIL describes procedures to upload navigational database using Thales PMAT software on affected ATR airplanes.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 45 Thales GPS/SBAS receivers installed on, but not limited to, GIE Avions de Transport Régional model ATR42 airplanes and Sikorsky Aircraft Corporation model S–76D helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Update navigation database for GPS/SBAS receiver.	1 work-hour × $85 per hour = $85	$0	$85	$3,825
Update AFM	3 work-hours × $85 per hour = $255	0	255	11,475

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds

necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–08–02 Thales AVS France SAS: Amendment 39–21108; Docket No. FAA–2019–0760; Project Identifier 2019–NE–18–AD.

(a) Effective Date

This AD is effective May 19, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Thales AVS France SAS (Thales) Global Positioning System/Satellite Based Augmentation System (GPS/SBAS) receivers, Topstar 200 LPV, part numbers (P/Ns) C17149JA02 and C17149HA01. These GPS/SBAS receivers are installed on, but not limited to, ATR–GIE Avions de Transport Régional (ATR) model ATR42 and ATR72 airplanes and Sikorsky Aircraft Corporation model S–76D helicopters, respectively.

(d) Subject

Joint Aircraft System Component (JASC) Code 3457, Global Positioning System.

(e) Unsafe Condition

This AD was prompted by reports that Thales GPS/SBAS receivers provided, under certain conditions, erroneous outputs on aircraft positions. The FAA is issuing this AD to prevent erroneous aircraft position outputs from the Thales GPS/SBAS receivers. The unsafe condition, if not addressed, could result in controlled flight into terrain and loss of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) For operators of affected ATR model ATR42 and ATR72 airplanes:

(i) Update the aircraft's navigation database within 30 days after the effective date of this AD using the software upload instructions, as applicable, in the following:

(A) ATR72 Aircraft Maintenance Manual (AMM) Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated June 1, 2018.

(B) ATR42–400/500 Series AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated July 1, 2018.

(C) Thales Service Information Letter (SIL) Doc. No. THAV/SIL–1308, Issue 7, dated September 28, 2018.

(ii) [Reserved]

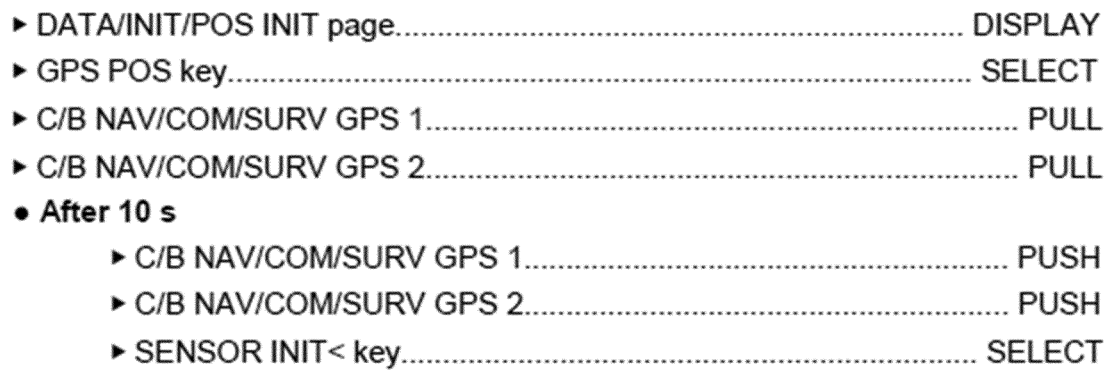
(2) For operators of affected ATR model ATR42 and ATR72 airplanes:

(i) Within 30 days after the effective date of this AD, amend Section 1.2 ''Each Flight Checks'' of the pre-flight section in the applicable airplane flight manual by inserting the change shown in Figure 1 and Figure 2 to paragraph (g)(2)(i) of this AD.

Figure 1 to Paragraph (g)(2)(i) – Reset Instructions for 1 GPS Receiver Installed

- ▸ DATA/INIT/POS INIT page..... DISPLAY
- ▸ GPS POS key..... SELECT
- ▸ C/B NAV/COM/SURV GPS 1..... PULL
- • **After 10 s**
  - ▸ C/B NAV/COM/SURV GPS 1..... PUSH
  - ▸ SENSOR INIT< key..... SELECT

Figure 2 to Paragraph (g)(2)(i) – Reset Instructions for 2 GPS Receivers Installed



(ii) Before each flight, power cycle the Thales GPS/SBAS receiver unit.

(3) For operators of Sikorsky S–76D helicopters, within 30 days after the effective date of this AD, update the aircraft's navigation database using the instructions in TASK 31–61–00–800–802, ''2. FMS Database Update for Multifunction Display (MFD)'' of the Sikorsky Aircraft Corporation, AMM SA S76D–AMM–000, 31–61–00, dated November 30, 2017.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

(1) For more information about this AD, contact Kirk Gustafson, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7190; fax: 781–238–7199; email: *kirk.gustafson@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0004, dated January 11, 2019 (corrected on January 17, 2019), for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0760.

(j) Material Incorporated by Reference

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

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

(i) Sikorsky Aircraft Corporation, Aircraft Maintenance Manual (AMM) SA S76D–AMM–000, 31–61–00, dated November 30, 2017.

(ii) ATR72 AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated June 1, 2018.

(iii) ATR42–400/500 Series AMM Job Instruction Cards, Doc. No. 45–11–00 LDG 10030–004, dated July 1, 2018.

(iv) Thales Service Information Letter Doc. No. THAV/SIL–1308, Issue 7, dated September 28, 2018.

(3) For Sikorsky Aircraft Corporation service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com.*

(4) For Thales service information identified in this AD, contact Thales AVS France SAS, 75–77 Avenue Marcel Dassault, 33700 Mérignac—France, Tel: +33 (0)5 24 44 77 40, *www.thalesgroup.com.*

(5) For ATR service information identified in this AD, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email continued.airworthiness@atr-aircraft.com.

(6) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued on April 8, 2020.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07746 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0363; Product Identifier 2018–SW–010–AD; Amendment 39–19894; AD 2020–07–15]

RIN 2120–AA64

Airworthiness Directives; PZL Świdnik S.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all PZL Świdnik S.A. Model PZL W–3A helicopters. This AD was prompted by a report of a cracked nose landing gear (NLG) bellcrank assembly. This AD requires a one-time inspection of the NLG bellcrank assembly for discrepancies and replacement if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 29, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 29, 2020.

The FAA must receive comments on this AD by May 29, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact PZL-Świdnik S.A., Al. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone (+48) 664 424 798; fax (+48) 817 225 710; internet *www.pzl.swidnik.pl.* You may view this referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0363.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0363; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5116; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0035–E, dated February 6, 2018; corrected March 16, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all PZL-Świdnik S.A. Model PZL W–3A helicopters. The MCAI also applies to PZL-Świdnik S.A. Model PZL W–3AS helicopters, which are not type certificated in the U.S. EASA advises that cracking in a NLG bellcrank assembly, part number (P/N) 30.42.010.01.00, was due to reduced wall thickness, which resulted from a manufacturing deficiency. EASA advises that this condition, if not detected and corrected, could lead to failure of the NLG, possibly resulting in damage to the helicopter and injury of the occupants. To address this potentially unsafe condition, EASA requires a one-time inspection of the affected NLG assembly installed on helicopters currently in service and replacement if necessary.

You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0363.

Related Service Information Under 1 CFR Part 51

Wytwórnia Sprzętu Komunikacyjnego has issued Mandatory Bulletin No. BO–37–18–292, Revision 1, dated February 5, 2018. This service information describes procedures for a one-time general visual inspection of the NLG bellcrank assembly for cracks; measurement of reference dimensions or ultrasonic inspection for manufacturing defects; and bellcrank assembly replacement including related investigative actions (inspection of the NLG for hydraulic fluid contamination and free movement of the piston rod) if necessary.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reason stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0363; Product Identifier 2018–SW–010–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on those comments.

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$0	$255

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
5 work-hours × $85 per hour = $425	$5,000	$5,425

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866; and

2. Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–07–15 PZL Świdnik S.A.: Amendment 39–19894; Docket No. FAA–2020–0363; Product Identifier 2018–SW–010–AD.

(a) Effective Date

This AD becomes effective April 29, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all PZL Świdnik S.A. Model PZL W–3A helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code 3200, Landing Gear System.

(e) Reason

This AD was prompted by a report of a cracked nose landing gear (NLG) bellcrank assembly. The FAA is issuing this AD to address cracking of the NLG bellcrank assembly due to a manufacturing deficiency. This condition, if not addressed, could lead to failure of the NLG, possibly resulting in damage to the helicopter and injury of the occupants.

(f) Compliance

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

(g) Definition

For purposes of this AD, affected NLG bellcrank assemblies have part number (P/N) 30.42.010.00.00.

(h) Inspection

For helicopters having serial numbers up to 3X.10.12 inclusive: Within 5 landings after the effective date of this AD, inspect the affected NLG bellcrank assembly for discrepancies, in accordance with Chapter II, paragraph 2., of Wytwórnia Sprzętu Komunikacyjnego Mandatory Bulletin No. BO–37–18–292, Revision 1, dated February 5, 2018 (Bulletin BO–37–18–292). For purposes of this AD, a ''landing'' is counted any time the helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shut down.

(i) Replacement

During the inspection required by paragraph (h) of this AD, if the NLG bellcrank assembly meets the criteria for replacement, as specified in Chapter II, paragraph 3., of Bulletin BO–37–18–292: Before further flight, replace the affected NLG bellcrank assembly and do all related investigative and corrective actions, in accordance with Chapter II, paragraph 4., of Bulletin BO–37–18–292.

(j) Parts Installation Limitation

As of the effective date of this AD: Do not install a bellcrank NLG assembly, P/N 30.42.010.00.00, on any helicopter unless the assembly has passed an inspection (no defects found), in accordance with paragraph (h) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using Bulletin BO–37–18–292.

(l) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(m) Alternative Methods of Compliance

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your

proposal to: David Hatfield, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5116; email *ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(n) Related Information

(1) The subject of this AD is addressed in the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD 2018–0035–E, dated February 6, 2018; corrected March 16, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0363.

(2) For more information about this AD, contact David Hatfield, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5116; email *david.hatfield@faa.gov.*

(o) Material Incorporated by Reference

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

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

(i) Wytwórnia Sprzętu Komunikacyjnego Mandatory Bulletin No. BO–37–18–292, Revision 1, dated February 5, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact PZL-Świdnik S.A., Al. Lotników Polskich 1, 21–045 Świdnik, Poland; telephone (+48) 664 424 798; fax (+48) 817 225 710; internet *www.pzl.swidnik.pl.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

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

Issued on April 8, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07742 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1069; Airspace Docket No. 19–ANM–12]

RIN 2120–AA66

Amendment of Class E Airspace; Bryce Canyon, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace, designated as a surface area, at Bryce Canyon Airport, Bryce Canyon, UT, by adding an extension to the northeast of the airport. Also, this action amends Class E airspace by establishing an area, designated as an extension to a surface area, to the southwest of the airport. Additionally, this action amends Class E airspace, extending upward from 700 feet above the surface, by reducing the area to the east and southeast of the airport. Further, this action removes Class E airspace extending upward from 1,200 feet above the surface. This airspace is wholly contained within Denver en route airspace and duplication is not necessary. Lastly, this action makes an administrative update to the Class E surface airspace's legal descriptions.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Bryce Canyon Airport, Bryce Canyon, UT, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 5176; January 29, 2020) for Docket No. FAA–2019–1069 to amend Class E airspace at Bryce Canyon Airport, Bryce Canyon, UT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E2, E4, and E5 airspace designations are published in paragraphs 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Bryce Canyon Airport, Bryce Canyon, UT.

This action amends Class E airspace, designated as a surface area, by adding a small extension to the northeast of the airport. The surface airspace extension is designed to contain IFR aircraft descending below 1,000 feet above the surface. The amended surface area is described as follows: That airspace extending upward from the surface within a 4.2-mile radius of the airport, and 1 mile each side of the 047° bearing from the airport, extending from the 4.2-mile radius to 5.4 miles northeast of the Bryce Canyon Airport.

Also, this action amends Class E airspace by establishing an area, designated as an extension to a surface area, to the southwest of the airport. This area is also designed to contain IFR aircraft descending below 1,000 feet above the surface and is described as follows: That airspace extending upward from the surface within 1 mile each side of the 227° bearing from the airport, extending from the 4.2-mile radius to 7.8 miles southwest of the Bryce Canyon Airport.

Additionally, this action amends Class E airspace, extending upward from 700 feet above the surface, by reducing the area to the east and southeast of the airport. This area is designed to contain IFR arrivals descending below 1,500 feet above the surface and IFR departures until reaching 1,200 feet above the surface. This area is described as follows: That airspace extending upward from 700 feet above the surface within 8 miles north and 4.2 miles south of the 047° bearing from the airport, extending from the airport to 16 miles northeast of the airport, and with 8 miles north and 4.2 miles south of the 227° bearing from the airport, extending from the airport to 16 miles southwest of Bryce Canyon Airport.

Further, this action removes Class E airspace extending upward from 1,200 feet above the surface. This airspace is wholly contained within the Denver en route airspace and duplication is not necessary.

Lastly, this action makes an administrative update to the Class E surface airspace's legal descriptions. The surface airspace should be in effect full time. The following two sentences do not accurately reflect the time of use and are removed. ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM UT E2 Bryce Canyon, UT [Amended]

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N, long. 112°08′45″W)

That airspace extending upward from the surface within a 4.2-mile radius of the airport, and 1 mile each side of the 047° bearing from the airport, extending from the 4.2-mile radius to 5.4 miles northeast of Bryce Canyon Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM UT E4 Bryce Canyon, UT [New]

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N, long. 112°08′45″ W)

That airspace extending upward from the surface within 1 mile each side of the 227° bearing from the airport, extending from the 4.2-mile radius to 7.8 miles southwest of Bryce Canyon Airport.

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

* * * * *

ANM UT E5 Bryce Canyon, UT [Amended]

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N, long. 112°08′45″ W)

That airspace extending upward from 700 feet above the surface within 8 miles north and 4.2 miles south of the 047° bearing from the airport, extending from the airport to 16 miles northeast of the airport, and within 8 miles north and 4.2 miles south of the 227° bearing from the airport, extending from the airport to 16 miles southwest of Bryce Canyon Airport.

Issued in Seattle, Washington, on April 7, 2020.

Shawn M. Kozica

Group Manager, Western Service Center Operations Support Group.

[FR Doc. 2020–07703 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0061]

RIN 1625–AA00

Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Washington Channel adjacent to The Wharf DC, Washington, DC, for recurring fireworks displays from April 4, 2020, through December 31, 2020. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from April 14, 2020 through December 31, 2020. For the purposes of enforcement, actual notice will be used from April 4, 2020, until April 14, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0061 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On January 9, 2020, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting seven fireworks displays, sponsored by The Wharf DC, from 7 p.m. to 11:59 p.m. for various events from April 4, 2020, through December 31, 2020. The fireworks are to be launched from a barge in the Washington Channel, adjacent to The Wharf DC in Washington, DC. The fireworks company has provided dates for two of the events, April 4, 2020, and December 5, 2020. However, the dates for the remaining five events have not yet been finalized.

On February 14, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC'' (85 FR 8507). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended March 16, 2020, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the fireworks displays, including the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in these displays will be a safety concern for anyone within 200 feet of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 14, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary recurring safety zone in the Washington Channel from April 4, 2020, through December 31, 2020. The safety zone will cover all navigable waters of the Washington Channel within 200 feet of the fireworks barge. It is anticipated that the safety zone will be activated for seven separate events during 2020. For each event, the barge will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the Francis Case (I–395) Memorial Bridge, located at Washington, DC. The safety zone will be enforced from 7 p.m. until 11:59 p.m. for each fireworks display scheduled from April 4, 2020, through December 31, 2020. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone. It is anticipated that the safety zone will be activated for seven separate events during 2020. Although vessel traffic will not be able to safely transit around this safety zone when being enforced, the impact will be for 5 hours or less for each of the 7 fireworks events (35 total enforcement hours or fewer) during the evening when vessel traffic in Washington Channel is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be in effect for the entire year, however, when activated, it will last less than 5 hours and prohibit entry within a portion of the Washington Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0061 to read as follows:

§ 165.T05–0061 Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Washington Channel within 200 feet of the fireworks barge which will be located within an area bounded on the south by latitude 38°52′30″ N, and bounded on the north by the southern extent of the Francis Case (I–395) Memorial Bridge, located at Washington, DC. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced April 4, 2020, through December 31, 2020, from 7 p.m. to 11:59

p.m. each day that a barge with a ''FIREWORKS—DANGER—STAY AWAY'' sign on the port and starboard sides is on-scene or a ''FIREWORKS—DANGER—STAY AWAY'' sign is posted on land adjacent to the shoreline, near the location described in paragraph (a) of this section. The enforcement times of this section are subject to change, but the duration of each enforcement of the zone is expected to be 5 hours or less. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance.

Dated: March 26, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–07094 Filed 4–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0648]

RIN 1625–AA11

Regulated Navigation Area; Savannah River, GA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending an existing regulated navigation area (RNA) on the Savannah River located between Fort Jackson, GA and the Savannah River Channel Entrance Sea Buoy. This rule removes inapplicable and/or outdated definitions, processes and requirements in the RNA following a change in capability, infrastructure and layout of the Southern Liquefied Natural Gas (LNG) facility on the Savannah River.

DATES: This rule is effective May 14, 2020.

ADDRESSES: To view documents mentioned in this preamble go to: *http://www.regulations.gov* and enter USCG–2018–0648 in the ''SEARCH'' feature. Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Joseph Palmquist, Coast Guard; telephone 912–652–4353 ext. 221, email *joseph.b.palmquist@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
RNA Regulated Navigation Area
DHS Department of Homeland Security
GT Gross Tons
LNG Liquefied Natural Gas
FR Federal Register
GA Georgia
FiFi Fire Fighting
NPRM Notice of proposed rulemaking
BNM Broadcast Notice to Mariners
§ Section
U.S.C. United States Code
OMB Office of Management and Budget

II. Background Information and Regulatory History

A notice of proposed rulemaking (NPRM) entitled ''Revision for Regulated Navigation Area; Savannah GA'' was published in the **Federal Register** on June 13, 2019 (84 FR 25506). The NPRM proposed to amend the regulated navigation area (RNA) on the Savannah River located between Fort Jackson, GA (32°04.93 N, 081°02.19 W) and the Savannah River Channel Entrance Sea Buoy in 33 CFR 165.756. The NPRM proposed to remove inapplicable and/or outdated definitions, processes and requirements in the RNA following a change in capability, infrastructure and layout of the Southern Liquefied Natural Gas (LNG) facility on the Savannah River. The NPRM provided for a 60-day comment period, which closed on August 12, 2019. We received three comments on the NPRM that are addressed below.

III. Legal Authority and Need for the Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. Through the NPRM and commenting period, the Coast Guard has determined that the RNA needs to be amended to remove inapplicable and/or outdated definitions, processes, and requirements due to changes in capability, infrastructure, and layout of the Southern LNG facility on the Savannah River.

IV. Discussion of Comments and Changes to the Rule

A. Discussion of Comments

The Coast Guard received three comment submissions from the public in response to the proposed rule. Two of the comments proposed additional amendments and/or changes. One comment agreed to the Coast Guard's proposed amendments to the RNA. The comments that proposed additional amendments were from companies and/or parties directly involved or impacted by the RNA, and the final comment received was from a private citizen. All three comments received are discussed below.

The first comment agreed with the proposed changes; however, it proposed further sections of the existing RNA, originally published on September 10, 2007, be amended. The commenter proposed removal of three paragraphs from the original RNA in § 165.756: (d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii). This recommendation is due to the possibility of smaller vessels calling to port at the Southern LNG Facility in the future. The commenter's first preference is to remove these paragraphs, but in the alternative, proposed to amend the three paragraphs to apply only to LNG Tankships with cargo capacity of over 120,000 m^3. In alignment with the purpose of this rule—to adapt the RNA to the facility changes—the Coast Guard agrees that stating which requirements apply only to large LNG Tankships will provide additional clarity to the applicability of these requirements. This final rule further amends existing § 165.756(d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii) (redesignated by this rule as §§ 165.756(d)(1)(iii)(D), (d)(2)(i), and (d)(2)(ii), respectively) by adding a statement that the requirements of those paragraphs only apply to LNG Tankerships with cargo capacity of over 120,000 m^3.

The second commenter expressed concern with removing paragraph (d)(5) of § 165.756 as proposed in the NPRM due to potential safety concerns. The commenter stated that, ''By removing the Docking Pilot as a watch stander on the bridge of an LNG Tankship, one of the layers of safety is being eliminated.'' While the Coast Guard agrees that having a docking pilot onboard each moored vessel could have a positive impact on the emergency response to a potential incident, this is not a standard practice among other LNG facilities, nor is this a requirement for other deep draft vessels moored throughout the Port of Savannah. In addition, it is a standard practice for the vessel to maintain a bridge watchstander while moored. No LNG vessels moor outside of the slip at Southern LNG at Elba Island due to the changes in the facility layout. Therefore, the passing arrangements and communications this watchstander facilitated are no longer necessary. For these reasons, we believe the requirement in paragraph (d)(5) to have an additional watchstander on the bridge, such as a docking pilot, is an unnecessary burden and are removing this requirement with this final rule. LNG tankship vessels mooring in this

RNA can still utilize a bridge watch or docking pilot, if desired.

The third and final comment stated that all of the proposed changes in the NPRM are reasonable. The commenter agreed with the revision of § 165.756 due to changes in the facility layout and types of vessels hailing to the facility. The commenter opined that the input from the public meeting and comments received on the NPRM further supports that changes to this RNA are necessary to ensure the safety of operations and to appropriately reflect on the changes to the facility's layout.

Additionally, since the publication of the proposed rule, paragraph (f) of § 165.756 was deleted by a separate final rule titled ''Navigation and Navigable Waters, and Shipping; Technical, Organizational, and Conforming Amendments for U.S. Coast Guard Field Districts 5, 8, 9, 11, 13, 14, and 17'' (85 FR 8169, Feb. 13, 2020) noting that it is an outdated penalty provision.

B. Discussion of Changes

This rule contains three types of changes in the regulatory text from the regulatory text proposed in the NPRM. First, based on the comments received from the NPRM, the Coast Guard will amend § 165.756 paragraphs (d)(1)(iii)(D), (d)(3)(i), and (d)(3)(ii) to clarify the requirements therein are only applicable to LNG Tankships with a cargo capacity of over 120,000 m^3.

Secondly, additional verbiage concerning communications, previously required in paragraph (d)(6)(ii) of this section, will be moved into the newly added paragraph (d)(3). The additional language will require vessels 1,600 gross tons or greater to make a broadcast on channel 13 at Buoys ''33'' and ''53'' to ensure awareness of vessel location amongst pilots, tugs, and any other inbound and outbound vessels. Additionally, this paragraph will state that the Coast Guard will issue a Broadcast Notice to Mariners (BNM) on channel 16 to ensure public awareness of RNA enforcement. The communication methods added in paragraph (d)(3) will help ensure safe navigation and situational awareness.

Third, since publication of the NPRM, the existing paragraph (f) concerning enforcement was eliminated from § 165.756.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss the First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed amendment and revision has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the RNA. Vessel traffic will be able to safely transit through the RNA with only the few restrictions mentioned in the rule. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the RNA, and there will be communication and coordination with the River Pilots, tugs, and the facility. Furthermore, the RNA has been in place since 2007, and the Coast Guard has only made minor revision to the rule to update the RNA.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an RNA lasting a minimum amount of time on the Savannah River when a LNG tankship in excess of heel is transiting the area or moored at the LNG facility. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.756 by:
■ a. In paragraph (b), removing the definitions for ''Fire Wire'', ''Made-up'', and ''Make-up'';
■ b. Revising paragraphs (d)(1)(iii)(D), (d)(2) and (3); and
■ c. Removing paragraphs (d)(4), (d)(5) and (d)(6).

The revisions read as follows:

§ 165.756 Regulated Navigation Area; Savannah River, Georgia.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) While transiting the RNA, LNG Tankships of cargo capacity over 120,000 m^3, carrying LNG in excess of heel, shall have a minimum of two escort towing vessels with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower, and capable of safely operating in the indirect mode. At least one of the towing vessels shall be FiFi Class 1 equipped.

(2) *Requirements while LNG tankships are moored inside the LNG facility slip.* (i) An LNG Tankship of cargo capacity over 120,000 m^3, moored inside the LNG facility slip shall have two standby towing vessels with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode. At least one of the towing vessels shall be FiFi Class 1 equipped. The standby towing vessels shall take appropriate action in an emergency.

(ii) If two LNG tankships of cargo capacity over 120,000 m^3 are moored inside the LNG facility slip, each vessel shall provide a standby towing vessel that is FiFi Class 1 equipped with a minimum capacity of 100,000 pounds of bollard pull and 4,000 horsepower that is available to assist.

(3) *Requirements for other vessels while within the RNA.* (i) Vessels 1,600 gross tons or greater shall at a minimum, transit at bare steerageway when within an area 1,000 yards on either side of the LNG facility slip to minimize potential wake or surge damage to the LNG facility and vessel(s) within the slip.

(ii) Vessels 1,600 gross tons or greater shall make a broadcast on channel 13 at the following points on the Savannah River:

(A) Buoy ''33'' in the vicinity of Fields Cut for inbound vessels;

(B) Buoy ''53'' in the vicinity of Fort Jackson for outbound vessels.

(iii) Vessels 1,600 gross tons or greater shall not meet nor overtake within the area adjacent to either side of the LNG facility slip when an LNG tankship is present within the slip.

(iv) Except for vessels involved in those operations noted in paragraph (c) of this section entitled Applicability, no vessel shall enter the LNG facility slip at any time without the permission of the Captain of the Port. The Coast Guard will issue a Broadcast Notice to Mariners on channel 16 upon enforcement of this RNA.

* * * * *

Dated: March 27, 2020.

E.C. Jones,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2020–06894 Filed 4–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2020–0036; NIOSH–335]

RIN 0920–AA69

Approval Tests and Standards for Air-Purifying Particulate Respirators

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Interim final rule with comment.

SUMMARY: The Department of Health and Human Service (HHS) is publishing this interim final rule to update the regulatory requirements used by the Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) to test and approve air-purifying particulate respirators for use in the ongoing public health emergency. With this rulemaking, parallel performance standards are added to existing regulatory requirements for PAPRs to allow for the approval of respirators in a new class, PAPR100, that may be better suited to the needs of workers in the healthcare and public safety sectors currently experiencing a shortage of air-purifying particulate respirators due to Coronavirus Disease 2019 (COVID–19), the disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2). This rulemaking also consolidates the technical standards for all types of air-purifying particulate respirators into one subpart, and standards pertaining to obsolete respirators designed for dust, fume, and mist; pesticide; and paint spray are removed from the regulation entirely. This rulemaking will have no substantive impact on the continued certification testing and approval by the NIOSH National Personal Protective Technology Laboratory of existing PAPR class HE (high-efficiency series) respirators or non-powered air-purifying particulate respirators, including N95 filtering facepiece respirators, currently in demand by healthcare workers and emergency responders. NIOSH expects

that the addition of PAPR100 devices to the marketplace will help to relieve the current high demand for possibly hundreds of thousands of additional particulate filtering facepiece respirators needed specifically for healthcare and emergency medical response settings.

DATES: This rule is effective on April 14, 2020. Comments must be received by August 12, 2020.

ADDRESSES:

Written comments: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to the docket.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 1090 Tusculum Avenue, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2020–0036; NIOSH–335) or Regulation Identifier Number (0920–AA69) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For detailed instructions on submitting public comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Palcic, NIOSH National Personal Protective Technology Laboratory (NPPTL), Pittsburgh, PA, (412) 386–5247 (this is not a toll-free number). Information requests can also be submitted by email to *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Any information in comments or supporting materials that is not intended to be disclosed should not be included. Comments may be submitted on any topic related to this interim final rulemaking, including the following:

- What operational and/or functional characteristics should be considered in establishing a standard for a healthcare PAPR?
- Should there be more than one class of healthcare PAPR, for example, surgical versus non-surgical?

II. Statutory Authority

Pursuant to the Occupational Safety and Health (OSH) Act of 1970 (Pub. L. 91–596), the Organic Act of 1910 (Pub. L. 179), and the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173 (codified at 30 U.S.C. 842(h), 844, 957)), NIOSH is authorized to approve respiratory equipment used in mines and other workplaces for the protection of employees potentially exposed to hazardous breathing atmospheres. The Occupational Safety and Health Administration (OSHA) requires U.S. employers to supply NIOSH-approved respirators to their employees whenever the employer requires the use of a respirator. (29 CFR 1910.134(d))

III. Background

A. Introduction

Air-purifying respirators use either filters, cartridges, or canisters (or combinations of filters and cartridges or filters and canisters), to protect users from gases; vapors; aerosols, including viruses capable of being transmitted by aerosolized droplets; and other contaminants in the air. Since these respirators simply purify the ambient atmosphere and do not provide an independent supply of breathing air to the wearer, most types cannot be used in atmospheres that are immediately dangerous to life and health (IDLH).[1] Air-purifying particulate respirators, a subclass of air-purifying respirators, are approved by NIOSH pursuant to 42 CFR part 84. Currently, testing and performance standards for non-powered air-purifying particulate respirators are codified in part 84, subpart K; standards for powered air-purifying particulate respirators are codified in subpart KK.

Non-powered air-purifying particulate respirators include filtering facepiece respirators and elastomeric half- and full-facepiece respirators, and are used in a very wide variety of work settings.

Powered air-purifying particulate respirators (PAPRs) are used in many similar work settings and are distinguished from the non-powered type by the powered blower that moves air through the attached filters, canisters, and/or cartridges. This respirator type comes in a variety of sizes, weights, and mounting configurations. PAPRs play an integral role in respiratory protection programs across multiple sectors, including general industry, healthcare, and police operations.

[1] With the exception of gas masks designed for escape from IDLH atmospheres. *See* 42 CFR 84, subpart I—Gas Masks.

Current regulatory standards provide for the NIOSH approval of high-efficiency (HE) particulate filters which are incorporated into PAPRs. The NIOSH National Personal Protective Technology Laboratory has determined the need for increasing the utility of PAPRs in the workplace and offering a wider array of options for today's work practices. Although the current PAPR approval program has proven protections, these interim requirements offer the potential to extend the same proven level of protection to smaller, lighter systems which may be more comfortable to wear, as discussed below.

B. PAPR Certification and Approval

NIOSH currently approves PAPRs under 42 CFR part 84, *Approval of Respiratory Protective Devices.* Within part 84, subpart KK, *Dust, Fume and Mist; Pesticide; Paint Spray; Powered Air-Purifying High Efficiency Respirators and Combination Gas Masks,* specifies testing and certification requirements for PAPRs with high-efficiency particulate filters. NIOSH reviews and approves such respirators for use, for example, by industrial, healthcare, and public safety workers.

C. Scope of the Rulemaking

This rulemaking applies to air-purifying particulate respirators and gas and vapor respirators which also incorporate a particulate filter. NIOSH is (1) consolidating all air-purifying, particulate respirator requirements, whether powered or non-powered, into subpart K; (2) eliminating unneeded and archaic parts of the standard related to PAPRs which were left in place since the 1995 promulgation of part 84; and (3) better aligning PAPR particulate filter testing for a new class of PAPR with the requirements for non-powered particulate respirators which were established in the 1995 rulemaking.

With this rulemaking, a new class of PAPR is established, PAPR100, in parallel with the current PAPR class HE, to open opportunities for designs offering the characteristics desired by many end-users, as revealed through user-sector input following the public meetings in 2003–2008 and a 2014 Institute of Medicine workshop, discussed below. PAPRs tested to the current requirements relocated from subpart KK are designated series ''HE''; those requirements are otherwise unchanged. PAPR100s tested to the new alternative testing and approval requirements are designated either series ''PAPR100–N,'' which is not for use against oil-based aerosols, or

''PAPR100–P,'' which is strongly resistant to oil aerosols.

Requirements for the current class HE are unchanged because those devices have a proven track record and widespread use. The existing HE requirements result in the approval of PAPRs that are well-suited to heavy industry settings where the particulates of concern may be dense in terms of their airborne concentration. In those settings, the PAPR is often unavoidably challenged to remove a large quantity of larger, non-respirable particles while it is doing the important work of removing the much smaller, but much more hazardous, respirable-sized particles. While the existing silica dust test specified in subpart KK demonstrates a portion of the unit's ability to remove the respirable-sized particles, it is a very good test to demonstrate the PAPR's ability to provide ongoing filtration across the wider aerosol size spectrum in these ''dirtier'' industrial settings. With this rulemaking, NIOSH is promulgating a new standard for the new class PAPR100, which replaces the silica dust test with a sodium chloride aerosol when testing PAPR100–N series filters, and with a dioctyl phthalate aerosol when testing PAPR100–P series filters. NIOSH will not designate either class specifically for industrial or non-industrial use, but it is thought that the PAPR class HEs will continue to be the design of choice in industrial settings. Since protections provided by the current class HE respirators are considered equivalent to the protections expected by the new PAPR100 devices, respiratory safety continues to be assured, regardless of the setting.

This rulemaking also eliminates the requirements for other obsolete types of respirators, including dust, fume, and mist; pesticide; and paint spray respirators identified in current subpart KK. Subpart KK is removed from part 84 in its entirety.

D. Need for Rulemaking

PAPRs are often used in high-hazard procedures in the healthcare setting because they are designed to filter chemicals, blood-borne pathogens, and aerosol-transmissible diseases. However, the size and weight of the PAPRs approved under the current regulations has been said to limit their widespread adoption in healthcare and by first responders. The current requirements for PAPR class HE (high-efficiency series) contained in 42 CFR part 84 were established in 1972 primarily for more industrial-type uses and exposures, such as mining and milling operations. The silica dust loading test is currently incorporated among the requirements which determine the PAPR filter efficiency. In order to pass the silica dust test, current NIOSH-approved PAPRs must provide a high flow of breathing air against a highly loaded filter for a duration of 4 hours. This generally results in approved PAPRs having blowers and batteries which may be inconveniently large, heavy, or both. Respirator designers and end-users have expressed a desire for greater latitude in the regulatory requirements in order to reduce the bulk and weight of currently approved PAPR class HE devices, given the advances in modern battery and sensor technology that would allow for smaller, lighter designs with service durations continuously monitored by required flow-detection devices.

During the past 20 years, PAPRs have played an increasing role in respiratory protection programs in the United States in sectors beyond general industry, including healthcare. PAPRs are also frequently considered for public safety and other specialized industrial uses. The 2002 Severe Acute Respiratory Syndrome (SARS), the 2009 H1N1 influenza, and the 2014 Ebola virus outbreaks ushered in more extensive use of respiratory protection, and specifically PAPRs, for today's 18 million healthcare workers.

In a 2014 assessment designed to quantify the amount of personal protective equipment held in U.S. acute care hospitals, the Association of States and Territorial Health Officials (ASTHO) estimated that acute care hospitals across the United States had no more than 83,196 PAPRs on-hand in 2012 compared with 114,694,159 N95s, demonstrating that the currently approved PAPRs are not as widely-used in healthcare as the N95s.[2] However, the Association for Professionals in Infection Control and Epidemiology (APIC) reported that healthcare employers are expected to increase the relative number of PAPRs used in healthcare as the devices become less expensive and lighter.[3] PAPRs have a number of advantages over N95 filtering facepiece respirators, including that they are reusable and can be cleaned and disinfected, loose-fitting PAPR do not need to be fit tested and often can be worn with facial hair, and have a higher assigned protection factor (as determined by the Occupational Safety and Health Administration in the Department of Labor). Designs not requiring fit testing are expected to be especially advantageous in a public health emergency, such as the Coronavirus Disease 2019 (COVID–19) response, by saving resources including both person-hours and the need to fit test multiple makes and models to find the right fit for an individual worker. Loose-fitting PAPR designs are also typically equipped with a head covering that delivers filtered air over the user's entire head, including the eyes and hair, thus offering greater overall protection from contact with any airborne infectious agents.

Healthcare workers and first responders are on the front line of efforts to contain COVID–19, the disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV–2). The virus is thought to spread primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may also spread through contact with contaminated surfaces or objects. The ease of SARS-CoV–2 transmission has resulted in a surge in hospitalizations in many jurisdictions, resulting in a well-documented shortage of personal protective equipment, especially respiratory protection, for healthcare workers and emergency responders. An APIC survey conducted March 23–24, 2020 found that 20 percent of respondents indicated they do not have any respirators and 61 percent of respondents indicated they are almost out of respirators. Only 18 percent of respondents said they have a sufficient number of respirators.[4]

Between March 16 and April 3, 2020, five potential approval holders seeking to develop PAPRs to support the COVID–19 response solicited NIOSH to explore the possibility of producing PAPRs for healthcare and emergency responders to increase the inventory of PAPRs across the nation. NIOSH expects that PAPR100s will be purchased to replace the current inventory of larger class HE devices designed for industrial use, as well as to substitute for the use of disposable N95 filtering facepiece respirators which require fit testing for effective use. NIOSH expects that the addition of PAPR100 devices to the marketplace will help to relieve the current high demand for possibly hundreds of

[2] ASTHO, *Assessment of Respiratory Personal Protective Equipment in U.S. Acute Care Hospitals—2012* (2014).

[3] *See* APIC public comment submitted to NIOSH Docket-272 for National Institute for Occupational Safety and Health, CDC, *Respiratory Protective Devices Used in Healthcare; Notice of Request for Information and Comment,* 79 FR 14515 [March 14, 2014].

[4] APIC, *Protecting Healthcare Workers During the COVID–19 Pandemic: A Survey of Infection Preventionists* (March 27, 2020), *https://apic.org/wp-content/uploads/2020/03/Protecting-Healthcare-Workers-Survey_Report_3_26_20_Final.pdf.*

thousands of additional particulate filtering facepiece respirators designed specifically for healthcare settings.

E. History of the PAPR100 Concept

NIOSH held a series of public meetings from 2003 through 2008 to discuss technical issues regarding a new PAPR concept.[5] Participants raised issues regarding the existing PAPR certification requirements and offered input on the need to eliminate the silica dust test and incorporate warnings for low air flow, pressure, and/or battery life.

In response to the growing number of PAPRs in healthcare, NIOSH sponsored an Institute of Medicine (IOM) workshop on the ''Use and Effectiveness of PAPRs in Healthcare'' in 2014.[6] The intent of the workshop was to assist NIOSH with prioritizing and updating approval requirements for NIOSH-approved PAPRs suitable for use in the healthcare sector. IOM workshop participants included government agencies, healthcare institutions, professional associations, respirator manufacturers, and unions representing healthcare workers. A general finding from the IOM workshop stated that current PAPR requirements are not always suitable for the healthcare work environment. Workshop participants indicated that powered air-purifying respirators should have the following attributes:

- Suitable for use in sterile field;
- Good visibility and communication;
- Ease of donning, doffing, and cleaning;
- Variable flows based on work rates;
- Smaller and less bulky;
- Sensors and alarms that monitor flow and power; and
- Training materials as part of certification.

In addition to the IOM workshop, NIOSH reached out to the International Safety Equipment Association (ISEA) and 10 manufacturers of NIOSH-approved PAPRs in August and September 2016 to better understand how current requirements impact PAPR designs and how today's technologies are being integrated into PAPR designs. According to the input NIOSH received, the aerosol threat in the healthcare setting, as compared with the industrial settings the current PAPR class HE requirements in part 84 are designed to address, is composed mainly of respirable-sized (or smaller) particles, with practically no other larger particles in the mix. Therefore, the ability to continue to provide needed air flow against high total filter loading is not a necessary consideration for PAPRs suitable for use in the healthcare setting. These experts indicated the following main areas of concern:

1. Silica dust testing adds to the size and weight of PAPR systems.
2. Silica dust test equipment is outdated and the test is a challenge to reproduce, not representative of today's workplace dust conditions, and requires operational safeguards to avoid the test operator's hazardous exposure to silica dust.
3. If the PAPR continuously monitors critical conditions such as flow, pressure, and battery life, the silica dust test would not be needed since the complete system is also evaluated with a quantitative human subject testing (corn oil test).
4. Technologies such as sensors and alarms for monitoring airflow rate, battery life, facepiece pressure, and other critical components are being integrated into many of today's PAPR designs. The current PAPR requirements prevent these technologies from being fully deployed.

NIOSH presented its new PAPR concept at the 2016 biennial International Society for Respiratory Protection (ISRP) conference in Yokohama, Japan and the 2017 meetings of the ISRP Americas Section in Pittsburgh, Pennsylvania and the National Academies Standing Committee on Personal Protective Equipment for Workplace Safety and Health. Attendees of these meetings generally supported the concepts presented.

By modifying and replacing some of the current PAPR requirements, NIOSH would enable manufacturers to take advantage of contemporary technology that could result in smaller and lighter-weight PAPRs having the same effective particulate protections while increasing workplace utility for today's diverse workforces. The addition of requirements for NIOSH-approved PAPRs intended for healthcare and other settings with lower overall particulate presence would allow stakeholders to incorporate additional technologies such as integrated circuits, sensors, batteries, motors, plastics, and fabrics to improve PAPR designs intended to be used in cleaner settings, such as healthcare.

F. Impact on Rulemaking and Other Activities of OSHA

The interim final rule would not require OSHA to make any changes to 29 CFR 1910.134, the OSHA respiratory protection requirements.

IV. Issuance of an Interim Final Rule With Immediate Effective Date

Rulemaking under the Administrative Procedure Act (APA) generally requires a public notice and comment period and consideration of the submitted comments prior to promulgation of a final rule (5 U.S.C. 553). However, the APA provides for exceptions to its notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In accordance with the provisions in 5 U.S.C. 553(b)(B), HHS finds good cause to waive the use of prior notice and comment procedures for this interim final rule and to make this action effective immediately.

This interim final rule amends 42 CFR part 84 to allow respirator manufacturers to produce an equally protective or equivalent new class of PAPR, the PAPR100, including both N-series and P-series particulate respirators, designed for use in healthcare or other workplace settings that will benefit the most from smaller, lighter devices. HHS has determined that it is impracticable to use prior notice and comment procedures for this interim final rule because of the ongoing public health emergency. As discussed above, respirator manufacturers have participated in discussions with NIOSH about the need for these new standards and are generally supportive of this effort. Recently, some manufacturers have notified NIOSH that they are ready to submit approval applications for PAPR100s that would be employable in the current public health emergency as soon as the effective date of this interim final rule. Thus, HHS is waiving the prior notice and comment procedures in the interest of protecting the health of healthcare workers and emergency responders who are on the front lines of the current public health emergency as soon as possible.

Under 5 U.S.C. 553(d)(3), HHS also finds good cause to make this interim final rule effective immediately. As stated above, in order to protect the health of healthcare workers and emergency responders, it is necessary that HHS act quickly to amend the existing standards in 42 CFR part 84 to allow NIOSH to approve a new class of PAPR suitable for use in healthcare settings. The addition of this new class of respirator to the market will improve safety of healthcare workers because it will result in the development of PAPRs that are less bulky, less noisy, and more suitable for use in healthcare and emergency response settings to meet the

[5] Transcripts of the public meetings as well as presentations and submissions from interested parties are available in NIOSH Dockets 008 and 008a.

[6] IOM [2015], *The Use and Effectiveness of Powered Air Purifying Respirators in Health Care: Workshop Summary* (National Academies Press: Washington, DC).

immediate needs of those treating patients during the COVID–19 pandemic. The cost of these devices is expected to be lower than the costs of PAPRs currently on the market. Loose-fitting PAPRs do not require fit testing, and because the devices are reusable and have a higher filter efficiency and higher assigned protection factor, thus they are a cost-effective alternative to other respiratory protective devices currently on the market. Because these PAPRs are reusable, it is likely that 1 percent of the stock of PAPRs would be required compared to that of single-use items such as the N95 filtering facepiece respirator, assuming the ability to reuse a PAPR one hundred times. Healthcare organizations using PAPRs in healthcare settings have reported cleaning their PAPR filters for several years prior to replacement, which is well beyond the 1 percent estimate.

While amendments to part 84 are effective on the date of publication of this interim final rule, we request public comment on this rule. After full consideration of public comments, HHS will publish a final rule with any necessary changes. (See Section I. Public Participation, above.)

V. Summary of Interim Final Rule

As discussed above, this interim final rule consolidates all air-purifying particulate respirator requirements in 42 CFR part 84, subpart K, and establishes alternative requirements for the testing and approval of class PAPR100 respirators designed for use in settings such as healthcare, public safety, and other workplaces that require or otherwise place a premium on the use of smaller, lighter devices. Other existing sections in part 84 that reference subpart KK are updated as necessary.

The table directly below matches the reorganized part 84, subpart K, with the originating sections in the current regulation. These changes are discussed in full below the table.

REORGANIZATION AND SECTION TITLE AMENDMENTS

Interim final rule section		Originating section	
84.170(a)	Non-powered air-purifying particulate respirators (series N, R, and P).	84.170	Non-powered air-purifying particulate respirators; description.
84.170(b)	Powered air-purifying particulate respirators (PAPR classes HE and PAPR100).	84.1100(d)	Scope and effective dates—powered air-purifying particulate respirator.
		84.1130(a)(4)	Respirators, description—air-purifying respirators. New for PAPR100 class.
84.171	Required components and attributes	84.171	Non-powered air-purifying particulate respirators; required components.
		84.1131	Respirators; required components.
84.171(a)	Respiratory inlet covering	84.175	Half-mask facepiece, full facepiece, hoods, helmets, and mouthpieces; fit; minimum requirements.
		84.171(a)	Non-powered air-purifying particulate respirators; required components.
		84.1135	Half-mask facepiece, full facepiece, hoods, helmets, and mouthpieces; fit; minimum requirements.
		84.1136	Facepieces, hoods, and helmets; eyepieces; minimum requirements.
84.171(b)(1)	Filters for non-powered respirators	84.179	Non-powered air-purifying particulate respirators; filter identification.
84.171(b)(2)	Filters for powered respirators	84.1130(a)(4)	Respirators; description—Powered air-purifying particulate respirators; filter identification.
84.171(c)	Valves	84.177 84.1137	Inhalation and exhalation valves; minimum requirements.
84.171(d)	Head harness	84.178, 84.1138	Head harness; minimum requirements.
84.171(e)	Breathing tube	84.172 84.1132	Breathing tubes; minimum requirements.
84.171(f)	Drink tube		New.
84.171(g)	Container	84.174 84.1134	Respirator containers; minimum requirements.
84.171(h)	Harness	84.173 84.1133	Harnesses; Installation and construction; minimum requirements.
84.171(i)	Attached blower	84.1156(f)	Minimum air flows.
84.171(j)	Low-flow warning device		New.
84.172	Airflow resistance test	84.180	Airflow resistance tests.
		84.1156(a)(1) and (2).	Pesticide respirators; performance requirements; general—breathing resistance test.
		84.1157(a)	Chemical cartridge respirators with particulate filters; performance requirements; general—breathing resistance test.
84.173	Exhalation valve leakage test	84.182 84.1150	Exhalation valve leakage test; minimum requirements.
84.174	Filter efficiency level determination test—non-powered series N, R, and P filtration.	84.181	Non-powered air-purifying particulate filter efficiency level determination.
84.175	Instantaneous filter efficiency level determination test—PAPR series HE, PAPR100–N, and PAPR100–P filtration.	84.1151	DOP filter test.
		84.1156(c)(2)	Pesticide respirators; performance requirements; general—silica dust test.
84.176(a)	Isoamyl acetate (IAA) fit test	84.1156(b)(5)	Pesticide respirators; performance requirements; general—isoamyl acetate tightness test.
84.176(b)	Generated Aerosol		New.
84.177	Total noise level test—PAPR classes HE and PAPR100.	84.1139	Air velocity and noise levels; hoods and helmets.

REORGANIZATION AND SECTION TITLE AMENDMENTS—Continued

Interim final rule section			
84.178	Breath response type, airflow resistance test—PAPR classes HE and PAPR100.		New.
84.179	Silica dust loading test—PAPR series HE filtration.	84.1144	Silica dust test for dust, fume, and mist respirators; single-use or reusable filters; minimum requirements.
		84.1152	Silica dust loading test.
84.180	Particulate loading test—PAPR series PAPR100–N and PAPR100–P filtration.		New.
84.181	Communication performance test—class PAPR100.		New.

Section 84.2 Definitions

In this existing section, located in 42 CFR part 84, subpart A, HHS adds definitions for the terms ''respiratory inlet covering,'' ''tight fitting,'' ''loose fitting,'' and ''warning device.''

Section 84.126 Canister Bench Tests; Minimum Requirements

In this existing section in subpart I—Gas Masks, a new paragraph (f) specifies that PAPRs designed with one or more canisters and particulate filters must meet the end-of-service-life requirements both as received from the applicant and after being equilibrated at room temperature.

Section 84.207 Bench Tests; Gas and Vapor Tests; Minimum Requirements; General

In this existing section in subpart L—Chemical Cartridge Respirators, a new paragraph (h) specifies that PAPRs designed with one or more canisters and particulate filters must meet the end-of-service-life requirements both as received from the applicant and after being equilibrated at room temperature.

Subpart K—Air-Purifying Particulate Respirators

Subpart K is retitled from ''Non-Powered Air-Purifying Particulate Respirators'' to ''Air-Purifying Particulate Respirators.'' The intent of the new title is to properly indicate the broadened scope of the subpart, which includes the requirements for both non-powered and powered air-purifying particulate respirators.

Section 84.170 Air-Purifying Particulate Respirators; Description

This section provides a general description of air-purifying particulate respirators as a class of respirator. It is intended to inform the public and to serve as a legal and practical definition for the purposes of the NIOSH respirator approval program.

Paragraphs (a)(1), (2), and (3), which describe non-powered devices, remain substantively unchanged from the existing language. New paragraphs (b)(1), (2), and (3) describe PAPRs. Specifically, paragraph (b)(1) provides a general description of PAPRs and paragraph (b)(2) indicates that PAPRs are classified into one of two PAPR classes, HE or PAPR100, and one of three filter series, ''HE,'' ''PAPR100–N,'' and ''PAPR100–P.'' Paragraph (b)(3) establishes that the minimum efficiency level for filters employed as part of powered respirator configurations is 99.97 percent for all three filter series, HE (high-efficiency), PAPR100–N, or PAPR100–P.

Requirements for two series of filters have been established for the PAPR100 class to give manufacturers greater flexibility in designing these devices. The PAPR100–P series filter requirements are established to provide a filter that, like the existing PAPR class HE (high-efficiency series) filter, is suitable for use against all aerosols, including those which are comprised of oils.

The PAPR100–N series filter, which is not intended to be used against oil-based aerosols, has also been added to allow for greater use of electrostatic filter media. New filter efficiency requirements in § 84.180 are intended to allow manufacturers to optimize PAPR100–N series filters for environments with very low concentrations of non-oil based (solid- or water-based) aerosols where disposal of the filter after each use is preferred over extended use. The minimum filtration efficiency for the two new series of PAPR filters is maintained at 99.97 percent, the minimum filtration efficiency of the existing and ongoing HE series filters.

Section 84.171 Required Components and Attributes

The title of this existing section is revised to describe the requirements for components and attributes that apply to both powered and non-powered air-purifying particulate respirators. The regulatory language itself is revised to replace terminology such as ''facepiece, mouthpiece with nose clip, hood, or helmet'' with ''respiratory inlet covering''; ''half-mask facepieces and full facepieces'' with ''tight-fitting respiratory inlet coverings''; and ''hoods and helmets'' with ''loose-fitting respiratory inlet coverings.'' The entire section is revised to not only include a list of the required components, but to include the required design attributes of those components.

Paragraph (a) specifies the required attributes for the respiratory inlet covering, currently described in §§ 84.175 and 84.1135.

Paragraph (b)(1) addresses the filter unit, currently described in § 84.179 for non-powered devices; paragraph (b)(2) includes new provisions specifying that powered devices must be labeled as series HE (high-efficiency) or series PAPR100–N or –P.

Paragraph (c) addresses valves, currently described in §§ 84.177 and 84.1137.

Paragraph (d) addresses the head harness, currently described in §§ 84.178 and 84.1138.

Paragraph (e) addresses the breathing tube, currently described in §§ 84.172 and 84.1132.

Paragraph (f) is new, and describes requirements for a drink tube, should the design require a drink tube.

Paragraph (g) addresses the container, currently described in §§ 84.174 and 84.1134.

Paragraph (h) addresses the harness, currently described in §§ 84.173 and 84.1133.

Paragraph (i) is moved from § 84.1156(f) to describe the airflow rate required of PAPR HE class and PAPR100 class tight-fitting and loose-fitting respiratory inlet coverings.

Finally, a new paragraph (j) requires a low-flow warning device for the new PAPR100 class respirators only. There are no requirements for PAPR warning devices in 42 CFR part 84 for class HE respirators. However, if any PAPR system is submitted for approval equipped with a warning device, NIOSH verifies that the warning functions

properly as per the manufacturer's user instructions. In accordance with this paragraph, the required PAPR100 warning must alert users to breathing air flow that falls below 115 liters per minute for tight-fitting facepieces or 170 liters per minute for loose-fitting hoods and helmets (the minimum required in § 84.175). Warning devices must also be able to be heard or otherwise detected by the wearer and must also be readily distinguishable from one another. For example, if an optional low-battery warning is included in addition to the low-flow warning, it needs to be distinguishable from the required low-flow warning. The PAPR100 warning system must also not de-energize while the unit's blower is energized (*i.e.,* power to the warning system must be prioritized), and must not switch off automatically or be able to be switched off manually. The warning should remain active until the reason for the warning is corrected.

Section 84.172 Airflow Resistance Test

This section specifies the test criteria and acceptable performance criteria for inhalation and exhalation resistance of a complete air-purifying particulate respirator. The requirements for non-powered air-purifying particulate respirators are currently specified in § 84.180 and would be consolidated in § 84.172 with requirements for PAPRs, unchanged. The existing requirements for PAPR class HE are moved from § 84.1156(a)(1) and (2) and combined into § 84.172, where the maximum airflow resistance standard for the new class PAPR100 would also be established.

Paragraph (a) addresses the inhalation and exhalation resistance of the complete air-purifying particulate respirator. This paragraph is essentially unchanged in meaning but updated from the existing language in § 84.180(a) to reflect industry standard terminology, replacing ''facepiece, mouthpiece, hood, or helmet'' with ''respiratory inlet covering.''

Paragraph (b) indicates that the airflow resistance of tight-fitting PAPRs is measured with the blower off if the model is designed not to be immediately doffed in the event of a blower failure.

Paragraph (c) maintains the current requirements in § 84.1157(a) for the maximum inhalation and exhalation resistances of complete PAPRs (both classes HE and PAPR100) and the current requirements in § 84.180(b) for non-powered air-purifying respirators.

Section 84.173 Exhalation Valve Leakage Test

This section contains the existing requirements in §§ 84.182 and 84.1150 that describe the NIOSH tests for exhalation valve leakage. The exhalation valve leakage testing is conducted on both non-powered and powered devices.

Section 84.174 Filter Efficiency Level Determination Test—Non-Powered Series N, R, and P Filtration

Text from existing section § 84.181 specifies the test criteria and acceptable performance criteria for non-powered air-purifying particulate filter efficiency levels; it is re-numbered § 84.173. This section is also re-named to clarify the content and indicate its application for all types of air-purifying particulate respirators. The word ''shall'' is replaced with ''will'' throughout the section, to clarify intent and reflect plain language principles. No substantive changes are made to the testing requirements and technical standards for filter efficiency for non-powered devices.

Section 84.175 Instantaneous Filter Efficiency Level Determination Test—PAPR Series HE, PAPR100–N, and PAPR100–P Filtration

This new section describes the NIOSH filter efficiency testing requirements for both classes of PAPR and all three particulate series filters, HE, PAPR100–N, and PAPR100–P. This instantaneous dioctyl phthalate (DOP) test is unchanged from the current § 84.1151. PAPRs are tested at the minimum required flow rates specified in § 84.1156(c)(2).

Paragraph (a) indicates that three filters from each powered air-purifying particulate respirator will have their filtration efficiency evaluated using DOP.

Paragraph (b) describes the current atmospheric concentration of DOP. The test concentration, 100 milligrams per cubic meter, is unchanged. Paragraph (b) also includes the airflow rates for tight- and loose-fitting respiratory inlet coverings currently found in § 84.1156(c)(2).

Paragraph (c) indicates that PAPRs designed with multiple filters will be tested by dividing the specified flow rate by the total number of filters.

Finally, paragraph (d) requires the filters, including holders and gaskets, when separable, to be tested while mounted on a test fixture in the manner as used on the respirator. This allows NIOSH to test the assembly in a configuration as it will actually be used.

Section 84.176 Fit Test—PAPR Classes HE and PAPR100

This section specifies the test criteria and acceptable performance criteria to fit test a complete PAPR. Two options are available to assess fit: Isoamyl acetate (IAA) or generated aerosol.

Paragraph (a) specifies the existing IAA tightness test, originally established in subpart KK, § 84.1156(a)(5). The IAA testing standard is unchanged.

Paragraph (b) describes a new generated aerosol (corn oil) test, intended as an alternative to the IAA method for those powered devices that are equipped solely with particulate filters. The corn oil quantitative fit test was developed by NIOSH, at the behest of respirator manufacturers, and has been used as a voluntary substitute test in place of the qualitative IAA test for series HE PAPRs since approximately 2008. This test utilizes a concentration of 20–40 milligrams per cubic meter of corn oil aerosol with a mass median aerodynamic diameter of 0.4 to 0.6 micrometers. Paragraph (b)(1) describes the work schedule performed by the wearer during the test. The activities that are specified in this paragraph—nodding and turning head, calisthenic arm movements, running in place, and pumping a tire pump—are used by the agency to test the facepiece fit of respirator types by simulating the types of activities workers might perform while wearing the respirator.

Paragraph (b)(2) allows NIOSH to verify that the facepiece is capable of adjustment and that the applicant's donning instructions should be followed. Paragraph (b)(3) requires that the appropriate fit factors for the applicant respirator be exceeded.

Section 84.177 Total Noise Level Test—PAPR Classes HE and PAPR100

This section replicates the testing standard for PAPR noise levels currently found in § 84.1139. The standard requires that the noise levels generated by any PAPR (*i.e.,* HE hood or helmet and any PAPR100) must not exceed 80 decibels using the A-weighting frequency response (dBA) measured at each ear location while the system operates at its maximum airflow obtainable. Today, PAPR designs include head-, neck-, and face-mounted blowers in closer proximity to the user's ears. Additionally, for class HE hood and helmet designs, the provision is revised to clarify that the noise level measurement will be taken at the entrance to the ear rather than ''inside the hood or helmet'' as the standard currently states.

Section 84.178 Breath Response Type, Airflow Resistance Test—PAPR Classes HE and PAPR100

This new section specifies the minimum test criteria for a breath-responsive PAPR. Breath-responsive PAPRs are designed to maintain a positive pressure in the facepiece to match the user's respiratory requirements. Current PAPR requirements in 42 CFR part 84 do not address these design features. Therefore, pursuant to 42 CFR 84.60 and 84.63, these types of PAPRs have been evaluated using the requirements of 42 CFR 84.157, which are applicable to certain types of atmosphere-supplying respirators.

This section specifies that the breath-responsive PAPR airflow will be measured with a breathing machine described in § 84.88(b) and (c). Paragraph (a) specifies that the minimum inhalation resistance shall be greater than zero. Paragraph (b) specifies that the maximum exhalation resistance must be less than 89 millimeters (3.5 inches) of water-column height, in accordance with current requirements in § 84.91(c) and (d).

Section 84.179 Silica Dust Loading Test—PAPR Series HE Filtration

This section contains the requirements from existing §§ 84.1144 and 84.1152, which are themselves removed from part 84 in this action. This section specifies the test criteria for the silica dust loading test of a complete powered PAPR series HE. This test procedure is not used to test PAPR100–N or –P series devices, which NIOSH expects will allow PAPR100 designs to be smaller and lighter than series HE devices. Paragraphs (a) and (f), respectively, specify the test period and flowrate as well as the amount of unretained test suspension; these testing standards are taken from § 84.1152. Paragraphs (b), (c), (d), and (e) establish the test chamber conditions and size and concentration of the test particulate.

Section 84.180 Particulate Loading Test—PAPR Series PAPR100–N and PAPR100–P Filtration

This new section adopts the existing particulate loading test for non-powered air-purifying respirators in § 84.181, applying it to both PAPR100 series filters. Paragraph (a) specifies that NIOSH will test the efficiency of 20 filters of each powered air-purifying particulate respirator model submitted for a class PAPR100 approval.

Paragraph (a)(1) specifies that NIOSH will use a sodium chloride aerosol when testing PAPR100–N series filters. Paragraph (a)(2) specifies that NIOSH will use a dioctyl phthalate or equivalent aerosol when testing PAPR100–P series filters.

Paragraph (b) requires that 20 PAPR100–N series filters be preconditioned with humid air prior to being subjected to the filtration efficiency loading test specified in paragraph (d)(1).

Paragraph (c) specifies the continuous test aerosol flow rates for the filter efficiency testing. Single filters are to be tested at a rate of 85 ± 4 liters per minute; filters used in pairs at a rate of 42.5 ± 2 liters per minute through each filter; and filters used in threes at a rate of 28.3 ± 1 liters per minute through each filter.

Paragraph (d)(1) specifies the filter efficiency test aerosol for series PAPR100–N, sodium chloride or an equivalent solid aerosol. The test conditions for the solid aerosol are specified to be at 25 ± 5 degrees Celsius. The sodium chloride aerosol specified to be used in these tests is to be neutralized to the Boltzmann equilibrium state, and the maximum concentration will not exceed 200 milligrams per cubic meter. This paragraph also specifies the particle size, and size distribution of the sodium chloride test aerosol at a count median diameter of 0.075 ± 0.020 micrometer and a standard geometric deviation not exceeding 1.86 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

Paragraph (d)(2) specifies the filter efficiency test aerosol for series PAPR100–P, DOP or an equivalent oil liquid particulate aerosol. The test conditions for the liquid aerosol are specified to be at 25 ± 5 degrees Celsius. The DOP aerosol specified to be used in these tests is to be neutralized to the Boltzmann equilibrium state, and the maximum concentration will not exceed 200 milligrams per cubic meter. This paragraph also specifies the particle size, and sized distribution of the DOP test aerosol at a count median diameter of 0.185 ± 0.020 micrometer and a standard geometric deviation not exceeding 1.60 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

Paragraph (e) specifies that both the solid and the liquid aerosol filtration efficiency test must continue until minimum efficiency is achieved or until an aerosol mass of 200 ± 5 milligrams has contacted the filter. This paragraph further specifies that for PAPR100–P series filters, if the filter efficiency is decreasing when the 200 ± 5 mg challenge point is reached, the test shall be continued until there is no further decrease in efficiency.

Paragraph (f) requires the efficiency of the filter (*i.e.,* the amount of aerosol particles that are removed by the filter) to be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

Paragraph (g) requires the minimum filter efficiency for each of the 20 filters to be determined and recorded. The minimum efficiency of each tested filter must be greater than or equal to 99.97 percent for both PAPR100–N and PAPR100–P series filters.

Section 84.181 Communication Performance Test—PAPR Class PAPR100

This new section specifies testing criteria for PAPR communication performance. The 2014 IOM workshop highlighted the limitations posed by PAPRs with regard to communication with patients, potentially compromising patient safety. This test is intended to address healthcare, first responders, and other workers' needs for PAPR100s designed and tested to ensure a PAPR's ability to meet a minimum communication performance level of speech conveyance and intelligibility.

Paragraph (a) requires that PAPR100s are designed to allow minimum communication while being worn.

Paragraph (b) specifies that the Modified Rhyme Test (MRT) will be used to conduct the test. The MRT consists of lists of 50 monosyllabic, phonetically-balanced words and evaluates a listener's ability to comprehend single words spoken by the respirator wearer.

Paragraph (c) specifies that for each MRT trial the overall performance rating is calculated. The performance rating is the ratio of the number of correct responses to the number of incorrect responses with and without a respirator being worn. To obtain a passing score, the PAPR100 must obtain an average overall performance rating greater than or equal to 70 percent.

VI. Regulatory Assessment Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim final rule has been determined to be a ''significant regulatory action'' under section 3(f) of E.O. 12866. The rulemaking is considered a deregulatory action because it removes a barrier to the manufacturing, labeling as NIOSH-approved, and selling of new PAPR designs intended for healthcare and other workplace settings. With the promulgation of the interim final requirements, manufacturers have a choice to submit approval applications under either the existing PAPR class HE standard or the new class PAPR100 standard.

The new PAPR100 respirators are required to meet most of the requirements and testing standards applied to class HE respirators except for the silica dust loading test in § 84.179, which requires that the device perform for a minimum service time of 4 hours. Three new requirements—a low-flow warning device (§ 84.171(j)), particulate loading test (§ 84.180), and communication performance testing (§ 84.181)—apply to class PAPR100 respirators only. HHS requests data that would facilitate quantification of: (a) The incremental cost savings resulting from the removal of the silica dust loading test requirements, and (b) the incremental costs resulting from each of the three new requirements.

This rule does not impose any mandatory costs on the public and benefits manufacturers who choose to develop a product under these new technical requirements. Healthcare facilities that currently utilize PAPR class HE devices that are designed for industrial use may also see a cost saving because class PAPR100 respirators designed for healthcare or other workplace settings may be more affordable than the current devices. In discussions with NIOSH, manufacturers have indicated that the cost of future class PAPR100 respirators is likely to be substantially less than the current cost of class HE devices. HHS requests data that would facilitate estimation of: (a) The increase in PAPR device availability resulting from this likely cost reduction, and (b) the timing of such availability relative to the issuance of this interim final rule.

HHS also requests data or other comment relevant to the benefits of this rulemaking—including, but not limited to, quantitative evidence on the duration of worker exposure to the hazards that class PAPR100 devices and other respirators protect against.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined for good cause that it is impracticable and contrary to the public interest to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. The Office of Management and Budget (OMB) has already approved the information collection and recordkeeping requirements for certification and approval of respiratory protective devices under OMB Control Number 0920–0109, *Information Collection Provisions in 42 CFR part 84—Tests and Requirements for Certification and Approval of Respiratory Protective Devices* (expiration date April 30, 2021). Due to this interim final rule, which would allow for the NIOSH approval of respirators in a new class, PAPR100, there is likely to be a change in burden in the approved collection of information.

Based on PAPR activity over the last several years and also the increased number of related inquiries in response to the COVID–19 pandemic, NIOSH estimates that up to 5 respirator manufacturers may submit approximately 23 applications for PAPR100 approvals to the National Personal Protective Technology Laboratory from April 2020 through April 2021. Each application is expected to require an average of 229 hours to complete and maintain.

Accordingly, NIOSH expects 5,267 burden hours to be attributed to applications for PAPR100 approvals. NIOSH estimates an hourly wage rate of $79.89 (wage data is the average unspecified manufacturing industry engineer wage of $45.68 as reported in the 2016 National Sector NAICS Industry-Specific estimates multiplied by 1.06 inflation adjustment and 1.65 factor for overhead expenses).

Section	TitleC	Number of respondents	Average responses per respondent	Average burden per response (hr)	Total burden (hr)
§ 84.170	Air-purifying particulate respirators; description ..	5	4.6	229	5,267

Section	Title	Total burden hours (from above)	Estimated hourly wage rate	Total cost of hour burden
§ 84.170	Air-purifying particulate respirators; description	5,267	79.89	$420,780

The agency will submit the adjustment in burden for OMB Control No. 0920–0109 to OMB for its emergency review and approval.

D. Congressional Review Act

As required by Congress under the Congressional Review Act (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date. This rule is not likely to result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises

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

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this interim final rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local, or Tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice Reform)

This interim final rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

HHS has reviewed this interim final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this interim final rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this interim final rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS has attempted to use plain language in promulgating the interim final rule consistent with the Federal Plain Writing Act guidelines but notes that these standards are technical in nature.

List of Subjects in 42 CFR Part 84

Mine safety and health, Occupational safety and health, Personal protective equipment, Respirators.

Final Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 84 as follows:

PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

■ 1. The authority citation for part 84 continues to read as follows:

Authority: 29 U.S.C. 651 *et seq.;* 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

Subpart A—General Provisions

■ 2. Amend § 84.2 by adding definitions for ''Loose fitting'', ''Respiratory inlet covering'', ''Tight fitting'', and ''Warning device'' in alphabetical order to read as follows:

§ 84.2 Definitions.

* * * * *

Loose fitting means respiratory inlet covering that covers the wearer's head and neck, or head, neck, and shoulders, or whole body (when integral to the design).

* * * * *

Respiratory inlet covering means that portion of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source, or both.

* * * * *

Tight fitting means a respiratory inlet covering that forms a complete gas tight or dust tight seal with the face or neck.

* * * * *

Warning device is a component of a respiratory protective device that informs the wearer to take some action.

Subpart G—General Construction and Performance Requirements

§ 84.60 [Amended]

■ 3. Amend § 84.60, in paragraph (a), by removing the words ''subparts H through KK'' and adding in their place the words ''subparts H through O''.

§ 84.63 [Amended]

■ 4. Amend § 84.63, paragraphs (a) through (c) by removing the words ''subparts H through KK'' and adding in their place the words ''subparts H through O''.

§ 84.64 [Amended]

■ 5. Amend § 84.64, in paragraph (b), by removing the words ''subparts H through KK'' and adding in their place the words ''subparts H through O''.

§ 84.65 [Amended]

■ 6. Amend § 84.65, in paragraph (a), by removing the words ''subparts H through KK'' and adding in their place the words ''subparts H through O''.

Subpart I—Gas Masks

§ 84.125 [Amended]

■ 7. Amend § 84.125 by removing the words ''§§ 84.170 through 84.183, except for the airflow resistance test of § 84.181'' and adding in their place the words ''§§ 84.170 through 84.181, except for the airflow resistance test of § 84.172''.

■ 8. Amend § 84.126 by adding paragraph (f) to read as follows:

§ 84.126 Canister bench tests; minimum requirements.

* * * * *

(f) Powered air-purifying respirators with a canister(s) and particulate filter(s) must meet the as-received minimum service-life requirements and half of the equilibrated minimum service-life requirements set forth in Tables 5, 6, and 7 of subpart I using the flows specified in subpart K, § 84.175(b) and equilibrated in accordance with paragraphs (a) through (e) of this section using the flows specified in subpart K, § 84.175(b).

Subpart L—Chemical Cartridge Respirators

§ 84.206 [Amended]

■ 9. Amend § 84.206, in paragraph (b), by removing the words ''§§ 84.179 through 84.183'' and adding in their place the words ''§§ 84.170 through 84.181''.

■ 10. Amend § 84.207 by adding paragraph (h) to read as follows:

§ 84.207 Bench tests; gas and vapor tests; minimum requirements; general.

* * * * *

(h) Powered air-purifying respirators with a cartridge(s) and particulate filter(s) must meet the as-received minimum service-life requirements and half of the equilibrated minimum service-life requirements set forth in table 11 of subpart L using the flows specified in subpart K, § 84.175(b) and equilibrated in accordance with paragraphs (a) through (g) of this section using the flows specified in subpart K, § 84.175(b).

■ 11. Subpart K is revised to read as follows:

Subpart K—Air-Purifying Particulate Respirators

Sec.

Subpart K—Air-Purifying Particulate Respirators

§ 84.170 Air-purifying particulate respirators; description.

(a) *Non-powered air-purifying particulate respirators (series N, R, and P).* (1) Non-powered air-purifying particulate respirators utilize the wearer's negative inhalation pressure to draw the ambient air through the air-purifying filter elements (filters) to remove particulates from the ambient air. They are designed for use as respiratory protection against atmospheres with particulate contaminants at concentrations that are not immediately dangerous to life or health and that contain adequate oxygen to support life.

(2) Non-powered air-purifying particulate respirators are classified into three series, N-, R-, and P-series. The N-series filters are restricted to use in those workplaces free of oil aerosols. The R- and P-series filters are intended for removal of any particulate that includes oil-based liquid particulates.

(3) Non-powered air-purifying particulate respirators are classified according to the efficiency level of the filter(s) as tested according to the requirements of this part.

(i) N100, R100, and P100 filters must demonstrate a minimum efficiency level of 99.97 percent.

(ii) N99, R99, and P99 filters must demonstrate a minimum efficiency level of 99 percent.

(iii) N95, R95, and P95 filters must demonstrate a minimum efficiency level of 95 percent.

(b) *Powered air-purifying particulate respirators (PAPR classes HE and PAPR100).* (1) Powered air-purifying particulate respirators utilize a blower to move the ambient air through the air-purifying filter elements (filters) to remove particulate contaminants and deliver clean air to the respiratory inlet covering. They are designed for use as respiratory protection against atmospheres considered not immediately dangerous to life or health and that contain adequate oxygen to support life.

(2) Powered air-purifying particulate respirators are classified into two classes, HE and PAPR100, and three series, HE, PAPR100–N, and PAPR100–P. The N-series filters are restricted to use in those workplaces free of oil aerosols. The P-series filters are intended for removal of any particulate that includes oil-based liquid particulates.

(3) All three filter series, HE, PAPR100–N, and PAPR100–P, for powered air-purifying particulate respirators must demonstrate a minimum efficiency level of 99.97 percent.

§ 84.171 Required components and attributes.

The components of each air-purifying particulate respirator must meet the minimum construction requirements set forth in subpart G of this part. Each air-purifying particulate respirator described in § 84.170 must, where its design requires, contain the following component parts:

(a) *Respiratory inlet covering.* (1) Tight fitting respiratory inlet coverings must be designed and constructed to fit persons with various facial shapes and sizes either:

(i) By providing more than one size; or

(ii) By providing one size which will fit varying facial shapes and sizes.

(2) Full facepieces must provide for optional use of corrective spectacles or lenses, which must not reduce the respiratory protective qualities of the respirator.

(3) Loose fitting respiratory inlet coverings must be designed and constructed to fit persons with various head sizes, provide for the optional use of corrective spectacles or lenses, and insure against any restriction of movement by the wearer.

(4) Mouthpieces must be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal.

(5) Respiratory inlet coverings that incorporate a lens or faceshield must be designed to prevent eyepiece fogging.

(6) Half-mask facepieces must not interfere with the fit of common industrial safety spectacles, including corrective safety spectacles.

(7) Respiratory inlet coverings must be designed and constructed to provide adequate vision which is not distorted by the eyepieces.

(b) *Filter unit.* The respirator manufacturer, as part of the application for certification, must specify the filter series and the filter efficiency level (*i.e.,* ''N95,'' ''R95,'' ''P95,'' ''N99,'' ''R99,'' ''P99,'' ''N100,'' ''R100,'' ''P100,'' ''HE,'' ''PAPR100–N'' or ''PAPR100–P'') for which certification is being sought.

(1) Filters for non-powered respirators (series N, R, and P) must be prominently labeled as follows:

(i) N100 filters must be labeled ''N100 Particulate Filter (99.97% filter efficiency level)'' and must be a color other than magenta.

(ii) R100 filters must be labeled ''R100 Particulate Filter (99.97% filter efficiency level)'' and must be a color other than magenta.

(iii) P100 filters must be labeled ''P100 Particulate Filter (99.97% filter efficiency level)'' and must be color coded magenta.

(iv) N99 filters must be labeled ''N99 Particulate Filter (99% filter efficiency level)'' and must be a color other than magenta.

(v) R99 filters must be labeled ''R99 Particulate Filter (99% filter efficiency level)'' and must be a color other than magenta.

(vi) P99 filters must be labeled ''P99 Particulate Filter (99% filter efficiency level)'' and must be a color other than magenta.

(vii) N95 filters must be labeled as ''N95 Particulate Filter (95% filter efficiency level)'' and must be a color other than magenta.

(viii) R95 filters must be labeled as ''R95 Particulate Filter (95% filter efficiency level)'' and must be a color other than magenta.

(ix) P95 filters must be labeled as ''P95 Particulate Filter (95% filter

efficiency level)'' and must be a color other than magenta.

(2) Filters for powered respirators (classes HE and PAPR100) must be prominently labeled as follows:

(i) HE filters must be labeled as ''HE Particulate Filter (99.97% filter efficiency level)'' and must be color coded magenta.

(ii) PAPR100–N filters must be labeled as ''PAPR100–N Particulate Filter (99.97% filter efficiency level)'' and must be color coded magenta.

(iii) PAPR100–P filters must be labeled as ''PAPR100–P Particulate Filter (99.97% filter efficiency level)'' and must be color coded magenta.

(c) *Valves.* (1) Inhalation and exhalation valves must be protected against distortion.

(2) Inhalation valves must be designed and constructed and provided where necessary to prevent excessive exhaled air from adversely affecting filters, except where filters are specifically designed to resist moisture.

(3) Exhalation valves must be:

(i) Provided where necessary;

(ii) Protected against damage and external influence; and

(iii) Designed and constructed to prevent inward leakage of contaminated air.

(d) *Head harness.* (1) All facepieces must be equipped with head harnesses designed and constructed to provide adequate tension during use and an even distribution of pressure over the entire area in contact with the face.

(2) Facepiece head harnesses, except those employed on filtering facepiece respirators, must be adjustable and replaceable.

(3) Mouthpieces must be equipped, where applicable, with adjustable and replaceable harnesses, designed and constructed to hold the mouthpiece in place.

(e) *Breathing tube.* Flexible breathing tubes used in conjunction with respirators must be designed and constructed to prevent:

(1) Restriction of free head movement;

(2) Disturbance of the fit of facepieces, mouthpieces, or loose fitting respiratory-inlet covering;

(3) Interference with the wearer's activities; and

(4) Shutoff of airflow due to kinking, or from chin or arm pressure.

(f) *Drink tube.* (1) For particulate respirators equipped with a drink tube, the respirator must meet all requirements of the standard with the drink tube in place.

(2) Dry drinking tube assembly will be subjected to a suction of 75 mm water column height while in a normal operating position (closed).

(3) Leakage through the drinking tube assembly must not exceed 30 mL per minute.

(g) *Container.* (1) Except as provided in paragraph (b) of this section, each respirator must be equipped with a substantial, durable container bearing markings which show the applicant's name, the type of respirator it contains, and all appropriate approval labels.

(2) Containers for respirators may provide for storage of more than one respirator; however, such containers must be designed and constructed to prevent contamination of respirators which are not removed, and to prevent damage to respirators during transit.

(h) *Harness.* (1) Each respirator must, where necessary, be equipped with a suitable harness designed and constructed to hold the components of the respirator in position against the wearer's body.

(2) Harnesses must be designed and constructed to permit easy removal and replacement of respirator parts, and, where applicable, provide for holding a full facepiece in the ready position when not in use.

(i) *Attached blower—PAPR classes HE and PAPR100.* Blowers must be designed to achieve the air flow rates required by the testing standards in § 84.175.

(j) *Low-flow warning device—PAPR class PAPR100.* (1) The design must include a low-flow warning. It must actively and readily indicate when flow inside the respiratory inlet covering falls below the minimum air flow defined in § 84.175.

(2) Any warning must be detectable by the wearer without any intervention by the wearer.

(3) Warning devices must be configured so that they may not be de-energized while the blower is energized.

(4) During use, warning devices must not switch off automatically and must not be capable of being switched off by the wearer.

(5) Any warnings which require different reactions by the wearer must be distinguishable from one another.

(6) If the warning provided is audible only, or other warnings are not readily apparent to the wearer, the minimum sound level must be 80 dBA.

§ 84.172 Airflow resistance test.

(a) Resistance to airflow will be measured in the tight-fitting respiratory inlet covering of a complete particulate respirator mounted on a test fixture with air flowing at continuous rate of 85 ±2 liters per minute, before each test conducted in accordance with § 84.173.

(b) Resistance of a complete tight-fitting powered air-purifying particulate respirator system will be measured with the blower off if the manufacturer indicates that the respirator should not be doffed in the event of a blower failure.

(c) The maximum allowable resistance requirements for air-purifying particulate respirators are as follows:

MAXIMUM RESISTANCE

[mm water-column height]

Respirator type	Inhalation		Exhalation
	Initial	Final	
Non-Powered (N, R, and P)	35	N/A	25
Powered (tight fitting) (HE class and PAPR100 class)	50	70	20

§ 84.173 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats will be subjected to a suction of 25 mm water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat must not exceed 30 mL per minute.

§ 84.174 Filter efficiency level determination test—non-powered series N, R, and P filtration.

(a) Twenty filters of each non-powered air-purifying particulate respirator model will be tested for filter efficiency against:

(1) A solid sodium chloride particulate aerosol as per this section, if N-series certification is requested by the applicant.

(2) A dioctyl phthalate (DOP) or equivalent liquid particulate aerosol as per this section, if R-series or P-series

certification is requested by the applicant.

(b) Filters including holders and gaskets, when separable, will be tested for filter efficiency level, as mounted on a test fixture in the manner as used on the respirator.

(c) Prior to filter efficiency testing of 20 N-series filters, the 20 to be tested will be taken out of their packaging and placed in an environment of 85 ± 5 percent relative humidity at 38 ± 2.5 °C for 25 ±1 hours. Following the pre-conditioning, filters will be sealed in a gas-tight container and tested within 10 hours.

(d) When the filters do not have separable holders and gaskets, the exhalation valves will be blocked so as to ensure that leakage, if present, is not included in the filter efficiency level evaluation.

(e) For non-powered air-purifying particulate respirators with a single filter, filters will be tested at a continuous airflow rate of 85 ± 4 liters per minute. Where filters are to be used in pairs, the test-aerosol airflow rate will be 42.5 ± 2 liters per minute through each filter.

(f) Filter efficiency test aerosols:

(1) When testing N-series filters, a sodium chloride or equivalent solid aerosol at 25 ± 5 °C and relative humidity of 30 ± 10 percent that has been neutralized to the Boltzmann equilibrium state will be used. Each filter will be challenged with a concentration not exceeding 200 mg/m^3.

(2) When testing R-series and P-series filters, a neat cold-nebulized dioctyl phthalate (DOP) or equivalent aerosol at 25 ± 5 °C that has been neutralized to the Boltzmann equilibrium state will be used. Each filter will be challenged with a concentration not exceeding 200 mg/m^3.

(3) The test will continue until minimum efficiency is achieved or until an aerosol mass of at least 200 ± 5 mg has contacted the filter. For P-series filters, if the filter efficiency is decreasing when the 200 ± 5 mg challenge point is reached, the test will be continued until there is no further decrease in efficiency.

(g) The sodium chloride test aerosol will have a particle size distribution with count median diameter of 0.075 ± 0.020 μm and a standard geometric deviation not exceeding 1.86 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent. The DOP aerosol will have a particle size distribution with count median diameter of 0.185 ± 0.020 μm and a standard geometric deviation not exceeding 1.60 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

(h) The efficiency of the filter will be monitored and recorded throughout the test period by a suitable forward-light-scattering photometer or equivalent instrumentation.

(i) The minimum efficiency for each of the 20 filters will be determined and recorded and must be equal to or greater than the filter efficiency criterion listed for each level as follows:

Filter series	Efficiency (%)
P100, R100, N100	≥99.97
P99, R99, N99	≥99
P95, R95, N95	≥95

§ 84.175 Instantaneous filter efficiency level determination test—PAPR series HE, PAPR100–N, and PAPR100–P filtration.

(a) Three filters from each powered air-purifying particulate respirator for efficiency will be tested against a neat cold-nebulized dioctyl phthalate (DOP) or equivalent aerosol at 25 ± 5 °C that has been neutralized to the Boltzmann equilibrium state.

(b) Single air-purifying particulate respirator filter units will be tested in an atmosphere concentration of 100 mg/m^3 of DOP at the following continuous flow rates for a period of 5 to 10 seconds:

Type of respiratory inlet covering	Airflow rate (liters per minute)
Tight-fitting	115
Loose-fitting	170

(c) Powered air-purifying particulate respirators with multiple filter units will be tested by dividing the flow rate specified in paragraph (b) of this section by the total number of filters used.

(d) The filter will be mounted on a connector in the same manner as used on the respirator and the total efficiency must be ≥99.97 percent.

§ 84.176 Fit test—PAPR classes HE and PAPR100.

NIOSH will assess powered air-purifying respirator fit using either isoamyl acetate or generated aerosol.

(a) *Isoamyl acetate (IAA) fit test.* The applicant must provide a charcoal-filled canister or cartridge of a size and resistance similar to the filter unit with connectors which can be attached to the facepiece in the same manner as the filter unit.

(1) The canister or cartridge will be used in place of the filter unit, and persons will each wear a modified half-mask facepiece for 8 minutes in a test chamber containing 100 parts (by volume) of isoamyl acetate vapor per million parts of air.

(i) The following work schedule will be performed by each wearer in the test chamber:

(A) Two minutes nodding up and down, and turning head side to side; and

(B) Two minutes calisthenic arm movements.

(C) Two minutes running in place.

(D) Two minutes pumping with tire pump.

(ii) The facepiece must be capable of adjustment, according to the applicant's instructions, to each wearer's face, and the odor of isoamyl acetate must not be detectable by any wearer during the test.

(2) Where the respirator is equipped with a full facepiece, hood, helmet, or mouthpiece, the canister or cartridge will be used in place of the filter unit, and persons will each wear the modified respiratory inlet covering for 8 minutes in a test chamber containing 500 parts (by volume) of isoamyl acetate vapor per million parts of air, performing the work schedule specified in paragraph (b)(2) of this section.

(b) *Generated aerosol fit test.* The powered air-purifying particulate respirator system is tested in an atmosphere containing 20–40 mg/m^3 corn oil aerosol having a mass median aerodynamic diameter of 0.4 to 0.6 μm.

(1) The following activities will be performed by each wearer in the test chamber:

(i) Two minutes, nodding and turning head;

(ii) Two minutes, calisthenic arm movements;

(iii) Two minutes, running in place; and

(iv) Two minutes, pumping with a tire pump into a 28-liter (1 ft^3) container.

(2) The respiratory inlet covering will be adjusted, according to the applicant's instructions, to each wearer's face.

(3) The appropriate fit factor must be exceeded during the entire test.

§ 84.177 Total noise level test—PAPR classes HE and PAPR100.

Noise levels generated by any powered air-purifying respirators that cover the ears (*i.e.,* hood or helmet) will be measured at the entrance to each ear at maximum airflow obtainable and must not exceed 80 dBA.

§ 84.178 Breath response type, airflow resistance test—PAPR classes HE and PAPR100.

Resistance to airflow will be measured with a breathing machine as described in § 84.88.

(a) Minimum inhalation resistance must be greater than zero mm of water-column height.

(b) Maximum exhalation resistance must be less than 89 mm of water-column height.

§ 84.179 Silica dust loading test—PAPR series HE filtration.

(a) Three powered air-purifying particulate respirators will be tested for a period of 4 hours each at a flowrate not less than 115 liters per minute for tight-fitting facepieces, and not less than 170 liters per minute for loose-fitting hoods and helmets.

(b) The relative humidity in the test chamber will be 20–80 percent, and the room temperature approximately 25 °C.

(c) The test suspension in the chamber will not be less than 50 nor more than 60 mg of flint (99 + percent free silica) per m^3 of air.

(d) The flint in suspension will be 99 + percent through a 270-mesh sieve.

(e) The particle-size distribution of the test suspension will have a geometric mean of 0.4 to 0.6 μm and the standard geometric deviation will not exceed 2.

(f) The total amount of unretained test suspension in samples taken during testing must not exceed 14.4 mg for a powered air-purifying particulate respirator with tight-fitting facepiece, and 21.3 mg for a powered air-purifying particulate respirator with loose-fitting hood or helmet.

§ 84.180 Particulate loading test—PAPR series PAPR100–N and PAPR100–P filtration.

(a) Twenty filters of each powered air-purifying particulate respirator design will be tested for filter efficiency against:

(1) A solid sodium chloride particulate aerosol, in accordance with paragraph (d)(1) of this section, if series PAPR100–N approval is requested by the applicant.

(2) A dioctyl phthalate or equivalent liquid particulate aerosol, in accordance with paragraph (d)(2) of this section, if series PAPR100–P approval is requested by the applicant.

(b) Prior to filter efficiency testing of 20 series PAPR100–N filters, the 20 to be tested will be taken out of their packaging and placed in an environment of 85 ±5 percent relative humidity at 38 ±2.5 °C for 25 ±1 hours. Following the pre-conditioning, filters will be sealed in a gas-tight container and tested within 10 hours.

(c) For powered air-purifying particulate respirators with a single filter, filters will be tested at a continuous airflow rate of 85 ±4 liters per minute. Where filters are to be used in pairs, the test-aerosol airflow rate will be 42.5 ±2 liters per minute through each filter.

(d) Filter efficiency test aerosols:

(1) Series PAPR100–N filters:

(i) A sodium chloride or equivalent solid aerosol at 25 ±5 °C and relative humidity of 30 ±10 percent that has been neutralized to the Boltzmann equilibrium state will be used. Each filter will be challenged with a concentration not exceeding 200 mg/m^3.

(ii) The sodium chloride test aerosol will have a particle size distribution with count median diameter of 0.075 ±0.020 μm and a standard geometric deviation not exceeding 1.86 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

(2) Series PAPR100–P filters:

(i) A neat cold-nebulized dioctyl phthalate (DOP) or equivalent aerosol at 25 ± 5 °C that has been neutralized to the Boltzmann equilibrium state will be used. Each filter will be challenged with a concentration not exceeding 200 mg/m^3.

(ii) The DOP aerosol shall have a particle size distribution with count median diameter of 0.185 ±0.020 μm and a standard geometric deviation not exceeding 1.60 at the specified test conditions as determined with a scanning mobility particle sizer or equivalent.

(e) The test will continue until minimum efficiency is achieved or until an aerosol mass of at least 200 ±5 mg has contacted the filter. For PAPR100–P series filters, if the filter efficiency is decreasing when the 200 ±5 mg challenge point is reached, the test will be continued until there is no further decrease in efficiency.

(f) The efficiency of the filter will be monitored and recorded throughout the test period by a suitable forward-light scattering photometer or equivalent instrumentation.

(g) The minimum efficiency for each of the 20 filters will be determined and recorded and must be equal to or greater than the filter efficiency criterion for PAPR100–N and PAPR100–P, efficiency ≥99.97 percent, pursuant to § 84.170(b).

§ 84.181 Communication performance test—PAPR class PAPR100.

(a) Powered air-purifying respirators must be designed to allow for proper communication while worn.

(b) A Modified Rhyme Test [7] will be used to test the wearer's ability to communicate efficiently.

(c) The communications requirement is met if the overall performance rating is greater than or equal to 70 percent.

[7] The Modified Rhyme Test is used in speech intelligibility experiments. *See https://www.nist.gov/ctl/pscr/modified-rhyme-test-audio-library.*

Subpart KK [Removed]

■ 12. Subpart KK, consisting of §§ 84.1100 through 84.1158 and the tables, is removed.

Dated: April 7, 2020.

Eric D. Hargan,

Deputy Secretary, Department of Health and Human Services.

[FR Doc. 2020–07804 Filed 4–9–20; 4:15 pm]

BILLING CODE 4150–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200401–0096]

RIN 0648–BJ08

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack 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 for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule revises the commercial trip limit in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) for greater amberjack. In addition, this final rule revises the boundaries of several Gulf reef fish management areas to reflect a change in the seaward boundary of Louisiana, Mississippi, and Alabama. The purpose of this final rule is to extend the commercial fishing season for greater amberjack by constraining the harvest rate while continuing to prevent overfishing and rebuild the stock in the Gulf, and to update the boundaries of reef fish management areas to reflect the current state water's boundaries for reef fish management.

DATES: This final rule is effective on May 14, 2020.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, 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-greater-amberjack-commercial-trip-limits.*

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

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes greater amberjack and is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (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).

On December 19, 2019, NMFS published a proposed rule in the **Federal Register** for the framework action and requested public comment (84 FR 69715, December 19, 2019). 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 action and implemented by this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule reduces the Gulf greater amberjack commercial trip limit from 1,500 lb gutted weight (680 kg; 1,560 lb (708 kg) round weight) to 1,000 lb gutted weight (454 kg; 1,040 lb (472 kg) round weight). Additionally, this final rule reduces the commercial trip limit to 250 lb gutted weight (113 kg; 260 lb (118 kg) round weight) when 75 percent of the commercial annual catch target (commercial quota) has been landed.

This commercial trip limit reduction is expected to extend the length of the commercial fishing season while continuing to allow enough harvest per trip to support vessels that engage in directed trips for greater amberjack. An in-season closure of the commercial sector for greater amberjack is still expected to occur as a result of the commercial quota being reached, but will likely occur later in the January through December fishing year than has occurred in recent years.

Changes in This Final Rule Not in the Framework Action

This final rule revises the boundaries of three Gulf reef fish management areas to reflect a change in the seaward boundaries of Louisiana, Mississippi, and Alabama for purposes of management under the FMP. Language included in the 2016 and 2017 Consolidated Appropriations Acts (Pub. L. 114–113, December 18, 2015, and Pub. L. 115–31, May 5, 2017), changed the state and Federal boundary for management of the Gulf reef fish fishery to 9 nautical miles (nm; 16.7 km) off the Gulf coasts of all the Gulf States. Therefore, some existing Federal reef fish management areas that were exclusively in Federal waters now extend into state managed areas.

This final rule updates the FMP regulations by revising the coordinates of the inshore boundaries for the reef fish stressed area (Table 2 of appendix B to 50 CFR part 622), the reef fish longline and buoy gear restricted area (Table 1 of appendix B to 50 CFR part 622), and the recreational shallow-water grouper closure (50 CFR 622.34(d)). This rule also updates the terminology in the coordinate tables to reflect that this boundary is specific to Gulf reef fish management. This rule does not change the management measures associated with each area.

Comments and Responses

NMFS received a total of 20 comments on the proposed rule for the framework action. Most commenters supported the measures for Gulf greater amberjack in the proposed rule. Other comments suggested changes to management measures that were outside the scope of the proposed rule, such as gear restrictions and a prohibition on commercial harvest, and therefore, are not addressed further. Specific comments related to the framework action and the proposed rule are grouped by topic and summarized below, followed by NMFS' respective responses.

Comment 1: The commercial trip limit for Gulf greater amberjack should be reduced further than 1,000 lb gutted weight (454 kg) with a trip limit reduction to 250 lb gutted weight (113 kg) when 75 percent of the commercial quota is harvested.

Response: NMFS disagrees that the trip limit should be reduced more than specified in this final rule. The Council considered three other alternatives for a commercial trip limit that ranged from 750 lb to 250 lb gutted weight (340 kg to 113 kg). However, the Council determined that these trip limits were too small to allow for directed commercial trips for Gulf greater amberjack based on public testimony by commercial fishermen, who indicated that they needed to harvest at least as 1,000 lb gutted weight (454 kg) or more per trip. Additionally, the alternative trip limits of 250 lb gutted weight (113 kg) year-round, or 500 lb gutted weight (227-kg; 520-lb (236-kg) round weight) with a reduction to 250 lb gutted weight (113 kg) at 75 percent of the commercial quota, were not expected to allow fishermen to harvest all of the commercial quota during a fishing year. Therefore, the Council determined, and NMFS agrees, that the reduction in the trip limit to 1,000 lb gutted weight (454 kg), and a further reduction to 250 lb gutted weight (113 kg) when 75 percent of the commercial quota is harvested, best balances the need of fishermen who rely on directed trips for Gulf greater amberjack and fishermen who rely on having a longer season.

Comment 2: The commercial trip limit for greater amberjack in the Gulf should remain the same or be increased.

Response: NMFS disagrees. The previous commercial trip limit of 1,500 lb gutted weight (680 kg) has been in effect since 2016 (80 FR 75432; December 2, 2015). From 2013 to 2016, a 2,000-lb round weight (907-kg) commercial trip limit was in effect (77 FR 67574; November 13, 2012). These commercial trip limits did not reduce harvest of Gulf greater amberjack enough to prevent yearly in-season commercial closures. Therefore, maintaining the previous trip limit or increasing the trip limit would not help achieve the purpose of this rule, which is to extend the Gulf greater amberjack commercial fishing season. Analysis included in the framework action predicted that, when compared to the alternatives considered, the shortest commercial fishing season would occur under the 1,500-lb gutted weight (680-kg) commercial trip limit, even with the current March through May seasonal closure. A larger commercial trip limit would result in an even shorter commercial fishing season. While NMFS still predicts that an in-season closure will occur with the reduced trip limit implemented through this final rule, the closure should occur later in the fishing year, thereby extending the opportunity for commercial harvest.

Comment 3: If commercial harvest for greater amberjack in the Gulf extends into the summer spawning season, the stock will be harmed.

Response: NMFS disagrees. This final rule does not change the commercial seasonal closure for greater amberjack of March 1 through May 31, which is in place to protect the stock during the majority of spawning activity in the Gulf. In addition, the harvest by the commercial sector will still be constrained by the commercial quota, which will not change through this final rule. Furthermore, extending the commercial season may help to reduce discards and discard mortality because it will allow harvest later in the year.

Comment 4: The greater amberjack commercial trip limit of 1,000 lb gutted weight (454 kg) will negatively impact business owners harvesting more than

this amount per trip. In addition, the further reduction in the trip limit to 250 lb gutted weight (113 kg) when 75 percent of the commercial quota is harvested will not allow fishermen on directed commercial trips for greater amberjack to effectively harvest the remaining 25 percent of the commercial quota.

Response: NMFS agrees that the reduction in the trip limit may have negative economic impacts on Gulf commercial reef fish permit holders who have historically harvested more than 1,000 lb gutted weight (454 kg) of greater amberjack per trip. The economic analysis in the framework action estimated that the 1,000-lb gutted weight (454-kg) commercial trip limit will reduce the catch per trip by approximately 18 percent, and on average, greater amberjack accounts for about 1.7 percent of total revenues from commercial Gulf reef fish trips. Therefore, the potential revenue reduction from the reduced commercial trip limit will be approximately 0.3 percent. However, the 1,000-lb gutted weight (454-kg) trip limit in combination with the 250-lb gutted weight (113-kg) trip limit reduction when 75 percent of the commercial quota is harvested is estimated to extend the fishing season from 85 days to 170 days. This may allow commercial vessels to recoup revenue losses from reduced trip limits. Further, as noted in response to *Comment 1,* the commercial trip limit in this final rule balances the need of fishermen who rely on directed trips and fishermen who rely on having a longer season.

Comment 5: Reducing the commercial trip limit for Gulf greater amberjack will increase discards and will be bad for the stock.

Response: NMFS disagrees. As explained in the framework action, studies have documented low bycatch and bycatch mortality of greater amberjack because fishermen who want to target the species are able to find schools when the season is open and avoid them when there is a closure. For fishermen who incidentally catch greater amberjack when targeting other species, extending the commercial season may help reduce discards and discard mortality by allowing those fish to be kept later in the year.

Comment 6: Moving the boundary between state and Federal waters off Louisiana, Mississippi, and Alabama could cause confusion.

Response: This rule does not change the boundary between state and Federal waters off Louisiana, Mississippi, and Alabama. The 2016 and 2017 Appropriations Acts moved state and Federal boundary off Louisiana, Mississippi, and Louisiana to 9 nm (16.7 km) for Gulf reef fish management only. This rule revises the boundaries of three Gulf reef fish management areas to reflect the change in the seaward boundary of these states for management purposes under the FMP. As previously codified, the boundaries for these Federal management areas extended into state managed areas. NMFS expects that updating the boundaries for the affected Gulf reef fish management areas will reduce confusion because these regulatory boundaries will be consistent with the boundaries specified in the Appropriations Acts.

Classification

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

This final rule has been determined to be not significant for 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.

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, recordkeeping, 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 (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant 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. One comment from the public on economic impacts was received, and is addressed in the Comments and Responses section in the response to *Comment 4.* No comments from the public or the SBA's Chief Counsel for Advocacy were received regarding the certification, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

List of subjects in 50 CFR Part 622

Boundary, Commercial, Coordinates, Fisheries, Fishing, Greater amberjack, Gulf of Mexico, Reef fish, Trip limits.

Dated: April 1, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is 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 § 622.34, revise paragraph (d) to read as follows:

§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.

* * * * *

(d) *Seasonal closure of the recreational sector for shallow-water grouper (SWG).* The recreational sector for SWG in or from the Gulf EEZ is closed each year from February 1 through March 31 in the portion of the Gulf EEZ seaward of rhumb lines connecting the following points in order. During the closure, the bag and possession limits for SWG in or from the Gulf EEZ seaward of the following rhumb lines are zero.

TABLE 4 TO PARAGRAPH (d)

Point	North lat.	West long.
1	24°48.0′	82°48.0′
2	25°07.5′	82°34.0′
3	26°26.0′	82°59.0′
4	27°30.0′	83°21.5′
5	28°10.0′	83°45.0′
6	28°11.0′	84°00.0′
7	28°11.0′	84°07.0′
8	28°26.6′	84°24.8′
9	28°42.5′	84°24.8′
10	29°05.0′	84°47.0′
11	29°02.5′	85°09.0′
12	29°21.0′	85°30.0′
13	29°27.9′	85°51.7′
14	29°45.8′	85°51.0′
15	30°05.6′	86°18.5′
16	30°07.5′	86°56.5′
17	29°43.9′	87°33.8′
18	29°43.0′	88°18.5′
19	29°18.9′	88°50.7′ at State and Federal Reef Fish Management Boundary, follow Reef Fish Management Boundary to point 20
20	28°58.98′	89°35.1′ at State and Federal Reef Fish Management Boundary
21	29°02.0′	89°45.5′

TABLE 4 TO PARAGRAPH (d)—Continued

Point	North lat.	West long.
22	28°32.7′	90°21.5′
23	28°24.8′	90°52.7′
24	28°42.3′	92°14.4′
25	28°34.2′	92°30.4′
26	28°27.6′	95°00.0′
27	28°20.0′	95°06.9′
28	28°02.2′	96°11.1′
29	27°46.5′	96°38.1′
30	27°15.0′	97°00.0′
31	26°45.5′	97°01.4′
32	At EEZ boundary	96°51.0′

* * * * *

■ 3. In § 622.43, revise paragraph (a) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(a) *Gulf greater amberjack.* (1) Until 75 percent of the quota specified in § 622.39(a)(1)(v) is reached, 1,000 lb (454 kg), gutted weight; 1,040 lb (472 kg), round weight.

(2) After 75 percent of the quota is reached or projected to be reached, 250 lb (113 kg), gutted weight; 260 lb (118 kg), round weight. See § 622.39(b) for the limitations regarding greater amberjack after the quota is reached. When the conditions in this paragraph (a)(2) have been reached, the Assistant Administrator will implement this trip limit change by filing a notification with the Office of the Federal Register.

* * * * *

■ 4. Revise appendix B to read as follows:

Appendix B to Part 622—Gulf Areas

TABLE 1 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point number and reference location [1]	North lat.	West long.
1 Seaward limit of State and Federal Reef Fish Management Boundary north of Dry Tortugas.	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Carrabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of Mississippi River	29°14.5′	88°28.0′
18 East of South Pass of Mississippi River	29°04.0′	88°49.7′ at State and Federal Reef Fish Management Boundary
Then westerly along the seaward limit of the State and Federal Reef Fish Management Boundary to:		
19 South of Southwest Pass of Mississippi River	28°46.5′	89°26.0′
20 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
21 West side of Mississippi Canyon	28°34.5′	89°59.5′
22 South of Timbalier Bay	28°22.5′	90°02.5′
23 South of Terrebonne Bay	28°10.5′	90°31.5′
24 South of Freeport	27°58.0′	95°00.0′
25 Off Matagorda Island	27°43.0′	96°02.0′
26 Off Aransas Pass	27°30.0′	96°23.5′
27 Northeast of Port Mansfield	27°00.0′	96°39.0′
28 East of Port Mansfield	26°44.0′	96°37.5′
29 Northeast of Port Isabel	26°22.0′	96°21.0′
30 U.S. and Mexico EEZ boundary	26°00.5′	96°24.5′
Then westerly along U.S. and Mexico EEZ boundary to seaward limit of the State and Federal Reef Fish Management Boundary		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA

Point number and reference location [1]	North lat.	West long.
1 Seaward limit of State and Federal Reef Fish Management Boundary northeast of Dry Tortugas.	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′

TABLE 2 OF APPENDIX B TO PART 622—SEAWARD COORDINATES OF THE STRESSED AREA—Continued

Point number and reference location [1]	North lat.	West long.
10 Seaward limit of State and Federal Reef Fish Management Boundary east of Cape St. George.	29°35.5′	84°38.6′
Then westerly along the seaward limit of State and Federal Reef Fish Management Boundary to:		
11 Seaward limit of State and Federal Reef Fish Management Boundary south of Cape San Blas.	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida and Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama and Mississippi border	30°01.5′	88°23.7′
18 Horn and Chandeleur Islands	30°01.5′	88°39.8′ at State and Federal Reef Fish Management Boundary
Then southerly along the seaward limit of State and Federal Reef Fish Management Boundary to:		
19 Seaward limit of State and Federal Reef Fish Management Boundary off Chandeleur Islands.	29°50.8′	88°39.07′ at State and Federal Reef Fish Management Boundary
20 Chandeleur Islands	29°35.5′	88°37.0′
21 Seaward limit of State and Federal Reef Fish Management Boundary off North Pass of Mississippi River.	29°21.0′	88°54.43′ at State and Federal Reef Fish Management Boundary
Then southerly and westerly along the seaward limit of State and Federal Reef Fish Management Boundary to:		
22 Seaward limit of State and Federal Reef Fish Management Boundary off Southwest Pass of Mississippi River.	29°01.3′	89°34.67′ at State and Federal Reef Fish Management Boundary
23 Seaward limit of the State and Federal Reef Fish Management Boundary west of Mississippi River.	29°5.24′ at State and Federal Reef Fish Management Boundary.	89°41.0′
Then westerly along the seaward limit of the State and Federal Reef Fish Management Boundary to:		
24 Seaward limit of State and Federal Reef Fish Management Boundary south of Grand Isle.	29°3.03′ at State and Federal Reef Fish Management Boundary.	89°56.0′
25 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
26 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
27 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
28 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
29 East of Aransas Pass	27°49.0′	96°19.5′
30 East of Baffin Bay	27°12.0′	96°51.0′
31 Northeast of Port Mansfield	26°46.5′	96°52.0′
32 Northeast of Port Isabel	26°21.5′	96°35.0′
33 U.S. and Mexico EEZ boundary	26°00.5′	96°36.0′
Then westerly along U.S. and Mexico EEZ boundary to seaward limit of the State and Federal Reef Fish Management Boundary		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

[FR Doc. 2020–07253 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200402–0097]

RIN 0648–BI31

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; 2020 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Final specifications.

SUMMARY: We are approving specifications for the 2020 Atlantic deep-sea red crab fishery, including an annual catch limit and total allowable landings limit and are clarifying the specifications process. This action establishes 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: The final specifications for the 2020 Atlantic deep-sea red crab fishery

are effective May 14, 2020, through February 28, 2021.

ADDRESSES: Copies of the supplemental environmental assessment, 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/library/2020-2023-red-crab-specifications.*

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 (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.

Final 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. The ABC is defined in terms of landings instead of total catch because there is insufficient information to estimate dead discards of red crab. We are approving the Council recommended specifications for the 2020 fishing year that establish a 2,000-mt ABC, ACL, and TAL.

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 of the quota in a subsequent fishing year. We would publish a notice in the **Federal Register** of any revisions to the projected specifications if an overage occurs. Based on the performance of the 2019 red crab fishery, no adjustment are necessary for fishing year 2020. We will provide notice of the final 2021–2023 quotas and any necessary reductions prior to the start of each respective fishing year.

Regulatory Clarifications

We are making two regulatory clarifications based on Council recommendations. First, we are changing the red crab specifications cycle from 3 to 4 years. The Northeast Region Coordinating Council, consisting of the New England and Mid-Atlantic Fishery Management Councils, the Atlantic States Marine Fisheries Commission, NMFS Greater Atlantic Regional Fisheries Office, and Northeast Fisheries Science Center, changed the Atlantic deep-sea red crab assessment from a 3-year to a 4-year cycle. Consequently, the Council sought to align the specifications cycle with the new 4-year assessment cycle. This rule approves changing the specifications cycle to 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 removing 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. 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. This rule proposes to streamline the Council process by removing the requirement for the Red Crab Committee to meet.

Comments and Responses

The public comment period for the proposed rule (85 FR 9717; February 20, 2020) ended on March 6, 2020. No comments were received on the proposed rule.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

This final rule is considered an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

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

Dated: April 2, 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 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:
■ a. Revise paragraph (a) introductory text, paragraphs (a)(1) through (3);
■ b. Remove the paragraph heading from paragraph (a)(6); and
■ c. Revise paragraph (b).

The revisions 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 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 years. 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. 2020–07276 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 72
Tuesday, April 14, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 708a and 741

RIN 3313–AF10

Combination Transactions With Non-Credit Unions; Reopening of Comment Period

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On January 30, 2020, the NCUA Board (Board) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. The NPRM requested comment on the Board's proposal to add subpart D to part 708a of its regulations and clarify the scope of section 741.8 of the NCUA's regulations related to procedures and requirements for combination transactions. The NPRM provided a 60-day comment period that closed on March 30, 2020. To allow stakeholders more time to consider and submit their comments, the Board has determined to reopen the comment period for an additional 60 days.

DATES: The Board is reopening the comment period on the proposed rule that published January 30, 2020 at 85 FR 5336. Submit comments by June 15, 2020.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only). *Please note that the NCUA is now accepting electronic comments only through the Federal eRulemaking portal, Regulations.gov:*

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Use the subject line ''[Your name] Comments on Combination Transactions'' on the transmission cover sheet.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Due to social distancing measures in effect through at least April 30, 2020, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or by telephone at (703) 518–6540.

SUPPLEMENTARY INFORMATION: On January 30, 2020, the Board issued an NPRM proposing to clarify the procedures and requirements for combination transactions (85 FR 5336). Combination transactions include those where a federally insured credit union (FICU) proposes to assume liabilities from a non-credit union, including a bank, as well as a FICU's merger or consolidation with a non-credit union entity. The NPRM also clarified the scope of section 741.8 of the NCUA's regulations.

The NPRM provided a 60-day public comment period that closed on March 30, 2020. In light of the challenges posed by the COVID–19 (coronavirus infection) pandemic, various stakeholders requested additional time to comment on the proposed rule. The Board has determined that reopening the NPRM comment period, with comments now due June 15, 2020, is appropriate.

By the National Credit Union Administration Board on March 28, 2020.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–07157 Filed 4–13–20; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0215; Product Identifier 2018–SW–088–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.A. (Leonardo) Model AB139, AW139, AW169, and AW189 helicopters. This proposed AD was prompted by reports of uncommanded deployment of the emergency flotation system (EFS) due to improper accomplishment of the reset procedure of the shape memory alloy (SMA) inflation system actuation device. This proposed AD would require removal of affected SMA inflation systems and installation of serviceable SMA inflation systems. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 29, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.*

You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0215; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Aerospace Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0215; Product Identifier 2018–SW–088–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0208, dated September 20, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Leonardo Model AB139, AW139, AW169, and AW189 helicopters. EASA advises that reports were received of uncommanded EFS deployment on Model AW139, AW169, and AW189 helicopters. Results of the subsequent technical investigation revealed that these events may have been caused by the improper accomplishment of the reset procedure of the SMA inflation system actuation device. EASA added that these events may lead to an unstable condition of the SMA inflation system. This condition, if not addressed, could lead to further events of uncommanded EFS deployment, possibly resulting in reduced control of the helicopter.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0215.

Related Service Information Under 1 CFR Part 51

Leonardo Helicopters has issued Alert Service Bulletin (ASB) No. 139–533, dated August 30, 2018; ASB No. 169–099, dated August 30, 2018; and ASB No. 189–195, dated August 30, 2018. This service information describes procedures for removal of affected SMA inflation systems and installation of serviceable SMA inflation systems (including correcting the SMA inflation system by performing a reset procedure). These documents are distinct since they apply to different helicopter models.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The FAA estimates that this proposed AD affects 138 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hours × $85 per hour = Up to $595.	$*	Up to $595*	Up to $82,110*

*The FAA has received no definitive data that would enable the FAA to provide parts cost estimates for the actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not

have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.A.: Docket No. FAA–2020–0215; Product Identifier 2018–SW–088–AD.

(a) Comments Due Date

The FAA must receive comments by May 29, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Leonardo S.p.A. helicopters identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model AB139 and AW139 helicopters, all serial numbers, equipped with an emergency flotation system (EFS) float assembly having part number (P/N) 3G9560V00332, 3G9560V00432, 3G9560V01432, or 3G9560V01532.

(2) Model AW169 helicopters, all serial numbers, equipped with an EFS float assembly having any part number.

(3) Model AW189 helicopters, all serial numbers, equipped with an EFS float assembly having P/N 8G9560V00331 or 8G9560V00431.

(d) Subject

Joint Aircraft Service Component (JASC) Code 3212, Emergency Flotation Section.

(e) Reason

This AD was prompted by reports of uncommanded deployment of the EFS due to improper accomplishment of the reset procedure of the shape memory alloy (SMA) inflation system actuation device. The FAA is issuing this AD to address uncommanded EFS deployment, which could result in reduced control of the helicopter.

(f) Compliance

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

(g) Definitions

(1) An ''affected part'' is an SMA inflation system having P/N 3G9560V01052 (Model AB139 and AW139 helicopters), P/N 6F9560V00551 (Model AW169 helicopters), or P/N 8G9560V01751 (Model AW189 helicopters), as applicable, with a serial number specified in Figure 1 to paragraph (g)(1) of this AD except those which have been corrected in accordance with the Accomplishment Instructions of Leonardo Helicopters Alert Service Bulletin (ASB) No. 139–533, dated August 30, 2018 (ASB 139–533); Leonardo Helicopters ASB No. 169–099, dated August 30, 2018 (ASB 169–099); or Leonardo Helicopters ASB No. 189–195, dated August 30, 2018 (ASB 189–195); as applicable.

Figure 1 to Paragraph (g)(1) – *Affected parts*

Helicopter Model	Affected part serial numbers (s/n)
AB139 and AW139	Up to s/n 1801 inclusive, except s/n 1783 and s/n 1784
AW169	Up to s/n 67 inclusive
AW189	Up to s/n 182 inclusive, except s/n 117

(2) A ''serviceable part'' is an affected part that has been corrected in accordance with the Accomplishment Instructions of ASB 139–533; ASB 169–099; or ASB 189–195; as applicable; or a part that is not affected.

(h) Removal and Installation

At the applicable compliance time specified in Figure 2 to paragraph (h) of this AD, remove each affected part from the helicopter and install a serviceable part. This may be done in accordance with the Accomplishment Instructions of ASB 139–533; ASB 169–099; or ASB189–195; as applicable.

Figure 2 to Paragraph (h) – *Removal and installation compliance times*

Helicopter Model	Compliance time (after the effective date of this AD)
AB139 and AW139	100 hours time-in-service (TIS)
AW169	45 hours TIS
AW189	

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an affected part on any helicopter.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristi Bradley, Aerospace Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, notify your principal inspector or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(k) Related Information

(1) The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD 2018–0208, dated September 20, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0215.

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Issued on April 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–07814 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2020–0123; FRL–10007–48–OW]

Wyoming Underground Injection Control Program; Class VI Primacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has received a complete Underground Injection Control (UIC) program revision package from the State of Wyoming requesting approval of a revision to the State's Safe Drinking Water Act (SDWA) section 1422 UIC program to include Class VI injection well primary implementation and enforcement authority (primacy). The EPA proposes to approve the application from Wyoming under the SDWA to implement a UIC program for Class VI injection wells located within the State, except those on Indian country. This revision would allow the Wyoming Department of Environmental Quality to issue UIC permits for geologic carbon sequestration facilities as Class VI wells and ensure compliance of Class VI wells with applicable requirements under the UIC program. The EPA is requesting public comments and announcing that any member of the public may request a public hearing.

DATES: The application is available for inspection and copying at the address appearing in the **ADDRESSES** section of this document. Comments must be received on or before May 29, 2020. Requests for a public hearing will be accepted until April 29, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2020–0123, to the Federal eRulemaking Portal: *https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OW–2020–0123 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 in the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing

Only if requested, a public hearing will be held on May 14, 2020 from 9 a.m. to 5 p.m. at 200 West 17th Street, Room 210, Cheyenne, Wyoming 82002. The hearing details will be provided in a **Federal Register** publication if requested.

FOR FURTHER INFORMATION CONTACT: Molly McEvoy, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4765; fax number: (202) 564–3754; email address: *mcevoy.molly@epa.gov* or Wendy Cheung, Underground Injection Control Unit, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202; telephone number: (303) 312–6242; fax number: (303) 312–7206; email address: *cheung.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0123, at *https://www.regulations.gov/* (our preferred method). 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. If you need to submit CBI, contact Wendy Cheung, contact information available in the **FOR FURTHER INFORMATION CONTACT** section. 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

Only if requested, a public hearing will be held on May 14, 2020 from 9:00 a.m. to 5:00 p.m. at 200 West 17th Street, Room 210, Cheyenne, Wyoming 82001. Requests for a hearing may be sent to Wendy Cheung, EPA Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202. For additional information regarding the public hearing, please contact Wendy Cheung at (303) 312–6242 or *cheung.wendy@epa.gov.*

The 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 contact Wendy Cheung, EPA Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202. For additional information regarding the public hearing, please contact Wendy Cheung (303) 312–6242 or *cheung.wendy@epa.gov.*

The last day to pre-register to speak at the hearing will be May 8, 2020. On

May 13, 2020 the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: *https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy#public-notices.*

If the EPA convenes a hearing, the Agency with make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing 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 five 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 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. Commenters should notify Wendy Cheung at (303) 312–6242 or *cheung.wendy@epa.gov* if they will need specific equipment or if there are other special needs related to providing comments at the hearings.

Confirmation of the public hearing will be announced on May 14, 2020. Any updates made to any aspect of the hearing including registration information and the hearing procedure, should a hearing be requested, will be posted online at *https://www.epa.gov/uic/underground-injection-control-epa-region-8-co-mt-nd-sd-ut-and-wy#public-notices.* Please monitor our website to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Wendy Cheung at (303) 312–6242 or *cheung.wendy@epa.gov* when they pre-register to speak if they will need specific equipment. If you require the service of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by May 7, 2020. We may not be able to arrange accommodations without advanced notice.

C. Public Participation Activities Conducted by Wyoming

In 2019, Wyoming held two public hearings with public comment periods on the State's intent to adopt its Class VI UIC regulations. The Wyoming Water and Waste Advisory Board (WWAB) held the first public hearing on June 25, 2019, in Casper, Wyoming. The State accepted public comments beginning on May 17, 2019, through the adjournment of the public hearing. The Wyoming Environmental Quality Council held the second public hearing on November 19, 2019, in Cheyenne, Wyoming. The State accepted comments on proposed revisions from September 13, 2019 through October 30, 2019. The Wyoming Class VI regulations were signed by the Governor on January 23, 2020. Documentation of all public participation activities, including those associated with Class VI UIC regulations and subsequent revisions that the State proposed before 2019, can be found in EPA's Docket ID No. EPA–HQ–OW–2020–0123.

II. Introduction

Wyoming received primacy for Class I, III, IV, and V injection wells under SDWA section 1422 on August 17, 1983, and Class II injection wells under SDWA section 1425 on December 23, 1982. Wyoming has applied to the EPA under section 1422 of the SDWA, 42 U.S.C. 300h–1, for primacy for Class VI injection wells, except those located on Indian lands. The UIC program revision package from Wyoming includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and the EPA Region 8 office.

This proposed action is based on a legal and technical review of Wyoming's application as directed in the *Code of Federal Regulations* (CFR) at 40 CFR part 145. As a result of this review, the EPA is proposing to approve Wyoming's application for primacy, based on its finding that the program meets all applicable requirements for approval under SDWA section 1422 and the State is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

This proposed action would be taken under the authority of sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h–1 and 300j–9.

Section 1421 of the SDWA requires the Administrator of the EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Section 1422 of the SDWA establishes requirements for states seeking EPA approval of State UIC programs.

For states that seek approval for UIC programs under section 1422 of the SDWA, the EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified in 40 CFR part 145. It includes requirements for state permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

IV. Wyoming's Application

On January 31, 2020, Wyoming submitted a program revision application to add Class VI injection wells to the State's SDWA section 1422 UIC program. The UIC program revision package from Wyoming includes a description of the State UIC program, copies of all applicable rules and forms, a statement of legal authority, a summary and results of Wyoming's public participation activities, and a Memorandum of Agreement between Wyoming and the EPA's Region 8 office. The EPA reviewed the application for completeness and simultaneously performed a technical evaluation of the application materials.

V. EPA's Proposed Action—Incorporation by Reference

In this action, the EPA is proposing to approve primacy for the State of Wyoming's Class VI UIC program over Class VI injection wells in the State, except for those located on Indian lands. Support of this action is part of the public record in EPA's Docket No. EPA–HQ–OW–2020–0123. When finalized, this action will amend 40 CFR 147.2550 and incorporate by reference the EPA-approved state program. The EPA will continue to administer its UIC program for Class I, II, III, IV, V, and VI injection wells on Indian lands.

The provisions of Wyoming's Code that contain standards, requirements, and procedures applicable to owners or operators of Class VI UIC wells, as described in the regulatory text, will be incorporated by reference into 40 CFR 147.2550. Provisions of Wyoming's Code that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV, and V injection wells

have already been incorporated by reference into 40 CFR 147.2550 but are being reapproved for this new format. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by the EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

In order to better serve the public, the EPA is reformatting the codification of the EPA-approved Wyoming SDWA section 1422 UIC Program Statutes and Regulations for Well Classes I, III, IV, V, and VI. Instead of codifying Wyoming Statutes and Regulations as separate paragraphs, the EPA is now codifying a notebook that contains the EPA-approved Wyoming Statutes and Regulations for Well Classes I, III, IV, V, and VI. This notebook will be incorporated by reference into 40 CFR 147.2550 and the documents will be available at *https://www.regulations.gov* in the docket for this rule. The EPA will also codify a table listing the EPA-approved Wyoming Statutes and Regulations for Well Classes I, III, IV, V, and VI in 40 CFR 147.2550.

The EPA will continue to oversee Wyoming's administration of the SDWA Class VI program. Part of the EPA's oversight responsibility will require quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR144.8. The Memorandum of Agreement between the EPA and Wyoming, signed by the Regional Administrator on March 20, 2020, makes available to the EPA any information obtained or used by Wyoming's Class VI UIC program without restriction.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action is exempt from review by the Office of Management and Budget (OMB) because it is a proposed approval of a state UIC program.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because this action is exempt under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This proposed action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0042. Reporting or recordkeeping requirements will be based on Wyoming's UIC Regulations, and the State of Wyoming is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This proposed action does not impose any requirements on small entities as this proposed action would approve a state program.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector. EPA's proposed approval of Wyoming's program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

F. Executive Order 13132: Federalism

This proposed 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 proposed action does not have tribal implications as specified in Executive Order 13175. This proposed action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it approves a state program.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this proposed action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This proposed action is simply proposing to provide that Wyoming has primacy under the SDWA for the Class VI UIC program, pursuant to which Wyoming will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Andrew Wheeler,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA–ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.;* and 42 U.S.C. 6901 *et seq.*

■ 2. Amend § 147.2550 by:
■ a. Revising the section heading;
■ b. Revising the introductory text and paragraph (a); and
■ c. Adding paragraph (c) subject heading, and paragraphs (c)(6) and (7), and (d)(3) and (4).

The revisions and additions read as follows:

§ 147.2550 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the State of Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by the EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. The effective date of this program is August 17, 1983. The UIC Program for Class VI wells in Wyoming, except those located on Indian lands, is the program administered by Wyoming Department of Environmental Quality, approved by the EPA pursuant to SDWA section 1422. Notice of this approval was published in the **Federal Register** on [DATE OF FINAL RULE]; the effective date of this program is [DATE OF FINAL RULE]. This program consists of the following elements, as submitted to the EPA in the State's program revision application.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations cited in the notebook entitled ''*EPA-Approved Wyoming SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI*'', dated March 31, 2020 (contained in Table 1 to paragraph (a) of this section), are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for Wyoming. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Wyoming's regulations that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WD–SDU, Denver, Colorado 80202; Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. If you wish to obtain materials from the EPA Regional Office, please call (303) 312–7226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566–2426.You may also inspect the materials 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.*

TABLE 1 TO PARAGRAPH (a) EPA-APPROVED WYOMING SDWA § 1422 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASSES I, III, IV, V AND VI

State citation	Title/subject	State effective date	EPA approval date [1]
Wyoming Statutes sections 35–11–101 through 35–11–115, and 35–11–301 through 35–11–305.	Wyoming Environmental Quality Act	1989	March 6, 1991, 56 FR 9421.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality Chapter III: Regulations for Permit to Construct, Install or Modify Public Facilities Capable or, (sic) Causing or Contributing to Pollution.	Regulations for Permit to Construct, Install or Modify Public Water Supplies, Wastewater Facilities, Disposal Systems, Biosolids Management Facilities, Treated Wastewater Reuse Systems and Other Facilities Capable of Causing or Contributing to Pollution.	1983	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter VIII: Quality Standards for Groundwaters of Wyoming.	Quality Standards for Groundwaters of Wyoming	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter IX: Wyoming Groundwater Pollution Control Permit.	Wyoming Groundwater Pollution Control Permit	1980	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells.	Prohibitions of Permits for New Hazardous Waste Injection Wells.	1989	March 6, 1991, 56 FR 9421.
Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining.	In Situ Mining	1981	May 11, 1984, 49 FR 20197.
Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXIV: Class VI Injection Wells and Facilities Underground and Injection Control Program.	Class VI Injection Wells and Facilities Underground and Injection Control Program.	2020	[DATE and CITATION of FINAL RULE].

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** publication cited in this column for the particular provision.

* * * * *

(c) Statements of agreement.

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(6) Memorandum of Agreement addendum between EPA, Region VIII and Wyoming Department of Environmental Quality, signed by the EPA Regional Administrator on March 20, 2020.

(7) Letter from Governor of Wyoming to Regional Administrator, EPA Region VIII, ''Re: UIC Program Class VI Application,'' January 23, 2020.

(d) * * *

(3) ''Attorney General's Statement—''Attorney General's Statement to Accompany Wyoming's Underground Injection Control Program Class VI Primacy Application,'' signed by Attorney General and Assistant Attorney General for the State of Wyoming, January 9, 2020.

(4) Letter form Attorney General for the State of Wyoming to Regional Counsel, EPA Region VIII, ''Re: Wyoming Underground Injection Control Program Class VI Regulations,'' October 25, 2019.

* * * * *

[FR Doc. 2020–07223 Filed 4–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2019–0361; FRL–10007–70–OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the comment period on EPA's proposal to establish a federal Coal Combustion Residuals (CCR) permit program. The notice announcing this proposal was published on February 20, 2020, and the public comment period was scheduled to end on April 20, 2020. However, a number of public interest groups have requested additional time to develop and submit comments on the proposal. In response to the request for additional time, EPA is extending the comment period through May 20, 2020.

DATES: Comments must be received on or before May 20, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0361; Title: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stacey Yonce, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail Code 5304P, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 308–8476; email address: *yonce.stacey@epa.gov.*

SUPPLEMENTARY INFORMATION: 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 the EPA to develop and implement a federal permit program for the regulation of CCR in nonparticipating states.

The Agency is proposing to establish a federal CCR permit program in accordance with the requirements of the WIIN Act. The 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 would include definitions, compliance deadlines, application requirements, content and duration, and modification requirements and procedures.

The 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 permits issued under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA). The 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.

The notice proposing to establish a federal CCR permit program was published on February 20, 2020, and the comment period was scheduled to end on April 20, 2020. See 85 FR 9940. Since publication of the notice, a number of stakeholders have requested additional time to review the proposal and to develop and submit comments. After considering this request for additional time, EPA has decided to extend the comment period until May 20, 2020.

Dated: April 3, 2020.

Peter Wright,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2020–07472 Filed 4–13–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 482

[CMS–1731–P]

RIN 0938–AU07

Medicare Program; FY 2021 Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPF), which include psychiatric hospitals and excluded psychiatric units of an Inpatient Prospective Payment System hospital or critical access hospital. In addition, this proposed rule would adopt the most recent Office of Management and Budget (OMB) statistical area delineations, and apply a 2-year transition for all providers negatively impacted by wage index changes. These changes would be effective for IPF discharges beginning during the FY from October 1, 2020 through September 30, 2021 (FY 2021).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 9, 2020.

ADDRESSES: In commenting, please refer to file code CMS–1731–P.

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–1731–P, P.O. Box 8010, 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–1731–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: The IPF Payment Policy mailbox at *IPFPaymentPolicy@cms.hhs.gov* for general information.

Mollie Knight, (410) 786–7948 or Hudson Osgood, (410) 786–7897, for information regarding the market basket update, or the labor-related share.

Theresa Bean, (410) 786–2287 or James Hardesty, (410) 786–2629, for information regarding the regulatory impact analysis.

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.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

Addendum A to this proposed rule summarizes the FY 2021 IPF PPS payment rates, outlier threshold, cost of living adjustment factors for Alaska and Hawaii, national and upper limit cost-to-charge ratios, and adjustment factors. In addition, the B Addenda to this proposed rule shows the complete listing of ICD–10 Clinical Modification (CM) and Procedure Coding System codes underlying the Code First table, the FY 2021 IPF PPS comorbidity adjustment, and electroconvulsive therapy (ECT) procedure codes. The A and B Addenda are available online at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

Tables setting forth the FY 2021 Wage Index for Urban Areas Based on Core-Based Statistical Area (CBSA) Labor Market Areas and the FY 2021 Wage Index Based on CBSA Labor Market Areas for Rural Areas are available exclusively through the internet, on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/IPFPPS/WageIndex.html.* In addition, Addendum C to this proposed rule is a provider-level file of the effects of the change to the wage index methodology, and is available at the same CMS website address.

I. Executive Summary

A. Purpose

This proposed rule would update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by Inpatient Psychiatric Facilities (IPFs) for discharges occurring during the Fiscal Year (FY) beginning October 1, 2020 through September 30, 2021. In addition, this proposed rule would update the IPF wage index, adopt the most recent Office of Management and Budget (OMB) statistical area delineations, and apply a 2-year transition for all providers negatively impacted by wage index changes.

B. Summary of the Major Provisions

1. Inpatient Psychiatric Facilities Prospective Payment System (IPF PPS)

For the IPF PPS, we are proposing to—

- Adjust the 2016-based IPF market basket proposed update (3.0 percent) by a reduction for economy-wide productivity (0.4 percentage point) as required by section 1886(s)(2)(A)(i) of the Social Security Act (the Act), resulting in a proposed IPF payment rate update of 2.6 percent for FY 2021.
- Make technical rate setting changes: The IPF PPS payment rates would be adjusted annually for inflation, as well as statutory and other policy factors. We are proposing to update:

++ The IPF PPS federal per diem base rate from $798.55 to $817.59.

++ The IPF PPS federal per diem base rate for providers who failed to report quality data to $801.65.

++ The Electroconvulsive therapy (ECT) payment per treatment from $343.79 to $351.99.

++ The ECT payment per treatment for providers who failed to report quality data to $345.13.

++ The labor-related share from 76.9 percent to 77.2 percent (based on the 2016-based IPF market basket).

++ The wage index budget-neutrality factor to 0.9979.

++ The fixed dollar loss threshold amount from $14,960 to $16,520 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF PPS payments.

- Adopt the most recent OMB core-based statistical area (CBSA) delineations and apply a 2-year transition for all providers negatively impacted by wage index changes.

2. Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program

We are not proposing any changes to the IPFQR Program.

C. Summary of Impacts

Provision description	Total transfers & cost reductions
FY 2021 IPF PPS payment update.	The overall economic impact of this proposed rule is an estimated $100 million in increased payments to IPFs during FY 2021.

II. Background

A. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required the establishment and implementation of an IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary of the Department of Health and Human Services (the Secretary) develop a per diem Prospective Payment System (PPS) for inpatient hospital services furnished in psychiatric hospitals and excluded psychiatric units including an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and excluded psychiatric units. ''Excluded psychiatric unit'' means a psychiatric unit in an inpatient prospective payment system (IPPS) hospital that is excluded from the IPPS, or a psychiatric unit in a Critical Access Hospital (CAH) that is excluded from the CAH payment system. These excluded psychiatric units would be paid under the IPF PPS.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to psychiatric distinct part units of CAHs.

Sections 3401(f) and 10322 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and

Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to jointly as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) of the Act titled ''Reference to Establishment and Implementation of System,'' refers to section 124 of the BBRA, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the rate year (RY) beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. As noted in our FY 2020 IPF PPS final rule with comment period, published in the **Federal Register** on August 6, 2019 (84 FR 38424 through 38482), for the RY beginning in 2019, the productivity adjustment currently in place was equal to 0.4 percentage point.

Section 1886(s)(2)(A)(ii) of the Act required the application of an ''other adjustment'' that reduced any update to an IPF PPS base rate by a percentage point amount specified in section 1886(s)(3) of the Act for the RY beginning in 2010 through the RY beginning in 2019. As noted in the FY 2020 IPF PPS final rule, for the RY beginning in 2019, section 1886(s)(3)(E) of the Act required that the other adjustment reduction be equal to 0.75 percentage point. Because FY 2021, is a RY beginning in 2020, FY 2021 would be the first year section 1886(s)(2)(A)(ii) does not apply since its enactment.

Sections 1886(s)(4)(A) through (D) of the Act require that for RY 2014 and each subsequent RY, IPFs that fail to report required quality data with respect to such a RY will have their annual update to a standard federal rate for discharges reduced by 2.0 percentage points. This may result in an annual update being less than 0.0 for a RY, and may result in payment rates for the upcoming RY being less than such payment rates for the preceding RY. Any reduction for failure to report required quality data will apply only to the RY involved, and the Secretary will not take into account such reduction in computing the payment amount for a subsequent RY. More information about the specifics of the current Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program is available in the FY 2020 IPF PPS and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 final rule (84 FR 38459 through 38468).

To implement and periodically update these provisions, we have published various proposed and final rules and notices in the **Federal Register**. For more information regarding these documents, see the Center for Medicare & Medicaid (CMS) website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html?redirect=/InpatientPsychFacilPPS/.*

B. Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as required by section 124 of the BBRA and codified at 42 CFR part 412, subpart N. The November 2004 IPF PPS final rule set forth the federal per diem base rate for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) of the Medicare program.

The IPF PPS established the federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget-neutrality.

The federal per diem payment under the IPF PPS is comprised of the federal per diem base rate described previously and certain patient- and facility-level payment adjustments for characteristics that were found in the regression analysis to be associated with statistically significant per diem cost differences with statistical significance defined as p less than 0.05. A complete discussion of the regression analysis that established the IPF PPS adjustment factors can be found in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

The patient-level adjustments include age, Diagnosis-Related Group (DRG) assignment, and comorbidities; additionally, there are adjustments to reflect higher per diem costs at the beginning of a patient's IPF stay and lower costs for later days of the stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost-of-living adjustment for IPFs located in Alaska and Hawaii, and an adjustment for the presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for outlier cases, interrupted stays, and a per treatment payment for patients who undergo electroconvulsive therapy (ECT). During the IPF PPS mandatory 3-year transition period, stop-loss payments were also provided; however, since the transition ended as of January 1, 2008, these payments are no longer available.

C. Annual Requirements for Updating the IPF PPS

Section 124 of the BBRA did not specify an annual rate update strategy for the IPF PPS and was broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final federal per diem base rate to be budget-neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

In RY 2012, we proposed and finalized switching the IPF PPS payment rate update from a RY that begins on July 1 and ends on June 30, to one that coincides with the federal FY that begins October 1 and ends on September 30. In order to transition from one timeframe to another, the RY 2012 IPF PPS covered a 15-month period from July 1, 2011 through September 30, 2012. Therefore, the IPF RY has been equivalent to the October 1 through September 30 federal FY since RY 2013. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period to coincide with a FY period, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

In November 2004, we implemented the IPF PPS in a final rule that published on November 15, 2004 in the **Federal Register** (69 FR 66922). In developing the IPF PPS, and to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. That regression analysis is described in detail in our

November 28, 2003 IPF proposed rule (68 FR 66923; 66928 through 66933) and our November 15, 2004 IPF final rule (69 FR 66933 through 66960). For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In the November 15, 2004 final rule, we explained the reasons for delaying an update to the adjustment factors, derived from the regression analysis, including waiting until we have IPF PPS data that yields as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We indicated that we did not intend to update the regression analysis and the patient-level and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (69 FR 66966).

On May 6, 2011, we published a final rule in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for Rate Year Beginning July 1, 2011 (RY 2012)'' (76 FR 26432), which changed the payment rate update period to a RY that coincides with a FY update. Therefore, final rules are now published in the **Federal Register** in the summer to be effective on October 1. When proposing changes in IPF payment policy, a proposed rule would be issued in the spring, and the final rule in the summer to be effective on October 1. For a detailed list of updates to the IPF PPS, we refer readers to our regulations at 42 CFR 412.428.

The most recent IPF PPS annual update was published in a final rule on August 6, 2019 in the **Federal Register** titled, ''Medicare Program; FY 2020 Inpatient Psychiatric Facilities Prospective Payment System and Quality Reporting Updates for Fiscal Year Beginning October 1, 2019 (FY 2020)'' (84 FR 38424), which updated the IPF PPS payment rates for FY 2020. That final rule updated the IPF PPS federal per diem base rates that were published in the FY 2019 IPF PPS Rate Update final rule (83 FR 38576) in accordance with our established policies.

III. Provisions of the FY 2021 IPF PPS Proposed Rule

A. Proposed Update to the FY 2021 Market Basket for the IPF PPS

1. Background

Originally, the input price index that was used to develop the IPF PPS was the ''Excluded Hospital with Capital'' market basket. This market basket was based on 1997 Medicare cost reports for Medicare participating inpatient rehabilitation facilities (IRFs), IPFs, long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing health care at a given point in time, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies) derived from that market basket. Accordingly, the term market basket as used in this document, refers to an input price index.

Since the IPF PPS inception, the market basket used to update IPF PPS payments has been rebased and revised to reflect more recent data on IPF cost structures. We last rebased and revised the IPF market basket in the FY 2020 IPF PPS rule, where we adopted a 2016-based IPF market basket, using Medicare cost report data for both Medicare participating freestanding psychiatric hospitals and psychiatric units. We refer readers to the FY 2020 IPF PPS final rule for a detailed discussion of the 2016-based IPF PPS market basket and its development (84 FR 38426 through 38447). References to the historical market baskets used to update IPF PPS payments are listed in the FY 2016 IPF PPS final rule (80 FR 46656).

2. Proposed FY 2021 IPF Market Basket Update

For FY 2021 (beginning October 1, 2020 and ending September 30, 2021), we are proposing to use an estimate of the 2016-based IPF market basket increase factor to update the IPF PPS base payment rate. Consistent with historical practice, we are proposing to estimate the market basket update for the IPF PPS based on IHS Global Inc.'s (IGI) forecast. IGI is a nationally recognized economic and financial forecasting firm that contracts with the CMS to forecast the components of the market baskets and multifactor productivity (MFP). For the proposed rule, based on IGI's fourth quarter 2019 forecast with historical data through the third quarter of 2019, the 2016-based IPF market basket increase factor for FY 2021 is 3.0 percent. Therefore, we are proposing that the 2016-based IPF market basket update for FY 2021 would be 3.0 percent.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (a RY that coincides with a FY) and each subsequent RY. For this FY 2021 IPF PPS proposed rule, based on IGI's fourth quarter 2019 forecast, the proposed MFP adjustment for FY 2021 (the 10-year moving average of MFP for the period ending FY 2021) is projected to be 0.4 percent. We are proposing to reduce the proposed 3.0 percent IPF market basket update by this 0.4 percentage point productivity adjustment, as mandated by the Act. This results in a proposed estimated FY 2021 IPF PPS payment rate update of 2.6 percent (3.0 − 0.4 = 2.6). We are also proposing that if more recent data become available, we would use such data, if appropriate, to determine the FY 2021 IPF market basket update and MFP adjustment for the final rule. For more information on the productivity adjustment, we refer readers to the discussion in the FY 2016 IPF PPS final rule (80 FR 46675).

3. Proposed FY 2021 IPF Labor-Related Share

Due to variations in geographic wage levels and other labor-related costs, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index, which would apply to the labor-related portion of the federal per diem base rate (hereafter referred to as the labor-related share).

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We are proposing to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2016-based IPF market basket, we are proposing to continue to include in the labor-related share the sum of the relative importance of Wages and Salaries; Employee Benefits; Professional Fees: Labor-Related; Administrative and Facilities Support Services; Installation, Maintenance, and Repair; All Other: Labor-related Services; and a portion of the Capital-Related cost weight (46 percent) from the 2016-based IPF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (FY 2016) and FY 2021. Using IGI's fourth quarter 2019 forecast for the 2016-based IPF market basket, the proposed IPF labor-related share for FY 2021 is the sum of the FY 2021 relative importance of each labor-related cost category. For more information on the labor-related share and its calculation, we refer readers to the FY 2020 IPF PPS final

rule (84 FR 38445 through 38447). For FY 2021, the proposed labor-related share based on IGI's fourth quarter 2019 forecast of the 2016-based IPF PPS market basket is 77.2 percent. We are also proposing that if more recent data become available, we would use such data, if appropriate, to determine the FY 2021 labor-related share for the final rule.

B. Proposed Updates to the IPF PPS Rates for FY Beginning October 1, 2020

The IPF PPS is based on a standardized federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient-level and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget-neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented. A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

Under the IPF PPS methodology, we calculated the final federal per diem base rate to be budget-neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

Next, we standardized the IPF PPS federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. Additional information concerning this standardization can be found in the November 2004 IPF PPS final rule (69 FR 66932) and the RY 2006 IPF PPS final rule (71 FR 27045). We then reduced the standardized federal per diem base rate to account for the outlier policy, the stop loss provision, and anticipated behavioral changes. A complete discussion of how we calculated each component of the budget-neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the RY 2007 IPF PPS final rule (71 FR 27044 through 27046). The final standardized budget-neutral federal per diem base rate established for cost reporting periods beginning on or after January 1, 2005 was calculated to be $575.95.

The federal per diem base rate has been updated in accordance with applicable statutory requirements and § 412.428 through publication of annual notices or proposed and final rules. A detailed discussion on the standardized budget-neutral federal per diem base rate and the electroconvulsive therapy (ECT) payment per treatment appears in the FY 2014 IPF PPS update notice (78 FR 46738 through 46740). These documents are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/index.html.*

IPFs must include a valid procedure code for ECT services provided to IPF beneficiaries in order to bill for ECT services, as described in our Medicare Claims Processing Manual, Chapter 3, Section 190.7.3 (available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c03.pdf.*) There were no changes to the ECT procedure codes used on IPF claims as a result of the proposed update to the ICD–10–PCS code set for FY 2021. Addendum B to this proposed rule shows the ECT procedure codes for FY 2021 and is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

2. Proposed Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Payment Per Treatment

The current (FY 2020) federal per diem base rate is $798.55 and the ECT payment per treatment is $343.79. For the proposed FY 2021 federal per diem base rate, we applied the payment rate update of 2.6 percent that is, the 2016-based IPF market basket increase for FY 2021 of 3.0 percent less the productivity adjustment of 0.4 percentage point and the wage index budget-neutrality factor of 0.9979 (as discussed in section III.D.1 of this proposed rule) to the FY 2020 federal per diem base rate of $798.55, yielding a proposed federal per diem base rate of $817.59 for FY 2021. Similarly, we applied the 2.6 percent payment rate update and the 0.9979 wage index budget-neutrality factor to the FY 2020 ECT payment per treatment of $343.79, yielding a proposed ECT payment per treatment of $351.99 for FY 2021.

Section 1886(s)(4)(A)(i) of the Act requires that for RY 2014 and each subsequent RY, in the case of an IPF that fails to report required quality data with respect to such RY, the Secretary will reduce any annual update to a standard federal rate for discharges during the RY by 2.0 percentage points. Therefore, we are applying a 2.0 percentage point reduction to the federal per diem base rate and the ECT payment per treatment as follows:

- For IPFs that fail requirements under the Inpatient Psychiatric Facilities Quality Reporting (IPFQR) Program, we applied a 0.6 percent payment rate update (that is, the IPF market basket increase for FY 2021 of 3.0 percent less the productivity adjustment of 0.4 percentage point for an update of 2.6 percent, and further reduced by 2 percentage points in accordance with section 1886(s)(4)(A)(i) of the Act, and the wage index budget-neutrality factor of 0.9979 to the FY 2020 federal per diem base rate of $798.55, yielding a federal per diem base rate of $801.65 for FY 2021.
- For IPFs that fail to meet requirements under the IPFQR Program, we applied the 0.6 percent annual payment rate update and the 0.9979 wage index budget-neutrality factor to the FY 2020 ECT payment per treatment of $343.79, yielding an ECT payment per treatment of $345.13 for FY 2021.

C. Proposed Updates to the IPF PPS Patient-Level Adjustment Factors

1. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 Medicare Provider and Analysis Review (MedPAR) data file, which contained 483,038 cases. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). We continue to use the existing regression-derived adjustment

factors established in 2005 for FY 2021. However, we have used more recent claims data to simulate payments to finalize the outlier fixed dollar loss threshold amount and to assess the impact of the IPF PPS updates.

2. IPF PPS Patient-Level Adjustments

The IPF PPS includes payment adjustments for the following patient-level characteristics: Medicare Severity Diagnosis Related Groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

a. Proposed Update to MS–DRG Assignment

We believe it is important to maintain for IPFs the same diagnostic coding and Diagnosis Related Group (DRG) classification used under the (IPPS) for providing psychiatric care. For this reason, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set (ICD–9–CM) and DRG patient classification system (MS–DRGs) that were utilized at the time under the IPPS. In the RY 2009 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). In the RY 2009 IPF PPS notice (73 FR 25716), we provided a crosswalk to reflect changes that were made under the IPF PPS to adopt the new MS–DRGs. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the RY 2009 IPF PPS notice (73 FR 25714).

The IPF PPS includes payment adjustments for designated psychiatric DRGs assigned to the claim based on the patient's principal diagnosis. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis discussed in detail in the November 28, 2003 IPF proposed rule (68 FR 66923; 66928 through 66933) and the November 15, 2004 IPF final rule (69 FR 66933 through 66960). Mapping the DRGs to the MS–DRGs resulted in the current 17 IPF MS–DRGs, instead of the original 15 DRGs, for which the IPF PPS provides an adjustment. For FY 2021, we are not proposing any changes to the IPF MS–DRG adjustment factors.

In the FY 2015 IPF PPS final rule published August 6, 2014 in the **Federal Register** titled, ''Inpatient Psychiatric Facilities Prospective Payment System—Update for FY Beginning October 1, 2014 (FY 2015)'' (79 FR 45945 through 45947), we finalized conversions of the ICD–9–CM–based MS–DRGs to ICD–10–CM/PCS–based MS–DRGs, which were implemented on October 1, 2015. Further information on the ICD–10–CM/PCS MS–DRG conversion project can be found on the CMS ICD–10–CM website at *https://www.cms.gov/Medicare/Coding/ICD10/ICD-10-MS-DRG-Conversion-Project.html.*

For FY 2021, we are proposing to continue to make the existing payment adjustment for psychiatric diagnoses that group to one of the existing 17 IPF MS–DRGs listed in Addendum A. Addendum A is available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.* Psychiatric principal diagnoses that do not group to one of the 17 designated MS–DRGs would still receive the federal per diem base rate and all other applicable adjustments, but the payment would not include an MS–DRG adjustment.

The diagnoses for each IPF MS–DRG would be updated as of October 1, 2020, using the final IPPS FY 2021 ICD–10–CM/PCS code sets. The FY 2021 IPPS proposed rule includes tables of the proposed changes to the ICD–10–CM/PCS code sets, which underlie the FY 2021 IPF MS–DRGs. Both the FY 2021 IPPS proposed rule and the tables of proposed changes to the ICD–10–CM/PCS code sets, which underlie the FY 2021 MS–DRGs are available on the IPPS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/index.html.*

Code First

As discussed in the ICD–10–CM Official Guidelines for Coding and Reporting, certain conditions have both an underlying etiology and multiple body system manifestations due to the underlying etiology. For such conditions, the ICD–10–CM has a coding convention that requires the underlying condition be sequenced first followed by the manifestation. Wherever such a combination exists, there is a ''use additional code'' note at the etiology code, and a ''code first'' note at the manifestation code. These instructional notes indicate the proper sequencing order of the codes (etiology followed by manifestation). In accordance with the ICD–10–CM Official Guidelines for Coding and Reporting, when a primary (psychiatric) diagnosis code has a ''code first'' note, the provider would follow the instructions in the ICD–10–CM text. The submitted claim goes through the CMS processing system, which will identify the primary diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign a DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

For more information on the code first policy, we refer our readers to the November 2004 IPF PPS final rule (69 FR 66945) and see sections I.A.13 and I.B.7 of the FY 2020 ICD–10–CM Coding Guidelines, available at *https://www.cdc.gov/nchs/icd/data/10cmguidelines-FY2019-final.pdf.* In the FY 2015 IPF PPS final rule, we provided a code first table for reference that highlights the same or similar manifestation codes where the code first instructions apply in ICD–10–CM that were present in ICD–9–CM (79 FR 46009). In FY 2018, FY 2019 and FY 2020, there were no changes to the final ICD–10–CM/PCS codes in the IPF Code First table. For FY 2021, there were 18 ICD–10–PCS codes deleted from the proposed IPF Code First table. The proposed FY 2021 Code First table is shown in Addendum B on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

b. Proposed Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain existing medical or psychiatric conditions that are expensive to treat. In our RY 2012 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment

received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Current billing instructions for discharge claims, on or after October 1, 2015, require IPFs to enter the complete ICD–10–CM codes for up to 24 additional diagnoses if they co-exist at the time of admission, or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM code first instructions applied. In a code first situation, the submitted claim goes through the CMS processing system, which will identify the principal diagnosis code as non-psychiatric and search the secondary codes for a psychiatric code to assign an MS–DRG code for adjustment. The system will continue to search the secondary codes for those that are appropriate for comorbidity adjustment.

As noted previously, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. The 17 comorbidity categories formerly defined using ICD–9–CM codes were converted to ICD–10–CM/PCS in our FY 2015 IPF PPS final rule (79 FR 45947 through 45955). The goal for converting the comorbidity categories is referred to as replication, meaning that the payment adjustment for a given patient encounter is the same after ICD–10–CM implementation as it would be if the same record had been coded in ICD–9–CM and submitted prior to ICD–10–CM/PCS implementation on October 1, 2015. All conversion efforts were made with the intent of achieving this goal. For FY 2021, we are proposing to continue to use the same comorbidity adjustment factors in effect in FY 2020, which are found in Addendum A, available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

We have updated the ICD–10–CM/PCS codes, which are associated with the existing IPF PPS comorbidity categories, based upon the proposed FY 2021 update to the ICD–10–CM/PCS code set. The proposed FY 2021 ICD–10–CM/PCS updates include ICD–10 updates: 21 ICD–10–CM diagnosis codes added to the Drug and/or Alcohol Induced Mental Disorders comorbidity category, 8 ICD–10–CM diagnosis codes added to the Infectious Disease comorbidity category and 1 deleted, 12 ICD–10–CM diagnosis codes added to the Poisoning comorbidity category and 4 deleted, 3 ICD–10–CM diagnosis codes added to the Renal Failure comorbidity category and 1 deleted and 64 ICD–10–PCS codes added to the Oncology Procedures comorbidity category. In addition, 18 ICD–10–PCS codes were deleted from the Code First Table. These updates are detailed in Addenda B of this proposed rule, which are available on our website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

In accordance with the policy established in the FY 2015 IPF PPS final rule (79 FR 45949 through 45952), we reviewed all new FY 2021 ICD–10–CM codes to remove codes that were site ''unspecified'' in terms of laterality from the FY 2020 ICD–10–CM/PCS codes in instances where more specific codes are available. As we stated in the FY 2015 IPF PPS final rule, we believe that specific diagnosis codes that narrowly identify anatomical sites where disease, injury, or a condition exists should be used when coding patients' diagnoses whenever these codes are available. We finalized in the FY 2015 IPF PPS rule, that we would remove site ''unspecified'' codes from the IPF PPS ICD–10–CM/PCS codes in instances when laterality codes (site specified codes) are available, as the clinician should be able to identify a more specific diagnosis based on clinical assessment at the medical encounter. None of the proposed additions to the FY 2021 ICD–10–CM/PCS codes were site ''unspecified'' by laterality, therefore we are not removing any of the new codes.

c. Proposed Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (range of ages) for payment adjustments. In general, we found that the cost per day increases with age. The older age groups are costlier than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant. For FY 2021, we are proposing to continue to use the patient age adjustments currently in effect in FY 2020, as shown in Addendum A of this rule (see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*).

d. Proposed Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF. As discussed in the November 2004 IPF PPS final rule, we used a regression analysis to estimate the average differences in per diem cost among stays of different lengths (69 FR 66947 through 66950). As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section III.D.4 of this rule.

For FY 2021, we are proposing to continue to use the variable per diem adjustment factors currently in effect, as shown in Addendum A of this rule (available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html*). A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

D. Proposed Updates to the IPF PPS Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the RY 2007 IPF PPS final rule (71 FR 27061), RY 2009 IPF PPS (73 FR 25719) and the RY 2010 IPF PPS notices (74 FR 20373), in order to provide an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location

of the IPF in an urban or rural area, as defined in § 412.64(b)(1)(ii)(A) and (C).

Due to the variation in costs and because of the differences in geographic wage levels, in the November 15, 2004 IPF PPS final rule, we required that payment rates under the IPF PPS be adjusted by a geographic wage index. We proposed and finalized a policy to use the unadjusted, pre-floor, pre-reclassified IPPS hospital wage index to account for geographic differences in IPF labor costs. We implemented use of the pre-floor, pre-reclassified IPPS hospital wage data to compute the IPF wage index since there was not an IPF-specific wage index available. We believe that IPFs generally compete in the same labor market as IPPS hospitals so the pre-floor, pre-reclassified IPPS hospital wage data should be reflective of labor costs of IPFs. We believe this pre-floor, pre-reclassified IPPS hospital wage index to be the best available data to use as proxy for an IPF specific wage index. As discussed in the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), under the IPF PPS, the wage index is calculated using the IPPS wage index for the labor market area in which the IPF is located, without taking into account geographic reclassifications, floors, and other adjustments made to the wage index under the IPPS. For a complete description of these IPPS wage index adjustments, we refer readers to the FY 2019 IPPS/LTCH PPS final rule (83 FR 41362 through 41390). Our wage index policy at § 412.424(a)(2), requires us to use the best Medicare data available to estimate costs per day, including an appropriate wage index to adjust for wage differences.

When the IPF PPS was implemented in the November 15, 2004 IPF PPS final rule, with an effective date of January 1, 2005, the pre-floor, pre-reclassified IPPS hospital wage index that was available at the time was the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index. Historically, the IPF wage index for a given RY has used the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY as its basis. This has been due in part to the pre-floor, pre-reclassified IPPS hospital wage index data that were available during the IPF rulemaking cycle, where an annual IPF notice or IPF final rule was usually published in early May. This publication timeframe was relatively early compared to other Medicare payment rules because the IPF PPS follows a RY, which was defined in the implementation of the IPF PPS as the 12-month period from July 1 to June 30 (69 FR 66927). Therefore, the best available data at the time the IPF PPS was implemented was the pre-floor, pre-reclassified IPPS hospital wage index from the prior FY (for example, the RY 2006 IPF wage index was based on the FY 2005 pre-floor, pre-reclassified IPPS hospital wage index).

In the RY 2012 IPF PPS final rule, we changed the reporting year timeframe for IPFs from a RY to the FY, which begins October 1 and ends September 30 (76 FR 26434 through 26435). In that FY 2012 IPF PPS final rule, we continued our established policy of using the pre-floor, pre-reclassified IPPS hospital wage index from the prior year (that is, from FY 2011) as the basis for the FY 2012 IPF wage index. This policy of basing a wage index on the prior year's pre-floor, pre-reclassified IPPS hospital wage index has been followed by other Medicare payment systems, such as hospice and inpatient rehabilitation facilities. By continuing with our established policy, we remained consistent with other Medicare payment systems.

In FY 2020 we finalized the IPF wage index methodology to align the IPF PPS wage index with the same wage data timeframe used by the IPPS for FY 2020 and subsequent years. Specifically, we finalized to use the pre-floor, pre-reclassified IPPS hospital wage index from the FY concurrent with the IPF FY as the basis for the IPF wage index. For example, the FY 2020 IPF wage index would be based on the FY 2020 pre-floor, pre-reclassified IPPS hospital wage index rather than on the FY 2019 pre-floor, pre-reclassified IPPS hospital wage index.

We explained in the FY 2020 proposed rule (84 FR 16973), that using the concurrent pre-floor, pre-reclassified IPPS hospital wage index would result in the most up-to-date wage data being the basis for the IPF wage index. It would also result in more consistency and parity in the wage index methodology used by other Medicare payment systems. The Medicare SNF PPS already used the concurrent IPPS hospital wage index data as the basis for the SNF PPS wage index. Thus, the wage adjusted Medicare payments of various provider types would be based upon wage index data from the same timeframe. CMS proposed similar policies to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index data in other Medicare payment systems, such as hospice and inpatient rehabilitation facilities. For FY 2021, we are proposing to continue to use the concurrent pre-floor, pre-reclassified IPPS hospital wage index as the basis for the IPF wage index.

We would apply the IPF wage index adjustment to the labor-related share of the national base rate and ECT payment per treatment. The labor-related share of the national rate and ECT payment per treatment would change from 76.9 percent in FY 2020 to 77.2 percent in FY 2021. This percentage reflects the labor-related share of the 2016-based IPF market basket for FY 2021 (see section III.A of this rule).

b. Office of Management and Budget (OMB) Bulletins

(i.) Background

The wage index used for the IPF PPS is calculated using the unadjusted, pre-reclassified and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IPF on the basis of the labor market area in which the IPF is geographically located. IPF labor market areas are delineated based on the CBSAs established by the OMB.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses through OMB Bulletins. These bulletins contain information regarding CBSA changes, including changes to CBSA numbers and titles. OMB bulletins may be accessed online at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins/*. In accordance with our established methodology, the IPF PPS has historically adopted any CBSA changes that are published in the OMB bulletin that corresponds with the IPPS hospital wage index used to determine the IPF wage index.

In the RY 2007 IPF PPS final rule (71 FR 27061 through 27067), we adopted the changes discussed in the OMB Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for MSAs, and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB CBSA geographic designations in RY 2007, we did not provide a separate transition for the CBSA-based wage index since the IPF PPS was already in a transition period from TEFRA payments to PPS payments.

In the RY 2009 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applied to the IPPS hospital wage index used to determine the current IPF wage index and stated that we expected to continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary (73 FR 25721).

On February 28, 2013, OMB issued OMB Bulletin No. 13–01 which

established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). These OMB Bulletin changes were reflected in the FY 2015 pre-floor, pre-reclassified IPPS hospital wage index, upon which the FY 2016 IPF wage index was based. We adopted these new OMB CBSA delineations in the FY 2016 IPF wage index and subsequent IPF wage indexes. We refer readers to the FY 2016 IPF PPS final rule (80 FR 46682 through 46689) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provided updates to and superseded OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provided detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013. The complete list of statistical areas incorporating these changes is provided in OMB Bulletin No. 15–01. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/omb/information-for-agencies/bulletins/.*

OMB Bulletin No. 15–01 established revised delineations for the Nation's Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas. The bulletin also provided delineations of Metropolitan Divisions as well as delineations of New England City and Town Areas. As discussed in the FY 2017 IPPS/LTCH PPS final rule (81 FR 56913), the updated labor market area definitions from OMB Bulletin 15–01 were implemented under the IPPS beginning on October 1, 2016 (FY 2017). Therefore, we implemented these revisions for the IPF PPS beginning October 1, 2017 (FY 2018), consistent with our historical practice of modeling IPF PPS adoption of the labor market area delineations after IPPS adoption of these delineations (historically the IPF wage index has been based upon the pre-floor, pre-reclassified IPPS hospital wage index from the prior year).

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014 and July 1, 2015. In the FY 2020 IPF PPS final rule (84 FR 38453 through 38454), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IPF wage index. Given that the loss of the rural adjustment was mitigated in part by the increase in wage index value, and that only a single IPF was affected by this change, we did not believe it was necessary to transition this provider from its rural to newly urban status. We refer readers to the FY 2020 IPF PPS final rule (84 FR 38453 through 38454) for a more detailed discussion about the decision to forego a transition plan in FY 2020.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued, OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of the most recent bulletin may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* According to OMB, ''[t]his bulletin provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on June 28, 2010, in the **Federal Register** [75 FR 37246], and Census Bureau data.'' (We note, on March 6, 2020 OMB issued OMB Bulletin 20–01 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*), and as discussed below was not issued in time for development of this proposed rule.)

While OMB Bulletin No. 18–04 is not based on new census data, it includes some material changes to the OMB statistical area delineations that we believe are necessary to incorporate into the IPF PPS. These changes include new some CBSAs, urban counties that would become rural, rural counties that would become urban, and existing CBSAs that would be split apart. We discuss these changes in more detail in the sections below.

(ii.) Proposed Implementation of New Labor Market Area Delineations

We believe it is important for the IPF PPS to use, as soon as is reasonably possible, the latest available labor market area delineations in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We believe that using the most current delineations will increase the integrity of the IPF PPS wage index system by creating a more accurate representation of geographic variations in wage levels. We have carefully analyzed the impacts of adopting the new OMB delineations, and find no compelling reason to further delay implementation. Therefore, we are proposing to implement the new OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04, effective beginning with the FY 2021 IPF PPS wage index. We are proposing to adopt the updates to the OMB delineations announced in OMB Bulletin No. 18–04 effective for FY 2021 under the IPF PPS. As noted above, the March 6, 2020 OMB Bulletin 20–01 was not issued in time for development of this proposed rule. While we do not believe that the minor updates included in OMB Bulletin 20–01 would impact our proposed updates to the CBSA-based labor market area delineations, if needed we would include any updates from this bulletin in any changes that would be adopted in the FY 2021 IPF PPS final rule. We also are proposing to implement a wage index transition policy that would be applicable to all IPFs that may experience negative impacts due to the proposed implementation of the revised OMB delineations. This proposed transition is discussed in more detail below.

(a.) Micropolitan Statistical Areas

OMB defines a ''Micropolitan Statistical Area'' as a CBSA associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in

the calculation of each state's IPF PPS rural wage index. We refer the reader to the FY 2007 IPF PPS final rule (71 FR 27064 through 27065) for a complete discussion regarding treating Micropolitan Areas as rural.

(b.) Urban Counties That Would Become Rural Under the Revised OMB Delineations

As previously discussed, we are proposing to implement the new OMB labor market area delineations (based upon OMB Bulletin No. 18–04) beginning in FY 2021. Our analysis shows that a total of 34 counties (and county equivalents) and 5 providers are located in areas that were previously considered part of an urban CBSA but would be considered rural beginning in FY 2021 under these revised OMB delineations. Table 1 lists the 34 urban counties that would be rural if we finalize our proposal to implement the revised OMB delineations.

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TABLE 1: Counties Previously Considered Part of an Urban CBSA that Would Become Rural Areas Under Revised OMB Delineations

FIPS County Code	County/County Equivalent	State	Current CBSA	Labor Market Area
01127	Walker	AL	13820	Birmingham-Hoover, AL
12045	Gulf	FL	37460	Panama City, FL
13007	Baker	GA	10500	Albany, GA
13235	Pulaski	GA	47580	Warner Robins, GA
15005	Kalawao	HI	27980	Kahului-Wailuku-Lahaina, HI
17039	De Witt	IL	14010	Bloomington, IL
17053	Ford	IL	16580	Champaign-Urbana, IL
18143	Scott	IN	31140	Louisville/Jefferson County, KY-IN
18179	Wells	IN	23060	Fort Wayne, IN
19149	Plymouth	IA	43580	Sioux City, IA-NE-SD
20095	Kingman	KS	48620	Wichita, KS
21223	Trimble	KY	31140	Louisville/Jefferson County, KY-IN
22119	Webster	LA	43340	Shreveport-Bossier City, LA
26015	Barry	MI	24340	Grand Rapids-Wyoming, MI
26159	Van Buren	MI	28020	Kalamazoo-Portage, MI
27143	Sibley	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
28009	Benton	MS	32820	Memphis, TN-MS-AR
29119	Mc Donald	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
30037	Golden Valley	MT	13740	Billings, MT
31081	Hamilton	NE	24260	Grand Island, NE
38085	Sioux	ND	13900	Bismarck, ND
40079	Le Flore	OK	22900	Fort Smith, AR-OK
45087	Union	SC	43900	Spartanburg, SC
46033	Custer	SD	39660	Rapid City, SD
47081	Hickman	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	Aransas	TX	18580	Corpus Christi, TX
48221	Hood	TX	23104	Fort Worth-Arlington, TX
48351	Newton	TX	13140	Beaumont-Port Arthur, TX
48425	Somervell	TX	23104	Fort Worth-Arlington, TX
51029	Buckingham	VA	16820	Charlottesville, VA
51033	Caroline	VA	40060	Richmond, VA
51063	Floyd	VA	13980	Blacksburg-Christiansburg-Radford, VA
53013	Columbia	WA	47460	Walla Walla, WA
53051	Pend Oreille	WA	44060	Spokane-Spokane Valley, WA

We are proposing that the wage data for all providers located in the counties listed above would now be considered rural, beginning in FY 2021, when calculating their respective state's rural wage index. This rural wage index value would also be used under the IPF PPS. We recognize that rural areas typically have lower area wage index values than urban areas, and providers located in these counties may experience a negative impact in their IPF payment due to the proposed adoption of the revised OMB delineations. We refer readers to section iii of this proposed rule for a discussion of the proposed wage index transition policy, particularly, the discussion of the

proposed wage index transition policy regarding the 5 percent cap for providers that may experience a decrease in their wage index from the prior FY.

(c.) Rural Counties That Would Become Urban Under the Revised OMB Delineations

As previously discussed, we are proposing to implement the new OMB labor market area delineations (based upon OMB Bulletin No. 18–04) beginning in FY 2021. Analysis of these OMB labor market area delineations shows that a total of 47 counties (and county equivalents) and 4 providers are located in areas that were previously considered rural but would now be considered urban under the revised OMB delineations. Table 2 lists the 47 rural counties that would be urban if we finalize our proposal to implement the revised OMB delineations.

TABLE 2: Counties that Would Gain Urban Status Under Revised OMB Delineations

FIPS County Code	County/County Equivalent	State Name	Proposed CBSA	Counties
01063	Greene	AL	46220	Tuscaloosa, AL
01129	Washington	AL	33660	Mobile, AL
05047	Franklin	AR	22900	Fort Smith, AR-OK
12075	Levy	FL	23540	Gainesville, FL
13259	Stewart	GA	17980	Columbus, GA-AL
13263	Talbot	GA	17980	Columbus, GA-AL
16077	Power	ID	38540	Pocatello, ID
17057	Fulton	IL	37900	Peoria, IL
17087	Johnson	IL	16060	Carbondale-Marion, IL
18047	Franklin	IN	17140	Cincinnati, OH-KY-IN
18121	Parke	IN	45460	Terre Haute, IN
18171	Warren	IN	29200	Lafayette-West Lafayette, IN
19015	Boone	IA	11180	Ames, IA
19099	Jasper	IA	19780	Des Moines-West Des Moines, IA
20061	Geary	KS	31740	Manhattan, KS
21043	Carter	KY	26580	Huntington-Ashland, WV-KY-OH
22007	Assumption	LA	12940	Baton Rouge, LA
22067	Morehouse	LA	33740	Monroe, LA
25011	Franklin	MA	44140	Springfield, MA
26067	Ionia	MI	24340	Grand Rapids-Kentwood, MI
26155	Shiawassee	MI	29620	Lansing-East Lansing, MI
27075	Lake	MN	20260	Duluth, MN-WI
28031	Covington	MS	25620	Hattiesburg, MS
28051	Holmes	MS	27140	Jackson, MS
28131	Stone	MS	25060	Gulfport-Biloxi, MS
29053	Cooper	MO	17860	Columbia, MO

FIPS County Code	County/County Equivalent	State Name	Proposed CBSA	Counties
29089	Howard	MO	17860	Columbia, MO
30095	Stillwater	MT	13740	Billings, MT
37007	Anson	NC	16740	Charlotte-Concord-Gastonia, NC-SC
37029	Camden	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
37077	Granville	NC	20500	Durham-Chapel Hill, NC
37085	Harnett	NC	22180	Fayetteville, NC
39123	Ottawa	OH	45780	Toledo, OH
45027	Clarendon	SC	44940	Sumter, SC
47053	Gibson	TN	27180	Jackson, TN
47161	Stewart	TN	17300	Clarksville, TN-KY
48203	Harrison	TX	30980	Longview, TX
48431	Sterling	TX	41660	San Angelo, TX
51097	King And Queen	VA	40060	Richmond, VA
51113	Madison	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	Southampton	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
51620	Franklin City	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	Jackson	WV	16620	Charleston, WV
54065	Morgan	WV	25180	Hagerstown-Martinsburg, MD-WV
55069	Lincoln	WI	48140	Wausau-Weston, WI
72001	Adjuntas	PR	38660	Ponce, PR
72083	Las Marias	PR	32420	Mayagüez, PR

We are proposing that when calculating the area wage index, beginning with FY 2021, the wage data for providers located in these counties would be included in their new respective urban CBSAs. Typically, providers located in an urban area receive a wage index value higher than or equal to providers located in their state's rural area. We refer readers to section iii of this proposed rule for a discussion of the proposed wage index transition policy.

(d.) Urban Counties That Would Move to a Different Urban CBSA Under the New OMB Delineations

In certain cases, adopting the new OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. In other cases, only the name of the CBSA would be modified, and none of the currently assigned counties would be reassigned to a different urban CBSA. Table 3 shows the current CBSA code and our proposed CBSA code where we are proposing to change either the name or CBSA number only. We are not discussing further in this section these proposed changes because they are inconsequential changes with respect to the IPF PPS wage index.

TABLE 3: Current CBSAs and Our Proposed CBSA Code

Proposed CBSA Code	Proposed CBSA Title	Current CBSA Code	Current CBSA Title
10540	Albany-Lebanon, OR	10540	Albany, OR
11500	Anniston-Oxford, AL	11500	Anniston-Oxford-Jacksonville, AL
12060	Atlanta-Sandy Springs-Alpharetta, GA	12060	Atlanta-Sandy Springs-Roswell, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock, TX
13460	Bend, OR	13460	Bend-Redmond, OR
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14740	Bremerton-Silverdale-Port Orchard, WA	14740	Bremerton-Silverdale, WA
15380	Buffalo-Cheektowaga, NY	15380	Buffalo-Cheektowaga-Niagara Falls, NY
19430	Dayton-Kettering, OH	19380	Dayton, OH
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Mauldin, SC
25060	Gulfport-Biloxi, MS	25060	Gulfport-Biloxi-Pascagoula, MS
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Beaufort, SC
28700	Kingsport-Bristol, TN-VA	28700	Kingsport-Bristol-Bristol, TN-VA
31860	Mankato, MN	31860	Mankato-North Mankato, MN
33340	Milwaukee-Waukesha, WI	33340	Milwaukee-Waukesha-West Allis, WI
34940	Naples-Marco Island, FL	34940	Naples-Immokalee-Marco Island, FL
35660	Niles, MI	35660	Niles-Benton Harbor, MI
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Hayward-Berkeley, CA
36500	Olympia-Lacey-Tumwater, WA	36500	Olympia-Tumwater, WA
38060	Phoenix-Mesa-Chandler, AZ	38060	Phoenix-Mesa-Scottsdale, AZ
39150	Prescott Valley-Prescott, AZ	39140	Prescott, AZ
23224	Frederick-Gaithersburg-Rockville, MD	43524	Silver Spring-Frederick-Rockville, MD
44420	Staunton, VA	44420	Staunton-Waynesboro, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45940	Trenton-Princeton, NJ	45940	Trenton, NJ
46700	Vallejo, CA	46700	Vallejo-Fairfield, CA
47300	Visalia, CA	47300	Visalia-Porterville, CA
48140	Wausau-Weston, WI	48140	Wausau, WI
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL

In some cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. We consider this type of change, where CBSAs are split into multiple new CBSAs, or a CBSA loses one or more counties to another urban CBSA to be significant modifications.

Table 4 lists the urban counties that would move from one urban CBSA to another newly proposed or modified CBSA if we adopted the new OMB delineations.

TABLE 4: Urban Counties That Would Move to a Newly Proposed or Modified CBSA Under Revised OMB Delineations

FIPS County Code	County Name	State	Current CBSA	Current CBSA Name	Proposed CBSA Code	Proposed CBSA Name
17031	Cook	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17043	Du Page	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17063	Grundy	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17093	Kendall	IL	16974	Chicago-Naperville-Arlington Heights, IL	20994	Elgin, IL
17111	Mc Henry	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
17197	Will	IL	16974	Chicago-Naperville-Arlington Heights, IL	16984	Chicago-Naperville-Evanston, IL
34023	Middlesex	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34025	Monmouth	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34029	Ocean	NJ	35614	New York-Jersey City-White Plains, NY-NJ	35154	New Brunswick-Lakewood, NJ
34035	Somerset	NJ	35084	Newark, NJ-PA	35154	New Brunswick-Lakewood, NJ
36027	Dutchess	NY	20524	Dutchess County-Putnam County, NY	39100	Poughkeepsie-Newburgh-Middletown, NY
36071	Orange	NY	35614	New York-Jersey City-White Plains, NY-NJ	39100	Poughkeepsie-Newburgh-Middletown, NY
36079	Putnam	NY	20524	Dutchess County-Putnam County, NY	35614	New York-Jersey City-White Plains, NY-NJ
47057	Grainger	TN	28940	Knoxville, TN	34100	Morristown, TN
54043	Lincoln	WV	26580	Huntington-Ashland, WV-KY-OH	16620	Charleston, WV
72055	Guanica	PR	38660	Ponce, PR	49500	Yauco, PR
72059	Guayanilla	PR	38660	Ponce, PR	49500	Yauco, PR
72111	Penuelas	PR	38660	Ponce, PR	49500	Yauco, PR
72153	Yauco	PR	38660	Ponce, PR	49500	Yauco, PR

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We have identified 49 IPF providers located in the affected counties listed in Table 4. If providers located in these counties move from one CBSA to another under the revised OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values.

(iii.) Proposed Transition Policy for Providers Negatively Impacted by Wage Index Changes

Overall, we believe implementing updated wage index values along with the revised OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. However, we recognize that implementing these wage index changes will have distributional effects among IPF providers, and that some providers would experience decreases in wage index values as a result of our proposals. Therefore, we believe it would be appropriate to consider, as we have in the past, whether or not a transition period should be used to implement these proposed changes to the wage index.

We considered having no transition period and fully implementing the proposed updated wage index values and new OMB delineations beginning in FY 2021. This would mean that we would adopt the updated wage index and revised OMB delineations for all providers on October 1, 2020. However, this would not provide any time for providers to adapt to the new OMB delineations or wage index values. As previously stated, some providers would experience a decrease in wage index due to implementation of the proposed new OMB delineations and wage index updates. Thus, we believe that it would be appropriate to provide for a transition period to mitigate the resulting short-term instability and negative impacts on these providers to provide time for them to adjust to their new labor market area delineations and wage index values. Furthermore, in light of the comments received during the RY 2007 and FY 2016 rulemaking cycles on our proposals to adopt revised CBSA definitions without a transition period, we believe that a transition period is appropriate for FY 2021.

We considered transitioning the proposed wage index changes over a number of years to minimize their impact in a given year. However, as discussed in the FY 2016 IPF PPS final rule (80 FR 46689), we continue to believe that a longer transition period would reduce the accuracy of the overall labor market area wage index system. The wage index is a relative measure of the value of labor in prescribed labor market areas; therefore, we believe it is important to implement the new delineations with as minimal a transition as is reasonably possible. As such, we believe that utilizing a 2-year (rather than a multiple year) transition period would strike the most appropriate balance between giving providers time to adapt to the new wage index changes while maintaining the accuracy of the overall labor market area wage index system.

We considered a transition methodology similar to that used to address past decreases in the wage index, as in FY 2016 (80 FR 46689) when major changed to CBSA delineations were introduced. Under that methodology, all IPF providers would receive a 1-year blended wage index using 50 percent of their FY 2021 wage index based on the proposed new OMB delineations and 50 percent of their FY 2021 wage index based on the OMB delineations used in FY 2020. However, if we were to propose a similar blended adjustment for FY 2021, we would have to calculate wage indexes for all providers using both old and new labor market definitions even though the blended wage index would only apply to providers that experienced a decrease in wage index values due to a change in labor market area definitions.

Because of the administrative complexity involved in implementing a blended adjustment, we decided to consider alternative transition methodologies that might provide greater transparency. Moreover, for FY 2021, we are not proposing the same transition policy we established in FY 2016 when we adopted new OMB delineations based on the decennial census data. However, consistent with our past practice of using transition policies to help mitigate negative impacts on hospitals of certain wage index proposals, we do believe it is appropriate to propose a transition policy for our proposed implementation of the revised OMB delineations.

We believe adopting a transition of the 5-percent cap on a decrease in an IPFs wage index from the IPF's final wage index from the prior FY is an appropriate transition for FY 2021 for the revised OMB delineations as it provides greater transparency and consistency with other payment systems. This 2-year transition would allow the proposed adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in an IPF's wage index would be capped at 5 percent in FY 2021. This approach strikes an appropriate balance by providing for a transition period to mitigate the resulting short-term instability and negative impacts on these providers and provide time for them to adjust to their new labor market area delineations and wage index values. No cap would be applied to the reduction in the wage index for the second year, that is, FY 2022.

Following the rationale outlined in the FY 2020 IPPS/LTCH PPS final rule (84 FR 42336), we continue to we believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in the wage index for FY 2021. Therefore, for FY 2021, we are proposing to provide for a transition of a 5-percent cap on any decrease in an IPF's wage index from the IPF's final wage index from the prior FY, which would be FY 2020. Consistent with the application of the 5 percent cap transition provided in FY 2020 for the IPPS, this 5-percent cap on wage index decreases would be applied to all IPF providers that have any decrease in their wage indexes, regardless of the circumstance causing the decline, so that an IPF's final wage index for FY 2021 would not be less than 95 percent of its final wage index for FY 2020, regardless of whether the IPF is part of an updated CBSA.

We invite comments on our proposed implementation of the new OMB delineations and our proposed transition methodology.

e. Proposed Adjustment for Rural Location

In the November 2004 IPF PPS final rule, (69 FR 66954) we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. This 17 percent adjustment has been part of the IPF PPS each year since the inception of the IPF PPS. For FY 2021, we are proposing to continue to apply a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C) (see 69 FR 66954) for a complete discussion of the adjustment for rural locations.

f. Proposed Budget Neutrality Adjustment

Changes to the wage index are made in a budget-neutral manner so that updates do not increase expenditures. Therefore, for FY 2021, we are proposing to continue to apply a budget-neutrality adjustment in accordance with our existing budget-neutrality policy. This policy requires us to update the wage index in such a way that total estimated payments to IPFs for FY 2021 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the IPF PPS rates. We use the following steps to ensure that the rates reflect the update to the wage indexes (based on the FY 2016 hospital cost report data) and the labor-related share in a budget-neutral manner:

Step 1. Simulate estimated IPF PPS payments, using the FY 2020 IPF wage index values (available on the CMS website) and labor-related share (as published in the FY 2020 IPF PPS final rule (84 FR 38424).

Step 2. Simulate estimated IPF PPS payments using the proposed FY 2021 IPF wage index values (available on the CMS website) and proposed FY 2021 labor-related share (based on the latest available data as discussed previously).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2021 budget-neutral wage adjustment factor of 0.9979.

Step 4. Apply the FY 2021 budget-neutral wage adjustment factor from step 3 to the FY 2020 IPF PPS federal per diem base rate after the application of the market basket update described in section III.A of this rule, to determine the FY 2021 IPF PPS federal per diem base rate.

2. Proposed Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the ratio of the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census (ADC).

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA

rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the IPF PPS. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is (1 + (the number of FTE residents training in the IPF/the IPF's ADC)). The teaching variable is then raised to 0.5150 power to result in the teaching adjustment. This formula is subject to the limitations on the number of FTE residents, which are described in this section of this rule.

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (publication date of the IPF PPS final rule). A complete discussion of the temporary adjustment to the FTE cap to reflect residents due to hospital closure or residency program closure appears in the RY 2012 IPF PPS proposed rule (76 FR 5018 through 5020) and the RY 2012 IPF PPS final rule (76 FR 26453 through 26456).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant. A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the RY 2009 IPF PPS notice (73 FR 25721). As with other adjustment factors derived through the regression analysis, we do not plan to rerun the teaching adjustment factors in the regression analysis until we more fully analyze IPF PPS data as part of the IPF PPS refinement we discuss in section IV of this rule. Therefore, in this FY 2021 proposed rule, we are proposing to continue to retain the coefficient value of 0.5150 for the teaching adjustment to the federal per diem base rate.

3. Proposed Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the area in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare prospective payment systems (for example: The IPPS and LTCH PPS) adopted a COLA to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA for IPFs located in Alaska and Hawaii is made by multiplying the non-labor-related portion of the federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors through 2009 were published by the Office of Personnel Management (OPM), and the OPM memo showing the 2009 COLA factors is available at *https://www.chcoc.gov/content/nonforeign-area-retirement-equity-assurance-act.*

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the federal courthouse.
- Rest of the state of Alaska.

As stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. However, sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for FY 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of NDAA, locality pay was phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA factors in the RY 2012 IPF PPS proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates, which had been reduced to account for the phase-in of locality pay. We did not intend to propose the reduced COLA rates because that would have understated the adjustment. Since the 2009 COLA rates did not reflect the phase-in of locality pay, we finalized the FY 2009 COLA rates for RY 2010 through RY 2014.

In the FY 2013 IPPS/LTCH final rule (77 FR 53700 through 53701), we established a new methodology to update the COLA factors for Alaska and Hawaii, and adopted this methodology for the IPF PPS in the FY 2015 IPF final rule (79 FR 45958 through 45960). We adopted this new COLA methodology for the IPF PPS because IPFs are hospitals with a similar mix of commodities and services. We think it is appropriate to have a consistent policy approach with that of other hospitals in Alaska and Hawaii. Therefore, the IPF COLAs for FY 2015 through FY 2017 were the same as those applied under the IPPS in those years. As finalized in the FY 2013 IPPS/LTCH PPS final rule (77 FR 53700 and 53701), the COLA updates are determined every 4 years, when the IPPS market basket labor-related share is updated. Because the labor-related share of the IPPS market basket was updated for FY 2018, the COLA factors were updated in FY 2018 IPPS/LTCH rulemaking (82 FR 38529). As such, we also updated the IPF PPS COLA factors for FY 2018 (82 FR 36780 through 36782) to reflect the updated COLA factors finalized in the FY 2018 IPPS/LTCH rulemaking. We are proposing to continue to apply the same COLA factors in FY 2021 that were used in FY 2018 and FY 2019.

TABLE 5: Comparison of IPF PPS Cost-of-Living Adjustment Factors: IPFs Located in Alaska and Hawaii

Area	FY 2015 through FY 2017	FY 2018 through FY 2020
Alaska:		
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23	1.25
City of Juneau and 80-kilometer (50-mile) radius by road	1.23	1.25
Rest of Alaska	1.25	1.25
Hawaii:		
City and County of Honolulu	1.25	1.25
County of Hawaii	1.19	1.21
County of Kauai	1.25	1.25
County of Maui and County of Kalawao	1.25	1.25

The proposed IPF PPS COLA factors for FY 2021 are also shown in Addendum A to this proposed rule, and is available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientPsychFacilPPS/tools.html.*

4. Proposed Adjustment for IPFs With a Qualifying Emergency Department (ED)

The IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a psychiatric hospital with a qualifying ED or an excluded psychiatric unit of an IPPS hospital or a CAH, for preadmission services otherwise payable under the Medicare Hospital Outpatient Prospective Payment System (OPPS), furnished to a beneficiary on the date of the beneficiary's admission to the hospital and during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)), and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception which we described), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. Those IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each patient stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described in this section of the proposed rule. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made when a patient is discharged from an IPPS hospital or CAH and admitted to the same IPPS hospital's or CAH's excluded psychiatric unit. We clarified in the November 2004 IPF PPS final rule (69 FR 66960) that an ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the IPPS hospital or through the reasonable cost payment made to the CAH.

Therefore, when patients are discharged from an IPPS hospital or CAH and admitted to the same hospital's or CAH's excluded psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF. For FY 2021, we are proposing to continue to retain the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factors are in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the RY 2007 IPF PPS final rule (71 FR 27070 through 27072).

E. Other Proposed Payment Adjustments and Policies

1. Outlier Payment Overview

The IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require costlier care, and therefore, reduce the incentives for IPFs to under-serve these patients. We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. The adjusted threshold amount is equal to the outlier threshold amount adjusted for wage area, teaching status, rural area, and the COLA adjustment (if applicable), plus the amount of the Medicare IPF payment for the case. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments.

After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target. Each year when we update the IPF PPS, we simulate payments using the latest available data to compute the fixed dollar loss threshold so that outlier payments represent 2 percent of total estimated IPF PPS payments.

2. Proposed Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are proposing to update the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy, which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the federal per diem base rate for all other cases that are not outlier cases.

Based on an analysis of the latest available data (the December 2019 update of FY 2019 IPF claims) and rate increases, we believe it is necessary to update the fixed dollar loss threshold amount to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments. We are proposing to update the IPF outlier threshold amount for FY 2021 using FY 2019 claims data and the same methodology that we used to set the initial outlier threshold amount in the RY 2007 IPF PPS final rule (71 FR 27072 and 27073), which is also the same methodology that we used to update the outlier threshold amounts for years 2008 through 2020. Based on an analysis of these updated data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 2.2 percent in FY 2020. Therefore, we are proposing to update the outlier threshold amount to $16,520 to maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2021. This proposed rule update is an increase from the FY 2020 threshold of $14,960.

3. Proposed Update to IPF Cost-to-Charge Ratio Ceilings

Under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount plus the IPF PPS amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the FY 2004 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for IPPS hospitals, because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule (69 FR 66961), we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS; therefore, we adopted a method to ensure the statistical accuracy of CCRs under the IPF PPS. Specifically, we adopted the following procedure in the November 2004 IPF PPS final rule:

- Calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas.
- Computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the most recent Provider Specific File available.

For FY 2021, we are proposing to continue to follow this methodology.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2021 is 1.9572 for rural IPFs, and 1.7387 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate, and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national median CCRs to the following situations:

- New IPFs that have not yet submitted their first Medicare cost report. We continue to use these national median CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.
- IPFs whose overall CCR is in excess of three standard deviations above the corresponding national geometric mean (that is, above the ceiling).
- Other IPFs for which the Medicare Administrative Contractor (MAC) obtains inaccurate or incomplete data with which to calculate a CCR.

We are proposing to continue to update the FY 2021 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2021, to be used in each of the three situations listed previously, using the most recent CCRs entered in the CY 2020 Provider Specific File, we provide an estimated national median CCR of 0.5720 for rural IPFs and a national median CCR of 0.4280 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations. A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

IV. Update on IPF PPS Refinements

For RY 2012, we identified several areas of concern for future refinement, and we invited comments on these issues in the RY 2012 IPF PPS proposed and final rules. For further discussion of these issues and to review the public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

We have delayed making refinements to the IPF PPS until we have completed a thorough analysis of IPF PPS data on which to base those refinements. Specifically, we would delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. We have begun and will continue the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS in the future, as appropriate. Our preliminary analysis has also revealed variation in cost and claim data, particularly related to labor costs, drugs costs, and laboratory services. Some providers have very low labor costs, or very low or missing drug or laboratory costs or charges, relative to other providers. As we noted in the FY 2016 IPF PPS final rule (80 FR 46693 through 46694), our preliminary analysis of 2012 to 2013 IPF data found that over 20 percent of IPF stays reported no ancillary costs, such as laboratory and drug costs, in their cost reports, or laboratory or drug charges on their claims. Because we expect that most patients requiring hospitalization for active psychiatric treatment would need drugs and laboratory services, we again remind providers that the IPF PPS federal per diem base rate includes the cost of all ancillary services, including drugs and laboratory services.

On November 17, 2017, we issued Transmittal 12, which made changes to

the hospital cost report form CMS–2552–10 (OMB No. 0938–0050), and included the requirement that cost reports from psychiatric hospitals include certain ancillary costs, or the cost report will be rejected. On January 30, 2018, we issued Transmittal 13, which changed the implementation date for Transmittal 12 to be for cost reporting periods ending on or after September 30, 2017. For details, we refer readers to see these Transmittals, which are available on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/index.html.* CMS suspended the requirement that cost reports from psychiatric hospitals include certain ancillary costs effective April 27, 2018, in order to consider excluding all-inclusive rate providers from this requirement. CMS issued Transmittal 15 on October 19, 2018, reinstating the requirement that cost reports from psychiatric hospitals, except all-inclusive rate providers, include certain ancillary costs.

We only pay the IPF for services furnished to a Medicare beneficiary who is an inpatient of that IPF (except for certain professional services), and payments are considered to be payments in full for all inpatient hospital services provided directly or under arrangement (see 42 CFR 412.404(d)), as specified in 42 CFR 409.10.

V. Collection of Information Requirements

This rule proposes to update the prospective payment rates, the outlier threshold, and the wage index for Medicare inpatient hospital services provided by IPFs. It also proposes to expand the IPPS wage index disparities policy and revise CBSA delineations. With regard to the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*), the rule's proposed changes would not impose any new or revised ''collection of information'' requirements or burden. While discussed in section IV (Update on IPF PPS Refinements) of this preamble, the active requirements and burden associated with our hospital cost report form CMS–2552–10 (OMB control number 0938–0050) are unaffected by this rule. Since this rule would not impose any new or revised collection of information requirements/burden, the rule is not subject to the PRA and OMB review under the authority of the PRA. With respect to the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

VI. Regulatory Impact Analysis

A. Statement of Need

This rule proposes updates to the prospective payment rates for Medicare inpatient hospital services provided by IPFs for discharges occurring during FY 2021 (October 1, 2020 through September 30, 2021). We are proposing to apply the 2016-based IPF market basket increase of 3.0 percent, less the productivity adjustment of 0.4 percentage point as required by 1886(s)(2)(A)(i) of the Act for a proposed total FY 2021 payment rate update of 2.6 percent. In this proposed rule, we are proposing to update the IPF labor-related share and update the IPF wage index to reflect the FY 2021 hospital inpatient wage index, and adopt the most recent Office of Management and Budget (OMB) statistical area delineations.

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 (RFA) (September 19, 1980, Pub. L. 96 354), section 1102(b) of the Social Security Act (the Act), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), 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. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

We estimate that this rulemaking is economically significant as measured by the $100 million threshold. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking.

We estimate that the total impact of these changes for FY 2021 payments compared to FY 2020 payments will be a net increase of approximately $100 million. This reflects an $110 million increase from the update to the payment rates (+$125 million from the 4th quarter 2019 IGI forecast of the 2016-based IPF market basket of 3.0 percent, and −$15 million for the productivity adjustment of 0.4 percentage point), as well as a −$10 million decrease as a result of the update to the outlier threshold amount. Outlier payments are estimated to change from 2.2 percent in FY 2020 to 2.0 percent of total estimated IPF payments in FY 2021.

C. Detailed Economic Analysis

In this section, we discuss the historical background of the IPF PPS and the impact of this proposed rule on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and RY 2007 IPF PPS final rules, we applied a budget neutrality factor to the federal per diem base rate and ECT payment per treatment to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the RY 2009 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

As discussed in section III.D.1 of this proposed rule, we are updating the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the federal per diem base rate and ECT payment per treatment. Therefore, the budgetary impact to the Medicare program of this proposed rule will be due to the market basket update for FY

2021 of 3.0 percent (see section III.A.4 of this proposed rule) less the productivity adjustment of 0.4 percentage point required by section 1886(s)(2)(A)(i) of the Act and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2021 impact will be a net increase of $100 million in payments to IPF providers. This reflects an estimated $110 million increase from the update to the payment rates and a -$10 million decrease due to the update to the outlier threshold amount to set total estimated outlier payments at 2.0 percent of total estimated payments in FY 2021. This estimate does not include the implementation of the required 2.0 percentage point reduction of the market basket increase factor for any IPF that fails to meet the IPF quality reporting requirements (as discussed in section V.A. of this proposed rule).

2. Impact on Providers

To show the impact on providers of the changes to the IPF PPS discussed in this proposed rule, we compare estimated payments under the IPF PPS rates and factors for FY 2021 versus those under FY 2020. We determined the percent change in the estimated FY 2021 IPF PPS payments compared to the estimated FY 2020 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount; the updated wage index data including the updated labor-related share; the adoption of the revised CBSA delineations based on the OMB Bulletin No. 18–04 published September 14, 2018; the implementation of the proposed low wage index policy and 5 percent cap on decreases to providers' wage index values; and the market basket update for FY 2021, as adjusted by the productivity adjustment according to section 1886(s)(2)(A)(i) of the Act.

To illustrate the impacts of the FY 2021 changes in this proposed rule, our analysis begins with FY 2019 IPF PPS claims (based on the 2019 MedPAR claims, December 2019 update). We estimate FY 2020 IPF PPS payments using these 2019 claims and the finalized FY 2020 IPF PPS federal per diem base rates and the finalized FY 2020 IPF PPS patient and facility level adjustment factors (as published in the FY 2020 IPF PPS final rule (84 FR 38424 through 38482)). We then estimate the FY 2020 outlier payments based on these simulated FY 2020 IPF PPS payments using the same methodology as finalized in the FY 2020 IPF PPS final rule (84 FR 38457) where total outlier payments are maintained at 2 percent of total estimated FY 2020 IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The proposed update to the outlier fixed dollar loss threshold amount.
- The proposed FY 2021 IPF wage index and the FY 2021 labor-related share.
- The proposed adoption of the revised CBSAs based on OMB Bulletin No. 18–04.
- The 5 percent cap on decreases to the wage index for providers whose wage index decreases from FY 2020.
- The proposed market basket update for FY 2021 of 3.0 percent less the productivity adjustment of 0.4 percentage point in accordance with section 1886(s)(2)(A)(i) of the Act for a payment rate update of 2.6 percent.

Our proposed column comparison in Table 6 illustrates the percent change in payments from FY 2020 (that is, October 1, 2019, to September 30, 2020) to FY 2021 (that is, October 1, 2020, to September 30, 2021) including all the payment policy changes in this proposed rule.

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TABLE 6: FY 2021 IPF PPS Proposed Payment Impacts
[Percent Change in Columns 3 through 6]

Facility by Type	Number of Facilities	Outlier	Wage Index FY21	Wage Index FY21 New CBSA and 5% Loss Cap	Total Percent Change[1]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,565	-0.2	0.0	0.0	2.4
Total Urban	1,255	-0.2	0.0	0.0	2.4
Urban unit	770	-0.3	0.0	0.1	2.3
Urban hospital	485	-0.1	0.0	-0.1	2.4
Total Rural	310	-0.1	-0.1	0.1	2.5
Rural unit	246	-0.2	-0.1	0.0	2.2
Rural hospital	64	0.0	0.1	0.4	3.1
By Type of Ownership:					
Freestanding IPFs					
Urban Psychiatric Hospitals					
Government	118	-0.3	0.3	0.0	2.6
Non-Profit	96	-0.1	0.0	-0.2	2.3
For-Profit	271	0.0	0.0	-0.1	2.5
Rural Psychiatric Hospitals					
Government	32	-0.1	-0.2	0.1	2.5
Non-Profit	14	-0.1	0.5	2.7	5.8
For-Profit	18	0.0	0.2	-0.1	2.8
IPF Units					
Urban					
Government	111	-0.5	0.1	0.3	2.5
Non-Profit	504	-0.3	-0.1	0.1	2.3

Facility by Type	Number of Facilities	Outlier	Wage Index FY21	Wage Index FY21 New CBSA and 5% Loss Cap	Total Percent Change[1]
For-Profit	155	-0.1	0.0	-0.1	2.3
Rural					
Government	66	-0.1	-0.3	0.0	2.2
Non-Profit	134	-0.3	0.1	-0.1	2.3
For-Profit	46	-0.1	-0.4	-0.1	2.0
By Teaching Status:					
Non-teaching	1,371	-0.2	0.0	-0.1	2.4
Less than 10% interns and residents to beds	108	-0.3	0.0	0.5	2.8
10% to 30% interns and residents to beds	65	-0.5	0.0	0.2	2.3
More than 30% interns and residents to beds	21	-0.7	0.3	0.0	2.2
By Region:					
New England	106	-0.2	-1.0	-0.1	1.3
Mid-Atlantic	221	-0.3	0.5	0.5	3.3
South Atlantic	243	-0.1	0.1	0.0	2.5
East North Central	262	-0.2	0.0	-0.1	2.3
East South Central	156	-0.1	0.0	-0.1	2.4
West North Central	115	-0.2	-0.5	-0.1	1.8
West South Central	229	-0.1	0.0	-0.1	2.4
Mountain	106	-0.1	-0.5	-0.1	1.9
Pacific	127	-0.3	0.4	-0.1	2.6
By Bed Size:					
Psychiatric Hospitals					
Beds: 0-24	87	-0.2	0.2	0.0	2.6
Beds: 25-49	83	0.0	0.2	-0.1	2.7
Beds: 50-75	87	0.0	-0.1	-0.1	2.3
Beds: 76 +	292	-0.1	0.1	-0.1	2.5
Psychiatric Units					
Beds: 0-24	569	-0.3	-0.1	0.0	2.1
Beds: 25-49	265	-0.2	-0.1	-0.1	2.2
Beds: 50-75	115	-0.3	-0.1	0.1	2.3
Beds: 76 +	67	-0.4	0.3	0.6	3.0

[1] This column includes the impact of the updates in columns (3) through (5) above, and of the IPF market basket increase factor for FY 2021 (3.0 percent), reduced by 0.4 percentage point for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act.

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3. Impact Results

Table 6 displays the results of our analysis. The table groups IPFs into the categories listed here based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from the Healthcare Cost Report Information System:

- Facility Type.
- Location.
- Teaching Status Adjustment.

- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,565 IPFs included in this analysis. In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 2.2 percent in FY 2020. Thus, we are adjusting the outlier threshold amount in this proposed rule to set total estimated outlier payments equal to 2.0 percent of total payments in FY 2021. The estimated change in total IPF payments for FY 2021, therefore, includes an approximate 0.2 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 2.2 percent to 2.0 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of Table 6), across all hospital groups, is to decrease total estimated payments to IPFs by 0.2 percent. The largest decrease in payments due to this change is estimated to be 0.7 percent for teaching IPFs with more than 30 percent interns and residents to beds.

In column 4, we present the effects of the budget-neutral update to the IPF wage index and the Labor-Related Share (LRS). This represents the effect of using the concurrent hospital wage data without taking into account the updated OMB delineations, or the 5 percent cap on decreases to providers' wage index values for providers whose wage index decreases from FY 2020 as discussed in section III.D.1.b.iii of this proposed rule. That is, the impact represented in this column reflects the update from the FY 2020 IPF wage index to the proposed FY 2021 IPF wage index, which includes basing the FY 2021 IPF wage index on the FY 2021 pre-floor, pre-reclassified IPPS hospital wage index data and updating the LRS from 76.9 percent in FY 2020 to 77.2 percent in FY 2021. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4, however, there will be distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be 0.5 percent for Mid-Atlantic IPFs, and the largest decrease in payments to be 1.0 percent for New England IPFs.

Next, column 5 shows the effect of the proposed update to the delineations used to identify providers as urban or rural providers and the CBSAs into which urban providers are classified. Additionally, column 5 shows the effect of the proposed five percent cap on wage index decreases in FY 2021 as discussed in section III.D.1.b.iii of this proposed rule. The new delineations would be based on the September 14, 2018 OMB Bulletin No. 18–04. In the aggregate, we do not estimate that these proposed updates will affect overall estimated payments of IPFs since these changes were implemented in a budget neutral manner. We observe that urban providers would experience no change in payments and rural providers would see a 0.1 percent increase in payments.

Finally, column 6 compares the total proposed changes reflected in this proposed rule for FY 2021 to the estimates for FY 2020 (without these changes). The average estimated increase for all IPFs is approximately 2.4 percent. This estimated net increase includes the effects of the 2016-based market basket update of 3.0 percent reduced by the productivity adjustment of 0.4 percentage point, as required by section 1886(s)(2)(A)(i) of the Act. It also includes the overall estimated 0.2 percent decrease in estimated IPF outlier payments as a percent of total payments from the proposed update to the outlier fixed dollar loss threshold amount. Column 6 also includes the distributional effects of the proposed updates to the IPF wage index and the labor-related share whose impacts are displayed in columns 4 and 5.

IPF payments are estimated to increase by 2.4 percent in urban areas and 2.5 percent in rural areas. Overall, IPFs are estimated to experience a net increase in payments as a result of the updates in this proposed rule. The largest payment increase is estimated at 3.3 percent for IPFs in the Mid-Atlantic region.

4. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2021 IPF PPS, but we continue to expect that paying prospectively for IPF services will enhance the efficiency of the Medicare program.

5. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will be directly impacted and will review this proposed rule, we assume that the total number of unique commenters on the most recent IPF proposed rule from FY 2020 (84 FR 16948) will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2020 IPF proposed rule in detail, and it is also possible that some reviewers chose not to comment on that proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of the number of reviewers who are directly impacted by this proposed rule. We solicited comments on this assumption.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule; therefore, for the purposes of our estimate, we assume that each reviewer reads approximately 50 percent of this proposed rule.

Using the May, 2018 mean (average) wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this proposed rule is $61.54 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes119111.htm*). Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 1½ hours for the staff to review half of this proposed rule. For each IPF that reviews the proposed rule, the estimated cost is (1 hour and 35 mins × $61.54) or $83.05. Therefore, we estimate that the total cost of reviewing this proposed rule is $1993.31 ($83.05 × 24 reviewers).

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule; applying the 2016-based IPF PPS market basket update for FY 2021 of 3.0 percent, reduced by the statutorily required multifactor productivity adjustment of 0.4 percentage point along with the wage index budget neutrality adjustment to update the payment rates; proposing a FY 2021 IPF wage index which is fully based upon the OMB CBSA designations from Bulletin 18–04 and which uses the FY 2021 pre-floor, pre-reclassified IPPS hospital wage index as its basis.

E. Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 7, we have prepared an accounting statement showing the

classification of the expenditures associated with the updates to the IPF wage index and payment rates in this proposed rule. Table 7 provides our best estimate of the increase in Medicare payments under the IPF PPS as a result of the changes presented in this proposed rule and based on the data for 1,565 IPFs in our database.

TABLE 7: Accounting Statement: Classification of Estimated Expenditures

Change in Estimated Impacts from FY 2020 IPF PPS to FY 2021 IPF PPS:	
Category	**Transfers**
Annualized Monetized Transfers	$100 million
From Whom to Whom?	Federal Government to IPF Medicare Providers

F. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or having revenues of $8 million to $41.5 million or less in any 1 year. Individuals and states are not included in the definition of a small entity.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities.

The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 6, we estimate that the overall revenue impact of this proposed rule on all IPFs is to increase estimated Medicare payments by approximately 2.4 percent. As a result, since the estimated impact of this proposed rule is a net increase in revenue across almost all categories of IPFs, the Secretary has determined that this proposed rule will have a positive revenue impact on a substantial number of small entities.

In addition, section 1102(b) of the 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. As discussed in section V.C.1 of this proposed rule, the rates and policies set forth in this proposed rule will not have an adverse impact on the rural hospitals based on the data of the 246 rural excluded psychiatric units and 64 rural psychiatric hospitals in our database of 1,565 IPFs for which data were available. Therefore, the Secretary has determined that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

G. Unfunded Mandate Reform Act (UMRA)

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 proposed rule does not mandate any requirements for state, local, or tribal governments, or for the private sector. This proposed rule would not impose a mandate that will result in the expenditure by state, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $156 million in any one year.

H. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule does not impose substantial direct costs on state or local governments or preempt state law.

I. Regulatory Reform Analysis Under Executive Order 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. It has been determined that this proposed rule is an action that primarily results in transfers and does not impose more than *de minimis* costs as described above and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

Dated: March 24, 2020.

Seema Verma

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 9, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–07870 Filed 4–10–20; 4:15 pm]

BILLING CODE 4120–01–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1610 and 1630

Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Cost Standards and Procedures; Extension of Comment Period

AGENCY: Legal Services Corporation.

ACTION: Further notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Legal Services Corporation (''LSC'') issued a proposed rule in the **Federal Register** of February 10, 2020, concerning proposed amendments to its regulations governing cost standards and procedures. This notice extends the comment period until May 15, 2020.

DATES: For the proposed rule published on February 10, 2020 (85 FR 7518), comments must be submitted by May 15, 2020.

ADDRESSES: You may submit comments by any of the following methods:

Email: lscrulemaking@lsc.gov. Include ''Parts 1610/1630 Rulemaking'' in the subject line of the message.

Fax, U.S. Mail, Hand Delivery, or Courier: Please call 202–295–1623 for instructions if you need to send materials by one of these methods.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC may not consider written comments sent via any other method or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295–1623 (phone), (202) 337–6519 (fax), *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is extending the public comment period stated in the **Federal Register** notice for this rulemaking. 85 FR 7518, Feb. 10, 2020. In that notice, LSC proposed amendments to its regulations governing its cost standards and procedures (45 CFR part 1630). The comment period closed on March 26, 2020. However, many of LSC's grantees are concentrating on providing necessary legal assistance to low-income Americans experiencing the effects of state and federal responses to the COVID–19 pandemic. To allow them to focus on their mission, LSC is extending the deadline for comments on the proposed changes until May 15, 2020.

Dated: April 2, 2020.

Stefanie Davis

Senior Assistant General Counsel.

[FR Doc. 2020–07319 Filed 4–13–20; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 15–80; FCC 20–20; FRS 16584]

Disruptions to Communications; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** on March 31, 2020, seeking comment on a proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this data. The document contained an incorrect URL link to the full text of the proposal available on the Commission's website. This document corrects the URL link.

DATES: April 14, 2020.

FOR FURTHER INFORMATION CONTACT: Saswat Misra, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–0944 or via email at *Saswat.Misra@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 31, 2020 (85 FR 17818, in FR Doc. 2020–06085, in the **SUPPLEMENTARY INFORMATION** section on page 17819, in the second column, at lines 8–10, correct the text to read: The full text may also be downloaded at: *https://docs.fcc.gov/public/attachments/FCC-20-20A1.pdf.*

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07541 Filed 4–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 20–73, 17–105; FCC 20–41: FRS 16626]

Significantly Viewed Stations; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on modernizing its methodology for determining whether a television broadcast station is ''significantly viewed'' in a community outside of its local television market and therefore may be treated as a local station in that community, permitted under the Commission's rules to be carried by cable systems and satellite operators. An examination into whether the existing methodology has become outdated or overly burdensome, particularly for smaller entities, is warranted given changes in the marketplace in the nearly fifty years since its adoption.

DATES: Comments for this proceeding are due on or before May 14, 2020; reply comments are due on or before June 15, 2020.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 20–73 and 17–105, by any of the following methods:

- *Federal Communications Commission's website: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

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

FOR FURTHER INFORMATION CONTACT: For additional information, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* FCC 20–41, adopted and released on March 31, 2020. The full text is available for public inspection and copying during regular

business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This *Notice of Proposed Rulemaking* may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on such requirements, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission will seek specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

I. Introduction

1. In this *Notice of Proposed Rulemaking,* we seek comment on modernizing our methodology for determining whether a television broadcast station is ''significantly viewed'' in a community outside of its local television market and thus may be treated as a local station in that community, permitted under the Commission's rules to be carried by cable systems and satellite operators. The existing process for determining a station's significantly viewed status was adopted nearly fifty years ago, and marketplace changes during this period lead us to examine whether this process has become outdated or overly burdensome, particularly for smaller entities. Our actions are taken in furtherance of the Commission's efforts in its *Modernization of Media Regulation Initiative* proceeding to update our media regulations.

II. Background

2. Local television broadcast stations typically hold exclusive rights to distribute network or syndicated programming within their local markets. Generally, a television station's ''local market'' is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company (Nielsen). The Commission's network nonduplication and syndicated exclusivity rules protect these exclusive rights by generally precluding cable operators and satellite carriers from carrying a duplicating network or syndicated program broadcast by a distant station. Cable operators and satellite carriers are required to delete duplicative network or syndicated programming carried on any out-of-market signals that they import into a local market where exclusivity provisions exist in the relevant contractual agreements between broadcasters and networks or syndicators. But under the significantly viewed exception to the network nonduplication and syndicated exclusivity rules, cable operators and satellite carriers are not required to delete the duplicating network or syndicated programming where the signal of the otherwise distant station is determined to be significantly viewed in the relevant community. The significantly viewed exception is based on a demonstration, made using over-the-air viewership surveys, that an otherwise distant station receives a ''significant'' level of over-the-air viewership in a particular cable or satellite community and therefore should be considered ''local'' with respect to that community. The Commission originally adopted the significantly viewed exception to balance concerns about the economic impact to local stations resulting from cable system importation of competing distant stations with concerns that a station be available in full on cable systems in communities where the station is available over the air.

3. Although cable operators have had carriage rights for significantly viewed stations under the Commission's rules since 1972, satellite carriers did not obtain carriage rights for significantly viewed stations until 2004. The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) changed the Communications Act of 1934, as amended (Act), to ''increas[e] regulatory parity by extending to satellite operators the same type of authority cable operators already have to carry 'significantly viewed' signals into a market.'' SHVERA added new section 340 of the Act, which authorized satellite carriage of significantly viewed stations subject to certain subscriber eligibility restrictions. The Satellite Television Extension and Localism Act of 2010 (STELA) amended section 340 to modify the subscriber eligibility restrictions. SHVERA also amended the Copyright Act to establish a compulsory copyright license for satellite carriage of significantly viewed signals to subscribers.

4. In 1972, the Commission established a list of significantly viewed stations based on viewership surveys for the periods May 1970, November 1970, and February/March 1971. The Commission's rules define a network station as significantly viewed if over-the-air viewership surveys demonstrate that the station exceeds a three percent share of viewing hours and a net weekly circulation of 25 percent, by at least one standard error. An independent station is defined as significantly viewed if over-the-air viewership surveys demonstrate that the station exceeds a two percent share of viewing hours and a net weekly circulation of five percent, by at least one standard error. A television station, or a cable operator or satellite carrier that seeks to carry the station, may petition the Commission to obtain ''significantly viewed'' status for the station in a particular community or communities and placement on the Significantly Viewed List. Under section 76.54(d) of the Commission's rules, signals of television stations not encompassed by the 1970–1971 surveys (i.e., not on-the-air at the time the surveys were taken) may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods during the first three years of the subject station's operation and are otherwise comparable to the surveys used in compiling the 1972 list. Alternatively, section 76.54(b) of the Commission's rules provides that significant viewing in a cable or satellite community:

> May be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population. A satellite carrier may demonstrate significant viewing in more than one community or satellite community through a single survey, provided that the sample includes over-the-

air television homes from each community that are proportional to the population.

The Commission maintains an updated list of significantly viewed stations on its website.

5. A station may also lose its significantly viewed status if another station petitions for a waiver of the significantly viewed exception to reinstate its exclusivity rights vis-à-vis the significantly viewed station. In *KCST–TV,* the Commission held that in order to obtain such a waiver, a petitioner would be required to demonstrate for two consecutive years that a station was no longer significantly viewed, based either on community-specific or system-specific over-the-air viewing data, following the methodology set forth in section 76.54(b). The burden of proof is on the petitioner to show that the station is no longer significantly viewed.

6. Following the Commission's decision in *KCST–TV,* the methodology required by section 76.54(b) of the rules for an entity seeking a change in a station's significantly viewed status or a petitioner seeking a waiver of the significantly viewed exception evolved through case law. Over time, Nielsen became the primary organization through which entities seeking changes to the Significantly Viewed List could obtain television viewership surveys. Until recently, Nielsen, which surveys television markets to obtain television stations' viewership, conducted four-week audience surveys four times a year (*i.e.,* during February, May, July, and November ''sweep periods''). In light of these quarterly surveys, the Media Bureau found that replacing each week required under section 76.54(b) with a sweep period is acceptable and added to the accuracy of the audience statistics because of the increased sample size. Thus, an entity seeking to change a station's significantly viewed status was permitted to submit the results from two sweep periods in each year and purchase survey data from Nielsen on either a community-specific or system-specific basis. In order to produce the required data, Nielsen re-tabulated the over-the-air data that it collected for its routine audience sweep periods, using in-tab diaries from its database for the area served by a cable system or an individual cable community. Notably, there have been recent cases where an entity seeking to make changes to the Significantly Viewed List could not make the showing required under section 76.54(b) and relevant case law for certain communities because Nielsen was unable to provide the requisite over-the-air viewership data for those communities.

7. In 2019, Nielsen completed a multi-year overhaul of the way it measures television viewing in its 210 DMAs, replacing the paper diaries that Nielsen families used to record what they watched on television in the smallest 140 DMAs entirely with electronic measurement. Nielsen now uses a combination of people meters, set meters, code readers, and return path data (RPD) from cable and satellite set-top boxes to measure television viewing. In many of the DMAs where it uses RPD from set-top boxes, Nielsen also uses code readers to capture over-the-air viewership data that is missed by set-top boxes. Nielsen then applies statistical modeling, weighting, and other data science techniques to the representative samples obtained through its electronic measurement to calculate over-the-air viewership data for a larger population. Additionally, instead of measuring local television viewership only four times a year during sweep months, Nielsen now provides electronic measurements every month of the year.

III. Discussion

8. As explained above, there have been recent instances where petitioners seeking to change a station's significantly viewed status for certain communities were unable to rely upon Nielsen to provide the over-the-air viewership data required under our rules and applicable case law. In addition, given Nielsen's changes to its process for measuring television viewing in its DMAs, it is unclear whether the shift to electronic measurement will sufficiently capture over-the-air viewing and enable Nielsen to provide would-be petitioners the requisite over-the-air viewership information for certain communities. Thus, we seek comment on the need for modifications or updates to the existing methodology for determining whether a station is significantly viewed in a community outside of its local television market. Specifically, we seek comment on whether the methodology for determining a station's significantly viewed status set forth in section 76.54(b) of the Commission's rules and relevant case law has become outdated or overly burdensome. What are the costs and other burdens associated with making the showing currently required to establish a station's significantly viewed status? To what extent do such costs and burdens discourage or deter entities, particularly entities in smaller markets, from seeking changes to the Significantly Viewed List? To the extent that our current methodology as set forth in the rules and developed through case law discourages entities from seeking changes to the Significantly Viewed List, what impact does this have on the affected stations and on viewers in the relevant communities?

9. As discussed above, Nielsen has been the primary organization through which entities seeking to establish a station's significantly viewed status or a waiver of the significantly viewed exception may obtain television viewership surveys. We seek comment on whether the over-the-air viewership data gathered by Nielsen today through electronic measurement techniques satisfies the requirement in section 76.54(b) of our rules for an ''audience survey of over-the-air television homes.'' Why or why not? We also seek specific comment on the extent to which Nielsen is able to provide the community-specific or system-specific over-the-air viewership data needed to demonstrate a station's significantly viewed status, particularly in smaller markets. Has the number of communities for which Nielsen is able to provide the required data changed substantially since it replaced its paper diaries entirely with electronic measurement? If Nielsen does not collect this community-specific or system-specific over-the-air viewership data, are there other sources from which broadcasters can obtain it? We request comment on whether there are a significant number of communities today for which Nielsen or other companies are unable to provide the over-the-air viewership data required under our rules. To the extent there are no commercially available sources for this information, does the expense to a station or other entity of commissioning over-the-air viewership surveys in a community or communities for which there is no data available deter such entities from seeking changes to the Significantly Viewed List? What are the expenses associated with commissioning such surveys? Would the costs exceed the benefits?

10. In addition, we seek comment on what, if any, specific modifications or updates should be made to the current methodology for establishing whether a station is significantly viewed in a community outside of its local market. For example, is it necessary to modify the current rule to reflect the fact that Nielsen now measures over-the-air viewership data electronically? If Nielsen or other companies are unable to provide the community-specific or system-specific over-the-air viewership data required under our rules for certain communities, how should we modify

our rules to take account of this? Are there other modifications that can be made to make the current process less costly or burdensome to entities seeking to make changes to a station's significantly viewed status? How should we address the challenges of relying on the requirements for sample size, given the diminished fraction of over-the-air viewers since 1972? Commenters who propose specific modifications should discuss the costs and benefits of their proposals, including the impact of the proposal on affected stations, especially small market stations, and viewers.

11. Moreover, we seek comment on whether there are alternative methodologies for demonstrating a station's significantly viewed status outside of its local market. For example, it has been suggested that a petitioner should be permitted to establish a station's significantly viewed status in a particular community by making a technical showing, such as by using a Longley-Rice analysis, demonstrating that the station's signal reaches or does not reach a certain percentage of the population in that community. If so, what showing should be required and what percentage of the community's population should the station's signal be required to reach in order to be considered significantly viewed? We note that such a showing would reflect potential rather than actual viewing in the community at issue. We seek comment on whether it is reasonable to infer that if a station's signal reaches a certain percentage of the population in a community that the station is significantly viewed in the community. Why or why not? We further note that section 340(a)(2) of the Act, which applies to satellite carriers, requires the use of ''standards and procedures concerning *shares of viewing hours and audience surveys*.'' We seek comment on whether a methodology that allowed a petitioner to establish a station's significantly viewed status in a particular community based on a technical showing of coverage area, rather than viewership data, would comply with the requirements of section 340(a)(2). We seek comment on the costs and benefits of any proposed alternative methodologies, including the impact of the proposal on affected stations, especially small market stations, and viewers.

12. Further, we seek comment on whether and to what extent the Commission has the statutory authority to modify the significantly viewed rules with respect to satellite carriers. Section 122(a)(2)(A) of the Copyright Act provides that the statutory copyright license for satellite carriers applies to stations that are ''determined by the Federal Communications Commission to be significantly viewed in such community, pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.'' The Commission previously has interpreted this statutory provision as precluding it from making substantive modifications to the section 76.54 process for making significantly viewed determinations. We seek comment on whether there is any basis for revisiting this interpretation.

13. In particular, we note that section 340 of the Act authorizes satellite carriers to retransmit the signal of an out-of-market station to a subscriber where such signal ''is, after December 8, 2004, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.'' Unlike section 122(a)(2)(A) of the Copyright Act, there is no requirement in section 340 that the Commission apply rules that were in effect on a certain date in determining whether a station is significantly viewed. Section 122(a)(2)(A) of the Copyright Act and section 340 of the Act serve two distinct purposes. Section 122(a)(2)(A) of the Copyright Act establishes the test for when satellite carriage of a significantly viewed station qualifies for the statutory copyright license: a station must be determined by the Commission to be significantly viewed in such community pursuant to the rules in effect on April 15, 1976. In contrast, section 340 of the Act establishes that a satellite carrier may carry a significantly viewed signal as defined by the Commission, and that the network nonduplication and syndicated exclusivity rules do not apply to a significantly viewed signal (unless a station successfully petitions to have a significantly viewed station removed from the Significantly Viewed List). Accordingly, since section 340 does not require that the Commission apply rules that were in effect on a certain date in determining whether a station is significantly viewed, we propose to interpret section 340 as allowing the Commission to amend its significantly viewed rules, provided that satellite carriers and cable operators are subject to the same rules. We seek comment on this proposed reading of section 340.

14. We note that this reading of section 340 could result in one set of procedures being applied in determining whether a station is significantly viewed for purposes of the Communications Act and a different set of procedures being applied in determining whether a station is significantly viewed for purposes of the Copyright Act. In other words, any modifications adopted by the Commission to the procedures for determining whether a station is significantly viewed would apply for purposes of the Commission's signal carriage and exclusivity rules, while the procedures that were in effect as of April 15, 1976, would continue to apply for purposes of determining whether satellite carriage of a station qualifies for the statutory copyright license. We seek comment on whether section 122(a)(2)(A) of the Copyright Act—which applies only in determining whether satellite carriage of a significantly viewed station qualifies for the statutory copyright license—limits the Commission's discretion to have a different set of procedures for determining whether a station is significantly viewed for purposes of signal carriage and exclusivity under section 340 of the Act. We also seek comment on whether there is any reason to have one set of procedures for both purposes. What are the benefits and burdens of having two different sets of procedures? Commenters should address the benefits and burdens from a number of perspectives, such as those of broadcast stations, cable operators, satellite carriers, and consumers. In addition, we seek comment on whether updating the procedures for determining whether a station is significantly viewed would allow a more accurate determination of which stations should legitimately be accorded significantly viewed status. We note that exclusivity protections depend on the Significantly Viewed List being as accurate as possible.

15. We recognize that having two different procedures could produce odd results in some cases and seek comment on the implications of such an approach. For example, a station could qualify as significantly viewed under the Commission's procedures, thus making satellite carriage of the station permissible under section 340 of the Act, but not under the procedures required to be applied by the Copyright Act. Under such circumstances, where a satellite carrier does not qualify for the section 122 compulsory copyright license, would the satellite carrier

nonetheless choose to carry the significantly viewed station? If so, how would the satellite carrier obtain the rights to retransmit the station's programming from each individual copyright holder? We seek comment on the impact of having two different procedures on regulatory parity between cable operators and satellite carriers. What would be the impact of having two different procedures on the congressional goals underlying section 340 and the Copyright Act?

16. Moreover, we note that in 1977, the Commission made a substantive revision to the methodology in section 76.54(b) to be used by cable operators in determining a station's significantly viewed status. We seek comment on what significance the 1977 modification of the significantly viewed rules for cable operators has on the question of the Commission's statutory authority to modify the significantly viewed rules for satellite carriers. Given that Congress's intent in enacting SHVERA was to create parity between cable operators and satellite carriers, we also seek comment on the impact any limitation on Commission authority to modify the significantly viewed rules for satellite carriers should have on our decision on whether to modify the significantly viewed rules for cable operators. Could the Commission modify the significantly viewed rules only as to cable systems consistent with section 340(a)(2) of the Act? If the record amassed in this proceeding indicates that there are no entities, including Nielsen, that can provide the community-specific or system-specific over-the-air viewership data required to demonstrate significantly viewed status pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, in a significant number of communities, how should this determination impact the Commission's decision as to whether to revise our rules pursuant to our authority under section 340, in light of the limitation contained in section 122 of the Copyright Act? That is, if it is infeasible to make the showing required under the existing rules because those rules are outdated or no longer relevant in today's marketplace, does that support our proposed reading of section 340 to allow the Commission to amend its significantly viewed rules?

17. Additionally, we seek comment on whether to update the definitions of the terms ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5 of the Commission's rules to reflect marketplace changes since these definitions were adopted. Under these definitions, a commercial television broadcast station is classified as either a full network station, partial network station, or independent station depending on how many hours per week it carries of prime time programming offered by one of the ''*three* major national television networks''—*i.e.,* ABC, CBS, or NBC. The Commission relies on these definitions to select the correct standard for determining whether a station is significantly viewed. We note that the Commission has recognized the Fox network as a fourth major national television network. We seek comment on whether to modify the definitions of ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5 to accurately reflect that there are now four rather than three major national television networks. What impact does the current treatment of Fox owned and affiliated stations as independent rather than network stations have on the process for determining a station's significantly viewed status and on affected stations and television viewers? Alternatively, we seek comment on whether to update these definitions to track with the definition of ''network station'' set forth in the Copyright Act. Under this definition, ''network station'' means ''a television station licensed by the Federal Communications Commission . . . that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States.'' Stations owned by or affiliated with Fox and a number of other networks, such as The CW, MyNetwork TV, Univision, and Telemundo, would be considered ''network stations'' under this definition.

18. We note that the Commission previously has rejected requests to update the definitions of ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5 to track with the definition of ''network station'' in the Copyright Act, concluding that the Copyright Act requires use of the rules in effect as of April 15, 1976, including these definitions. Although section 340 of the Act requires that the Commission use the definition in the Copyright Act in determining subscriber eligibility to receive significantly viewed stations from satellite carriers, the Commission found that it was precluded by statute from conforming the definitions in its rules with the Copyright Act definition because section 122(a)(2)(1) of the Copyright Act requires use of the Commission rules in effect as of April 15, 1976. The Commission therefore determined that it would continue to use the definitions of network station and independent station in our rules for purposes of determining whether a station is significantly viewed, but use the copyright definition of network station for purposes of subscriber eligibility and the other applications of the significantly viewed provisions. We seek comment on whether we should revisit this interpretation. As discussed above, section 122(a)(2)(A) of the Copyright Act applies only in determining whether satellite carriage of a significantly viewed station qualifies for the statutory copyright license. Furthermore, section 340 of the Act does not require that the Commission apply rules that were in effect on a certain date in determining whether a station is significantly viewed. Accordingly, we propose to interpret section 340 as allowing the Commission to amend its significantly viewed rules to update the definitions of ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5. What impact would modification of these definitions have on affected stations, cable operators, satellite carriers, and consumers? What policy goals would be served by amending the significantly viewed rules to update these definitions? What impact, if any, would modification of these definitions have on the congressional goals underlying section 340 and the Copyright Act? Does it make sense from a legal or policy perspective to continue to treat Fox and certain other network owned and affiliated stations as ''independent stations'' for purposes of determining the station's significantly viewed status but as network stations in all other respects? We seek comment on these issues.

IV. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be

identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

20. Local television broadcast stations typically hold exclusive rights to distribute network or syndicated programming within their local markets. The Commission's network nonduplication and syndicated exclusivity rules protect these exclusive rights by generally precluding cable operators and satellite carriers from carrying a duplicating network or syndicated program broadcast by a distant station. Under the significantly viewed exception to the network nonduplication and syndicated exclusivity rules, cable operators and satellite carriers are not required to delete the duplicating network or syndicated programming where the signal of the otherwise distant station is determined to be significantly viewed in the relevant community. The significantly viewed exception is based on a demonstration, made using over-the-air viewership surveys, that an otherwise distant station receives a ''significant'' level of over-the-air viewership in a particular cable or satellite community and therefore should be considered ''local'' with respect to that community.

21. The Commission in 1972 established a list of significantly viewed stations based on viewership surveys for the periods May 1970, November 1970, and February/March 1971. The Commission's rules define a network station as significantly viewed if over-the-air viewership surveys demonstrate that the station exceeds a three percent share of viewing hours and a net weekly circulation of 25 percent, by at least one standard error. An independent station is defined as significantly viewed if over-the-air viewership surveys demonstrate that the station exceeds a two percent share of viewing hours and a net weekly circulation of five percent, by at least one standard error. A television station, or a cable operator or satellite carrier that seeks to carry the station, may petition the Commission to obtain ''significantly viewed'' status for the station in a particular community or communities and placement on the Significantly Viewed List. Under section 76.54(d) of the Commission's rules, signals of television stations not encompassed by the 1970–1971 surveys (*i.e.,* not on-the-air at the time the surveys were taken) may be demonstrated as significantly viewed on a county-wide basis by independent professional audience surveys which cover three separate, consecutive four-week periods during the first three years of the subject station's operation and are otherwise comparable to the surveys used in compiling the 1972 list. Alternatively, section 76.54(b) of the Commission's rules provides that significant viewing in a cable or satellite community:

> May be demonstrated by an independent professional audience survey of over-the-air television homes that covers at least two weekly periods separated by at least thirty (30) days but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population. A satellite carrier may demonstrate significant viewing in more than one community or satellite community through a single survey, provided that the sample includes over-the-air television homes from each community that are proportional to the population.

The Commission maintains an updated list of significantly viewed stations on its website.

22. A station also may petition for a waiver of the significantly viewed exception to reinstate its exclusivity rights vis-à-vis a significantly viewed station. In *KCST–TV,* the Commission held that in order to obtain such a waiver, a petitioner would be required to demonstrate for two consecutive years that a station was no longer significantly viewed, based either on community-specific or system-specific over-the-air viewing data, following the methodology set forth in section 76.54(b). The burden of proof is on the petitioner to show that the station is no longer significantly viewed.

23. Over time, Nielsen became the primary organization through which entities seeking changes to the Significantly Viewed List could obtain television viewership surveys. Until recently, Nielsen, which surveys television markets to obtain television stations' viewership, conducted four-week audience surveys four times a year (*i.e.,* during February, May, July, and November ''sweep periods''). The Media Bureau found that replacing each week required under *KCST–TV* with a sweep period is acceptable and, if anything, added to the accuracy of the audience statistics because of the increased sample size. Thus, a petitioner seeking to show that a station is no longer significantly viewed was permitted to submit the results from two sweep periods in each year and purchase survey data from Nielsen on either a community-specific or system-specific basis. In order to produce the data required for exclusivity waivers, Nielsen re-tabulated the over-the-air data that it collected for its routine audience sweep periods, using in-tab diaries from its database from the area served by a cable system or an individual cable community. In 2019, Nielsen completed a multi-year overhaul of the way it measures television viewing in its 210 DMAs, replacing the paper diaries that Nielsen families used to record what they watched on television in the smallest 140 DMAs entirely by electronic measurement. Nielsen now uses a combination of people meters, set meters, code readers, and return path data (RPD) from cable and satellite set-top boxes to measure television viewing. Nielsen then applies statistical modeling, weighting, and other data science techniques to the representative samples obtained through its electronic measurement to calculate viewership data for a larger population.

24. The NPRM seeks comment on whether the methodology for determining a station's significantly viewed status set forth in section 76.54(b) of the Commission's rules and relevant case law has become outdated or overly burdensome. In particular, the NPRM seeks comment on the costs and other burdens associated with making the showing required to establish a station's significantly viewed status under the current process and the extent to which such costs and burdens discourage or deter entities, particularly smaller entities, from seeking changes to the Significantly Viewed List. The NPRM seeks comment on whether the over-the-air viewership data gathered by Nielsen today through electronic measurement techniques satisfies the requirement in section 76.54(b) of our rules for an ''audience survey of over-the-air television homes.'' Further, the NPRM notes that there have been recent cases where an entity seeking to make changes to the Significantly Viewed List could not make the showing required under section 76.54(b) and relevant case law for certain communities because

Nielsen was unable to provide the requisite over-the-air viewership data for those communities. The NPRM accordingly seeks comment on the extent to which Nielsen is able to provide the community-specific or system-specific over-the-air viewership data needed to demonstrate a station's significantly viewed status, particularly in smaller markets.

25. The NPRM seeks comment what, if any, specific modifications or updates should be made to the current methodology for establishing whether a station is significantly viewed in a community outside of its local market. In addition, the NPRM seeks proposals for new or alternative methodologies for establishing whether a station is significantly viewed in a community outside of its local market. Commenters who propose alternative methodologies should discuss the costs and benefits of their proposals, including the impact of the proposal on affected stations, especially small market stations, and viewers.

26. The NPRM also seeks comment on whether to update the definitions of the terms ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5 of the Commission's rules to reflect marketplace changes since these definitions were adopted. In particular, the NPRM seeks comment on whether to modify these definitions to reflect that there are four rather than three major national television networks. Alternatively, the NPRM seeks comment on whether to update these definitions to conform with the definition of ''network station'' set forth in the Copyright Act. Under this definition, ''network station'' means ''a television station licensed by the Federal Communications Commission . . . that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States.''

27. Further, the NPRM seeks comment on the Commission's authority to modify the significantly viewed rules with respect to satellite carriers in light of section 122(a)(2)(A) of the Copyright Act, which explicitly limits application of the statutory copyright license for satellite carriers to stations that are ''determined by the Federal Communications Commission to be significantly viewed . . . pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, applicable to determining with respect to a cable system whether signals are significantly viewed in a community.'' Although the Commission previously has interpreted this statutory provision as precluding it from making substantive modifications to the section 76.54 process for making significantly viewed determinations and to the definitions of ''full network station,'' ''partial network station,'' and ''independent station'' in section 76.5 of the Commission's rules, the NPRM seeks comment on whether there is any basis for revisiting this interpretation. The NPRM notes that section 340 of the Act authorizes satellite carriers to retransmit the signal of an out-of-market station to a subscriber where such signal ''is, after December 8, 2004, determined by the Commission to be significantly viewed in such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.'' Unlike section 122(a)(2)(A) of the Copyright Act, there is no requirement in section 340 that the Commission apply rules that were in effect on a certain date in determining whether a station is significantly viewed. Section 122(a)(2)(A) of the Copyright Act and section 340 of the Act serve two distinct purposes. Section 122(a)(2)(A) of the Copyright Act establishes the test for when satellite carriage of a significantly viewed station qualifies for the statutory copyright license: A station must be determined by the Commission to be significantly viewed in such community pursuant to the rules in effect on April 15, 1976. In contrast, section 340 of the Act establishes that a satellite carrier may carry a significantly viewed signal as defined by the Commission, and that the network nonduplication and syndicated exclusivity rules do not apply to a significantly viewed signal (unless a station successfully petitions to have a significantly viewed station removed from the Significantly Viewed List). Accordingly, since section 340 does not require that the Commission apply rules that were in effect on a certain date in determining whether a station is significantly viewed, the NPRM proposes to interpret section 340 as allowing the Commission to amend its significantly viewed rules, provided that satellite carriers and cable operators are subject to the same rules.

C. Legal Basis

28. The proposed action is authorized pursuant to sections 303, 325, 339, 340, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 303, 325, 339, 340, and 534.

D. Description and Estimates of the Number of Small Entities To Which the Proposed Rules Will Apply

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

30. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated television broadcast stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of $25 million or less. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,374. Of this total, 1,257 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on January 8, 2018, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE)

television stations to be 388. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

33. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

34. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

35. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1500 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

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

36. *Reporting and Recordkeeping Requirements.* The NPRM does not propose any new or modified reporting or recordkeeping requirements.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

38. The NPRM seeks comment on modernizing the methodology set forth in the Commission's rules for determining whether a television broadcast station is significantly viewed in a community outside of its local television market. To the extent that the current methodology has become outdated or overly burdensome, it may discourage or deter entities, particularly entities in smaller markets, from seeking changes to the Significantly Viewed List. Any revisions to the current process, if adopted, would reduce the costs and burdens associated with establishing a station's significantly viewed stations by establishing a more viable and less burdensome process for seeking changes to the Significantly Viewed List. Thus, any such revisions are expected to benefit small entities.

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

39. None

H. Initial Paperwork Reduction Act of 1995 Analysis

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

I. Ex Parte Rules

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

J. Filing Procedures

42. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

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

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

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

45. *Additional Information.* For additional information on this proceeding, contact Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–7454.

V. Ordering Clauses

46. Accordingly, *it is ordered* that, pursuant to the authority found in sections 303, 325, 339, 340, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 303, 325, 339, 340, and 534, this Notice of Proposed Rulemaking *is adopted.*

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

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07505 Filed 4–13–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200330–0092]

RIN 0648–BJ34

Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement a ''fish up''

provision in the halibut and sablefish Individual Fishing Quota (IFQ) Program to allow Community Quota Entities (CQEs) located in IFQ regulatory Area 3A (Southcentral Alaska) holding category D halibut quota share (QS) (*i.e.,* for use on catcher vessel less than or equal to 35 ft (10.7 m) length overall) to have the associated IFQ harvested on category C vessels (catcher vessels less than or equal to 60 ft (18.3 m) length overall) beginning August 15 of each IFQ fishing season. This action would also make a minor change to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms. This proposed rule is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982 and other applicable laws.

DATES: Comments must be received no later than May 14, 2020.

ADDRESSES: Submit your comments, identified by docket number NOAA–NMFS–2019–0134, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0134,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available 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; by email to *OIRA_Submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Doug Duncan, 907–586–7228 or *doug.duncan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

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

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis)* through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with the concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and concurrence from the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures at 50 CFR 300.62.

The Halibut Act, 16 U.S.C. 773c (a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, 16 U.S.C. 773c (c), also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c (c)) and section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)).

Background

This proposed rule includes two elements. The first would modify regulations pertaining to the use of halibut QS and halibut IFQ held by CQEs in Area 3A. The second element includes minor changes to regulations implementing the IFQ Program that would consolidate temporary IFQ transfer forms. The following sections summarize the IFQ Program, the CQE Program, and this proposed rule.

IFQ Program

The IFQ Program, a limited access privilege program for the fixed-gear halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in 1993. A comprehensive explanation of the IFQ Program can be found in the final rule implementing the program (58 FR 59375, November 9, 1993). The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program changed the management structure of the fixed-gear halibut and sablefish fishery by issuing QS to qualified persons who owned or leased a vessel that made fixed-gear landings of those species from 1988 to 1990. Halibut QS was issued specific to one of eight IPHC halibut management areas throughout the BSAI and GOA, and four vessel categories: Catcher/processor of any length (category A); catcher vessel of any length (category B); catcher vessel less than or equal to 60 ft (18.3 m) LOA (category C); and catcher vessel less than or equal to 35 ft (10.7 m) LOA (category D). The amount of halibut that each QS holder may harvest is calculated annually and issued as IFQ in pounds on an IFQ permit. Under typical circumstances, the category of halibut IFQ must be matched to the category of vessel used to harvest it. Exceptions to allow a

smaller category of IFQ to be harvested on a larger vessel category (*i.e.,* fishing category D IFQ on a category C vessel) are referred to as ''fish-up'' provisions.

Although the IFQ Program resulted in significant safety and economic benefits for fishermen, many residents of Alaska's small, remote, coastal communities who held QS have transferred their QS to non-community residents or moved out of these communities. As a result, the number of resident QS holders has declined substantially in most remote coastal communities throughout Alaska. This transfer of halibut QS and the associated fishing effort out of small, remote, coastal communities has limited the ability of residents to locally purchase or lease QS.

CQE Program

The Council developed the CQE Program to improve the ability for rural coastal communities to maintain long-term opportunities to access the halibut and sablefish resources. The Council recommended the CQE Program in the GOA as an amendment to the IFQ Program in 2002, and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004).

The CQE Program allows 45 small, remote, coastal communities in the GOA to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. Communities eligible to participate in the CQE Program in the GOA include those that meet criteria for geographic location, population size, historic participation in the halibut and sablefish fisheries, and are listed in Table 21 to 50 CFR part 679. Additional detail on these criteria is available in the final rule implementing the CQE Program (69 FR 23681, April 30, 2004).

Participating communities are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. With limited exceptions, QS must remain with the CQE in order to create a permanent asset for the community to use. Community residents who lease IFQ from the CQE can use the revenue to purchase their own QS. These program features promote community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries.

The Council established limitations in the original CQE Program to prevent excessive consolidation of IFQ harvest into CQE communities, limit demand driven QS price increases for all IFQ Program participants, and broadly distribute the benefits from fishing activities among CQE communities. One limitation prohibited CQEs in some areas (*i.e.,* Southcentral Alaska; Area 3A) from purchasing entry level category D QS. However, subsequent review by the Council and NMFS found that few CQEs held any halibut QS and there was no clear evidence demonstrating a potential conflict between the limited number of new IFQ Program entrants and CQEs. In 2013, NMFS revised regulations on vessel use caps that apply to CQE-held QS and IFQ, expanded the list of eligible CQE communities, and allowed CQEs to hold category D halibut QS in Area 3A. Additional detail is available in the final rule implementing these regulatory provisions (78 FR 33243, June 4, 2013). Generally, these changes were intended to improve the effectiveness of the CQE Program by minimizing program limitations.

Need for This Action

While the expanded CQE Program has provided additional flexibility for eligible communities to purchase, maintain, and use QS, challenges still remain due to difficulties in securing favorable financing terms and limited available revenue streams (see Section 2.9.2 of the Analysis for additional detail). As of 2019, only two out of fourteen eligible CQEs in Area 3A had purchased halibut QS. Furthermore, public testimony has indicated that in those Area 3A CQE communities that have acquired category D halibut QS, smaller category D vessels are sometimes unavailable to harvest the IFQ, and that the skiffs often used as category D vessels are not ideal for the harsh weather and ocean conditions later in the season when halibut can move offshore (Section 2.11.3 of the RIR). IFQ Program regulations in Area 3A do not allow category D IFQ to be harvested on larger category C vessels which could limit a CQE's ability to fully utilize its halibut IFQ in certain circumstances. If a CQE is unable to fully harvest its annual IFQ and realize the associated revenue, it may face financial challenges fulfilling any debt service on financed QS. If no alternative funding is available, a CQE could be forced to sell QS, potentially eliminating fishery access and economic opportunities for the community.

Modifying the regulations to allow category D IFQ to be harvested on larger category C vessels near the end of the IFQ season would provide more flexibility to CQE participants to fully harvest their category D IFQ in Area 3A. This would further the Council's intent of facilitating CQE community access to the halibut resource. By limiting use of the exemption to the end of the season as a contingency plan, this action is also consistent with the intent of the IFQ Program to maintain the historical vessel size characteristics of the fleet when possible.

The Council's intent is reflected in the purpose and need statement adopted at final action at the April 2018 Council meeting. The Council's purpose and need, and final motion is available in the RIR (see **ADDRESSES**). Section 1.1 of the RIR also provides a summary of the history of this action.

This Proposed Rule

This proposed rule includes two elements. The first element would modify regulations to allow halibut IFQ derived from CQE held category D QS in Area 3A to be used to harvest halibut on a vessel less than or equal to 60 ft (18.3 m) LOA beginning on August 15 of each IFQ fishing season. The second element of this action would make minor changes to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms.

CQE Fish-Up Provision

The first element of this proposed rule would add a paragraph at § 679.42(a)(2)(ii)(A) specifying that IFQ derived from CQE held QS assigned to category D in Area 3A could be harvested on a vessel less than or equal to 60 ft (18.3 m) LOA from August 15 to the end of the IFQ season. This action would allow eligible community residents leasing category D IFQ from a CQE to fish it on larger vessels near the end of the season. This proposed rule does not prevent category D IFQ held by a CQE from being fished on a category D vessel on or after the August 15.

Currently, if a CQE in Area 3A has category D IFQ it cannot be harvested on a vessel larger than 35 ft (10.7 m). Any unharvested category D IFQ in excess of 10 percent of the CQE's account cannot be rolled over to the following year and becomes forgone harvest and subsequently forgone revenue to the CQE and community harvester.

This proposed rule would only apply to Area 3A category D halibut QS held by a CQE located in Area 3A. CQEs located in other IFQ regulatory areas are not eligible to hold category D halibut QS assigned to Area 3A. Currently, one CQE in Area 3A owns 159,075 units of Area 3A category D halibut QS (6,324 IFQ pounds in 2018). If CQEs held the maximum amount of Area 3A category D halibut QS allowed by regulation, this proposed rule would apply to 1,233,740

halibut QS units (approximately 10 percent of the total Area 3A category D halibut QS, or about 0.7 percent of the total halibut QS in Area 3A).

This proposed rule would provide additional flexibility for using category D halibut QS held by CQEs in Area 3A. Increases in demand driven by the additional flexibility of category D halibut QS could increase QS prices. However, changes in halibut QS price as a result of this action are expected to be limited for the following reasons. First, the flexibility to fish up afforded by this action is currently limited to one CQE in Area 3A that holds approximately 6,000 pounds of category D halibut IFQ. Second, increased flexibility for a narrow group of users for a limited amount of time is not likely to significantly increase halibut QS demand. Third, the market power of CQEs to purchase QS is already constrained due to the lack of availability of category D halibut QS and CQE funding barriers (described in Section 2.9.2 of the RIR), as well as the regulatory caps previously described. Non-CQE participants would continue to have access to roughly 90 percent of the category D halibut QS in Area 3A without potential competition from CQEs. While upward pressure on the value of halibut QS (such as being able to fish up) could cumulatively impact transfer prices, the impact of this action is expected to be minimal, given the present constraints on CQEs' access to investment capital and historical investment patterns, as well as the broad range of other factors that influence halibut QS prices. Section 2.11.2 of the RIR provides a more complete discussion of the potential impacts to other IFQ Program participants.

While evaluating a fish-up provision, the Council considered three alternatives, which are described in Sections 2.10 and 2.11 of the RIR. These included alternatives that would have limited the number of times the fish-up provision could be used over a period of years or would have extended the use of this provision to the entire fishing season. These alternatives were not recommended by the Council. Additional detail of the Council's rationale in support of this action is provided in Section 2.5 of the RIR prepared for this action.

Additional Changes to IFQ Program Regulations

This action also includes a minor change to regulations implementing the IFQ Program to consolidate the Application for Temporary Military Transfer of IFQ form into the Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) form. This would centralize all non-medical temporary IFQ transfers onto a single form. To implement this form consolidation, this action would eliminate regulatory reference to the previously required form fields of ''number of QS units'' and ''range of QS serial numbers for IFQ to be transferred'' because they are no longer used to process temporary IFQ transfers. This would simplify the temporary IFQ transfer process for the public and for agency administrators. There would be no changes to the eligibility requirements for, or agency processing of, a temporary military transfer of IFQ. Regulations at § 679.41(m)(3) introductory text and (m)(3)(iii) would be modified to reference the ''application for temporary transfer of halibut/sablefish IFQ'' and the corresponding contents of a complete application.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional fishery management council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which are in addition to, and not in conflict with, IPHC regulations. This proposed rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

This proposed rule is expected to be an Executive Order 13771 deregulatory action.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS requests comments on the decision to certify this proposed rule. The factual basis for this determination is as follows:

This proposed rule would directly regulate CQEs located in Area 3A holding halibut QS assigned to category D in Area 3A. As of 2019, one CQE located in Area 3A held halibut QS assigned to category D in Area 3A. This QS holder is non-profit entity and unlikely to be considered a large entity under SBA standards; however, this cannot be confirmed because NMFS does not have or collect economic data on permit holders necessary to definitively determine total annual receipts. Thus, this QS holder is considered a small entity, based on SBA criteria.

Eligible CQEs in Area 3A may obtain halibut QS assigned to category D in Area 3A; therefore, this proposed rule directly regulates entities representing small, remote communities in Area 3A. There are 14 communities in Area 3A eligible to obtain halibut QS assigned to category D in Area 3A through CQEs. Of these, all have populations less than 50,000 and are considered to be small government jurisdictions.

This proposed action would provide increased flexibility for CQEs in Area 3A to harvest their category D IFQ on category C vessels from August 15 to the end of the IFQ season each year. Use of this provision is voluntary. Currently, this action would only apply to approximately 6,000 pounds of halibut IFQ held by a single CQE in Area 3A. The maximum potential impact of this action is limited to the amount of category D IFQ that CQEs in Area 3A are allowed to hold by regulation, which is roughly 10 percent of the total category D QS in Area 3A. No agency imposed cost burdens are associated with the use of this voluntary provision. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of the RIR is available from NMFS (see **ADDRESSES**). The Council recommended this proposed action based on those measures that maximized net benefits to the Nation.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements

subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0272. Public reporting burden is estimated to average per response: Two hours for Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *https://www.reginfo.gov/public/do/PRASearch.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 31, 2020.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 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 § 679.41, revise paragraphs (m)(3) introductory text and (m)(3)(iii) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(m) * * *

(3) *Application.* A QS holder may apply for a temporary military transfer by submitting an application for temporary transfer of halibut/sablefish IFQ to the Alaska Region, NMFS. NMFS will transfer, upon approval of the application, the applicable IFQ from the applicant (transferor) to the recipient (transferee). An application for temporary transfer of halibut/sablefish IFQ is available at *https://www.fisheries.noaa.gov/region/alaska* or by calling 1–800–304–4846. A complete application must include all of the following:

* * * * *

(iii) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year.

* * * * *

■ 3. In § 679.42, add paragraph (a)(2)(ii)(A) and reserve paragraph (a)(2)(ii)(B) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(2) * * *

(ii) * * *

(A) Halibut IFQ derived from QS assigned to vessel category D in Area 3A that is held by a CQE located in Area 3A may be used to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA from August 15 to the end of the IFQ fishing season.

(B) [Reserved]

* * * * *

[FR Doc. 2020–07097 Filed 4–13–20; 8:45 am]

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Notices

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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

Rural Housing Service

[Docket No. RHS–20–NONE–00010]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named Agency to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of the servicing of Loan Programs.

DATES: Comments on this notice must be received by June 15, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202) 720–2825. Email *arlette.mussington@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection the Agency is submitting to OMB for extension.

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 will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the Search box, type the docket no. RHS–20–NONE–0010 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Form RD 3550–28, Authorization Agreement for Preauthorized Payments, Form RD 1951–65, Customer Initiated Payments (CIP), and Form RD 1951–66, FedWire Worksheet.

OMB Number: 0575–0184.

Expiration Date of Approval: March 31, 2021

Type of Request: Revision of a currently approved information collection.

Abstract: Rural Development uses electronic methods (Customer Initiated Payments [CIP], FedWire, and Preauthorized Debits [PAD]) for receiving and processing loan payments and collections. These electronic collection methods provide a means for Rural Development borrowers to transmit loan payments from their financial institution (FI) accounts to Rural Development's Treasury Account and receive credit for their payments.

To administer these electronic loan collection methods, Rural Development collects the borrower's FI routing information (routing information includes the FI routing number and the borrower's account number). Rural Development uses Agency approved forms for collecting bank routing information for CIP, FedWire, and PAD.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response. Each Rural Development borrower who elects to participate in electronic loan payments will only prepare one response for the life of their loan unless they change financial institutions or accounts.

This revision reflects a 969 increase in responses and a 1,643 decrease in burden hours. This is due to an increase in respondents for the housing program and a decrease in completion of Forms 3550–28/A.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Estimated Number of Respondents: 9,598.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 9,598.

Estimated Total Annual Burden on Respondents: 2,399.50 hours.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Bruce W. Lammers,

Administrator, Rural Housing Service.

[FR Doc. 2020–07754 Filed 4–13–20; 8:45 am]

BILLING CODE 3410–XV–P

CIVIL RIGHTS COMMISSION

Notice of Public Meeting of the Idaho 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 that the Idaho Advisory Committee (Committee) will hold a series of meetings via teleconference on Tuesday, May 26, 2020 and Tuesday, June 23, 2020 both at 1:00 p.m. Mountain Time. The purpose of the meeting is for the

Committee to discuss their project on Native American Voting Rights and planning upcoming community forums.

DATES: The meetings will be held on:

- Tuesday, May 26, 2020, at 1:00 p.m. Mountain Time.
- Tuesday, June 23, 2020, at 1:00 p.m. Mountain Time.

Public Call Information: Dial: 800–259–2693, Conference ID: 8083007.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012. They may also be faxed to the Commission at (213) 894–0508 or emailed to Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (213) 894–3437.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Approval of Minutes
Discussion: Project on Native American Voting Rights
Public Comment
Adjournment

Dated: April 8, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07756 Filed 4–13–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Maryland Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on Tuesday, May 5, 2020. The purpose of the meeting is to discuss project proposals submitted by members.

DATES: Tuesday, May 5, 2020, at 12:00 p.m. (EDT).

Public Call-In Information: Conference call-in number: 1–866–575–6539 and conference ID: 3918108.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–575–6539 and conference ID: 3918108. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–866–575–6539 and conference ID: 3918108.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzloAAA,* click the ''Meeting Details'' and ''Documents'' links.Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Tuesday, May 5, 2020 at 12:00 p.m. (EDT)

- Roll call
- Discussion and Vote on Project Proposals
- Other Business
- Open Comment
- Adjournment

Dated: April 9, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07834 Filed 4–13–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday April 17, 2020, 10:00 a.m. ET.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Zakee Martin, (202)–376–7700, *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only: 1–800–289–0449, Conference ID 209–3370.

Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, April 17, 2020, is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
- A. Presentation by Chair of Massachusetts Advisory Committee on the Committee's report, *Human Trafficking in Massachusetts*
- B. Presentation by Chair of Delaware Advisory Committee on the Committee's report, *Implicit Bias and Policing in Communities of Color in Delaware*
- C. Discussion and vote on Commission Advisory Committees
- Chair of Kentucky Advisory Committee
- Connecticut Advisory Committee
- Delaware Advisory Committee
- Vermont Advisory Committee
- D. Presentation on U.S. Election Assistance Commission Board of Advisors by Commissioner Michael Yaki
- E. Management and Operations
- Staff Director's Report

III. Adjourn Meeting

Dated: April 9, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07832 Filed 4–10–20; 11:15 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Connecticut Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EDT) on Thursday, April 16, 2020. The purpose of the meeting is to discuss possible work products in anticipation of the expiration of the current Advisory Committee's term, including a Statement of Concern to the Commission regarding incarceration issues.

DATES: Thursday, April 16, 2020; 12:00 p.m. (EDT). Public Call-In Information: Conference call-in number: 1–866–288–0540 and conference call 3166769.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–866–288–0540 and conference call 3166769. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–866–288–0540 and conference call 3166769.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email, or street address.

Agenda

Thursday, April 16, 2020 at 12:00 p.m. (EDT)

- Roll Call
- Draft and Review Statement of Concern Regarding
- Other Business
- Open Comment
- Adjourn

Dated: April 9, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–07830 Filed 4–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–21–2020]

Foreign-Trade Zone (FTZ) 70—Detroit, Michigan, Notification of Proposed Production Activity, Pacific Industrial Development Corporation (Zeolites, Specialty Alumina Products, Rare Earth Powders and Aqueous Solutions), Ann Arbor, Michigan

Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, submitted a notification of proposed production activity to the FTZ Board on behalf of Pacific Industrial Development Corporation (PIDC), located in Ann Arbor, Michigan. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 6, 2020.

The PIDC facility is located within FTZ 70. The facility is used for the production of zeolites, specialty alumina products, rare earth powders and aqueous solutions for use in a variety of industries. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt PIDC from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted

below, PIDC would be able to choose the duty rates during customs entry procedures that apply to: Alumina based materials with dopants and/or other surface properties functioning as a support material in industrial catalytic reactions; alumina catalyst support material sol (suspension of fine alumina particles) that is used as a binder in industrial catalytic reactions; lanthanum nitrate crystal; lanthanum nitrate solution; neodymium nitrate crystal; cerium nitrate crystal; cerium nitrate solution; neodymium nitrate solution; zirconium nitrate solution; and, praseodymium nitrate solution (duty rate ranges from duty-free to 5.5%). PIDC would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Alumina based materials with dopants and/or other surface properties functioning as a support material in industrial catalytic reactions; lanthanum oxide; cerium carbonate; neodymium oxide; zirconium carbonate; and, praseodymium oxide (duty rate ranges from duty-free to 5.5%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 26, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the 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: April 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07794 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–59–2020]

Foreign-Trade Zone 61—San Juan, Puerto Rico, Application for Subzone, Oldach Associates, LLC, Cataño, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Economic Development and Commerce, grantee of FTZ 61, requesting subzone status for the facility of Oldach Associates, LLC, located in Cataño, Puerto Rico. 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 Board (15 CFR part 400). It was formally docketed on April 7, 2020.

The proposed subzone (2.4896 acres) is located at Road #869, corner of D Street, Las Palmas Industrial Park, Cataño, Puerto Rico. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 61.

In accordance with the Board's regulations, Camille Evans 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 Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 26, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 8, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: April 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–07793 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–830]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Correction to Final Results of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is correcting the final results of the administrative review of the countervailing duty order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). The period of review (POR) is March 1, 2017 through December 31, 2017.

DATES: March 20, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy Decker, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0196.

SUPPLEMENTARY INFORMATION: On March 20, 2020, Commerce published the final results of the administrative review of the countervailing duty order on rebar from Turkey covering the period March 1, 2017 through December 31, 2017.[1] Commerce is correcting the *Final Results* as it pertains to the net countervailable subsidy rate for mandatory respondent, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and its cross-owned companies.

Correction to the Final Results

We are correcting the *Final Results* to reflect that the net countervailable subsidy rate is applicable to Habas *and* its cross-owned companies. The relevant text of the *Final Results* should have appeared as follows:

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we determine the following net countervailable subsidy rate for Habas, for the period March 1, 2017 through December 31, 2017:

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017,* 85 FR 16056 (March 20, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

Company	Subsidy rate *Ad Valorem*
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.[2]	3.37 percent [3]

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review, to liquidate shipments of subject merchandise produced and exported by Habas or its cross-owned companies and entered, or withdrawn from warehouse, for consumption on or after March 1, 2017 through December 31, 2017, at the *ad valorem* assessment rate listed above.

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Habas and its cross-owned companies. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This correction to the *Final Results* is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–07840 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DS–P

[2] Habas' cross-owned companies are: Habas Endustri Tesisleri A.S., Habas Petrol Urtmleri Sanayi ve Ticaret A.S., Pegagaz A.S., Cebitas Demir Celik Endustrisi A.S., and Osman Sonmez Ins. Taah. These cross-owned companies were identified in the *Preliminary Results. See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017,* 84 FR 48583 (September 16, 2019), and accompanying Preliminary Decision Memorandum (collectively, *Preliminary Results*); *see also Final Results* IDM at Attribution of Subsidies.

[3] This rate applies to merchandise produced and exported by Habas or its cross-owned companies (*i.e.,* Habas Endustri Tesisleri A.S., Habas Petrol Urtmleri Sanayi ve Ticaret A.S., Pegagaz A.S., Cebitas Demir Celik Endustrisi A.S., and Osman Sonmez Ins. Taah). Merchandise produced by Habas or its cross-owned companies and exported by another company, or produced by another company and exported by Habas or its cross-owned companies continues to be covered by *Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (Nov. 6, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a Partially Closed Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a partially closed meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, April 23, 2020, from 11:00 a.m. to 4:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Standard Time (EST) on Friday, April 17, 2020.

ADDRESSES: The meeting will be held via phone/webinar. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the CINTAC meeting on Thursday, April 23, 2020, is as follows:

Closed Session (11:00 a.m.–1:00 p.m.)—Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3). The session will be closed to the public pursuant to Section 10(d) of FACA as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) and Section 552b(c)(9)(B) of Title 5, United States Code, which authorize closure of meetings that are ''likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and ''likely to significantly frustrate implementation of a proposed agency action,'' respectively. The part of the meeting that will be closed will address (1) nuclear cooperation agreements; (2) encouraging ratification of the Convention on Supplementary Compensation for Nuclear Damage; and (3) identification of specific trade barriers impacting the U.S. civil nuclear industry.

Public Session (1:00 p.m.–4:00 p.m.)—Subcommittee work, review of deliberative recommendations, and opportunity to hear from members of the public.

Members of the public wishing to attend the public session of the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, April 17, 2020 in order to pre-register to participate. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, April 17, 2020. If the number of registrants requesting to make statements is greater than can be

reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, April 17, 2020. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: April 1, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–07796 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Rebecca Janz, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1993 or (202) 482–2972, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 18, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China) filed in proper form on behalf of Briggs and Stratton Corporation (the petitioner).[1] The Petition was accompanied by an antidumping duty (AD) petition concerning imports of small vertical engines from China.

On March 20, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions,[2] to which the petitioner filed responses on March 24, 2020.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of small vertical engines in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing small vertical engines in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in sections 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[4]

Period of Investigation

Because the Petition was filed on March 18, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[5]

Scope of the Investigation

The merchandise covered by this investigation is small vertical engines from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on April 27, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 7, 2020, which is 10 calendar days from the initial comment deadline.[8]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[9]

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China,'' dated March 18, 2020 (the Petition).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume I,'' dated March 20, 2020; *see also* Commerce's Letter ''Petition for the imposition of Countervailing Duties on imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume III,'' dated March 20, 2020.

[3] *See* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From The People's Republic of China/ Responses of Briggs & Stratton Corporation to Volume I Supplemental Questionnaire,'' dated March 24, 2020 (General Issues Supplement); *see also* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From The People's Republic of China/ Responses of Briggs & Stratton Corporation to Volume III Supplemental Questionnaire,'' dated March 24, 2020.

[4] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[5] *See* 19 CFR 351.204(b)(2).

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] *See* 19 CFR 351.303(b).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements,

Continued

An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.[10] The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[13] Based on our analysis of the information submitted on the record, we have determined that small vertical engines, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its 2019 shipments of the domestic like product.[15] The petitioner estimated the production of the domestic like product for the entire domestic industry based on its own knowledge of the industry.[16] The petitioner compared its 2019 production of domestic like product to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[23]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[10] *See* Commerce's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition,'' dated March 19, 2020.

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[13] *See* Volume I of the Petition at 13–15; *see also* General Issues Supplement at 2–4 and Exhibit Supp–I–2.

[14] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China (China CVD Initiation Checklist) at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China'' (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

[15] *See* Volume I of the Petition at 3 and Exhibits I–1 and I–2.

[16] *Id.* at 3–4 and Exhibits I–1 through I–6.

[17] *Id.* at 3–4 and Exhibits I–1 and I–2.

[18] *Id.* at 3–4 and Exhibits I–1 through I–6. For further discussion, *see* China CVD Initiation Checklist at Attachment II.

[19] *See* China CVD Initiation Checklist at Attachment II.

[20] *See* section 702(c)(4)(D) of the Act; *see also* China CVD Initiation Checklist at Attachment II; and Volume I of the Petition at 3–4 and Exhibits I–1 through I–6.

[21] *See* China CVD Initiation Checklist at Attachment II; *see also* Volume I of the Petition at 3–4 and Exhibits I–1 through I–6.

[22] *See* China CVD Initiation Checklist at Attachment II; *see also* Volume I of the Petition at 3–4 and Exhibits I–1 through I–6.

[23] *See* China CVD Initiation Checklist at Attachment II; *see also* Volume I of the Petition at 3–4 and Exhibits I–1 through I–6.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; impacts on the domestic industry's financial condition; and a shuttered manufacturing facility.[25] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[26]

Initiation of CVD Investigation

Based upon our examination of the Petition on small vertical engines from China and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of small vertical engines from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all but one of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 43 companies in China as producers/exporters of small vertical engines.[27] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of small vertical engines from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix.

On March 31, 2020, Commerce released CBP data on imports of small vertical engines from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[28] We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of small vertical engines from China are materially injuring, or threatening material injury to, a U.S. industry.[29] A negative ITC determination will result in the investigation being terminated.[30] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [31] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[32] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.[33] For submissions that are due from multiple parties simultaneously, an extension request will be considered

[24] *See* Volume I of the Petition at 18.

[25] *Id.* at 18–29 and Exhibits I–2, I–7, and I–11 through I–21.

[26] *See* China CVD Initiation Checklist at Attachment III (''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China'' (Attachment III)).

[27] *See* Volume I of the Petition at Exhibit I–9.

[28] *See* Memorandum, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,'' dated March 31, 2020.

[29] *See* section 703(a)(1) of the Act.

[30] *Id.*

[31] *See* 19 CFR 351.301(b).

[32] *See* 19 CFR 351.301(b)(2).

[33] *See* 19 CFR 351.302.

untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[34] Parties must use the certification formats provided in 19 CFR 351.303(g).[35] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.*

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[36]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

[FR Doc. 2020–07863 Filed 4–13–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–124]

Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 7, 2020.

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5518 or (202) 482–6274, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 18, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from the People's Republic of China (China), filed in proper form on behalf of the Briggs and Stratton Corporation (the petitioner).[1]

[34] *See* section 782(b) of the Act.

[35] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[36] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing

The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of small vertical engines from China.

On March 20, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions,[2] to which the petitioner filed responses on March 24, 2020.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of small vertical engines from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing small vertical engines in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[4]

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), and because the Petition was filed on March 18, 2020, the period of investigation (POI) is July 1, 2019 through December 31, 2019.

Scope of the Investigation

The merchandise covered by this investigation is small vertical engines from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[5] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[6] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on April 27, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 7, 2020, which is 10 calendar days from the initial comment deadline.[7]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[8] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics for AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of small vertical engines to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on April 27, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 7, 2020, which is 10 calendar days from the initial comment deadline.[9] All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of this AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the Petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Duties on Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China,'' dated March 18, 2020 (the Petition).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume I,'' dated March 20, 2020; *see also* ''Petition for the Imposition of Antidumping Duties on imports of Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China: Supplemental Questions Concerning Volume II,'' dated March 20, 2020.

[3] *See* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from The People's Republic of China/ Responses of Briggs & Stratton Corporation to Volume II Supplemental Questionnaire,'' dated March 24, 2020 (AD Supplement); *see also* Petitioner's letter to Commerce, ''Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof, from the People's Republic of China/ Response of Briggs and Stratton Corporation to Volume I Supplemental Questionnaire,'' dated March 24, 2020 (General Issues Supplement).

[4] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[6] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[7] *See* 19 CFR 351.303(b).

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[9] *See* 19 CFR 351.303(b).

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[12] Based on our analysis of the information submitted on the record, we have determined that small vertical engines, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its 2019 production of the domestic like product.[14] The petitioner estimated the production of the domestic like product for the entire domestic industry based on its own knowledge of the industry.[15] The petitioner compared its 2019 production of domestic like product to the estimated total production of the domestic like product for the entire domestic industry.[16] We relied on data provided by the petitioner for purposes of measuring industry support.[17]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[18] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[21] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; impacts on the domestic industry's financial condition; and a shuttered manufacturing facility.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of small vertical engines from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioner based export price (EP) on sales offers to a U.S. customer in the United States for the sale of small vertical engines produced in and exported from China.[26] In order to calculate ex-factory U.S. prices, where appropriate, the petitioner made

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[12] *See* Volume I of the Petition at 13–15; *see also* General Issues Supplement at 2–4 and Exhibit Supp-I–2.

[13] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China (China AD Initiation Checklist) at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Vertical Shaft Engines between 99cc and up to 225cc, and Parts Thereof from the People's Republic of China'' (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

[14] *See* Volume I of the Petition at 3 and Exhibits I–1 and I–2.

[15] *Id.* at 3–4 and Exhibits I–1–I–6.

[16] *Id.* at 3–4 and Exhibits I–1 and I–2.

[17] *Id.* at 3–4 and Exhibits I–1–I–6. For further discussion, *see* China AD Initiation Checklist at Attachment II.

[18] *See* China AD Initiation Checklist at Attachment II.

[19] *See* section 732(c)(4)(D) of the Act; *see also* China AD Initiation Checklist at Attachment II; and Volume I of the Petition at 3–4 and Exhibits I–1–I–6.

[20] *See* China AD Initiation Checklist at Attachment II; *see also* Volume I of the Petition at 3–4 and Exhibits I–1–I–6.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petition at 18 and Exhibit I–15.

[24] *Id.* at 18–29 and Exhibits I–2, I–7, and I–11–I–21.

[25] *See* China AD Initiation Checklist at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Shaft Engines between 99cc and up to 225cc, and Parts thereof from the People's Republic of China'' (Attachment III).

[26] *See* Volume II of the Petition at 4–5 and Exhibit II–5.

deductions from U.S. prices for foreign inland freight.[27]

Normal Value

Commerce considers China to be an NME country.[28] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[29]

The petitioner claims that Turkey is an appropriate surrogate country for China, because it is a market economy country that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[30] The petitioner valued direct material inputs and packing materials using the Global Trade Atlas, data from the International Energy Agency to value electricity and natural gas, and data from the International Labor Organization to value labor.[31] Based on the information provided by the petitioner, we determine that it is appropriate to use Turkey as a surrogate country for purposes of initiation.[32]

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs, within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to estimate a Chinese manufacturer's FOPs.[33] The petitioner valued the estimated FOPs using surrogate values from Turkey.[34] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Turkish producer of comparable merchandise (*i.e.,* radiators, boilers, heat pumps, motors, and other products).[35]

Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of small vertical engines from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for small vertical engines from China range from 457.52 percent to 541.75 percent.[36]

Initiation of LTFV Investigation

We find that the Petition on small vertical engines from China meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of small vertical engines from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named 43 companies in China as producers/exporters of small vertical engines.[37] In accordance with our standard practice for respondent selection in AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Furthermore, Commerce has determined to limit the number of Q&V questionnaires that it will send out to exporters and producers based on U.S. Customs and Border Protection (CBP) data for U.S. imports of small vertical engines during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on E&C's website at *http://www.trade.gov/enforcement/news.asp.* Producers/exporters of small vertical engines from China that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from E&C's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

The Q&V questionnaire response must be submitted by the relevant Chinese exporters/producers no later than April 23, 2020. All Q&V questionnaire responses must be filed electronically via ACCESS.

On April 1, 2020, Commerce released CBP data on imports of small vertical engines from China under administrative protective order (APO) to all parties with access to information protected by APO, and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[38] We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be

[27] *Id.* at 4–8 and Exhibits II–4, II–5A, II–5B, II–6, II–7, II–8, and II–13.

[28] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum at ''China's Status as a Non-Market Economy,'' unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[29] *See* China AD Initiation Checklist.

[30] *See* Volume II of the Petition at 2–4 and Exhibits II–2 and II–3.

[31] *Id.* at 5–8 and Exhibit II–7–Exhibit II–16; *see also* AD Supplement at 3–4 and Exhibit Supp-II–3 and Supp-II–4.

[32] *See* China AD Initiation Checklist.

[33] *Id.* at 9; *see also* Volume II of the Petition at Exhibit II–9.

[34] *See* China AD Initiation Checklist at 9; *see also* Volume II of the Petition at Exhibit II–7–Exhibit II–16.

[35] *See* Volume II of the Petition at 4 and Exhibits II–16a and II–16b.

[36] *See* AD Supplement at 2–4 and Exhibit Supp-II–5; *see also* China AD Initiation Checklist.

[37] *See* Volume I of the Petition at Exhibit I–9; and General Issues Supplement at 1 and Revised Exhibit I–9.

[38] *See* Memorandum, ''Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection Data,'' dated April 1, 2020.

received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[39] The specific requirements for submitting a separate-rate application in a China investigation are outlined in detail in the application itself, which is available on E&C's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[40] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that Commerce will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[41]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of China via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of small vertical engines from China are materially injuring or threatening material injury to a U.S. industry.[42] A negative ITC determination will result in the investigation being terminated.[43] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[44] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[45] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[46] Parties must use the certification formats provided in 19 CFR 351.303(g).[47] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO

[39] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[40] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[41] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[42] *See* section 733(a) of the Act.

[43] *Id.*

[44] *See* 19 CFR 351.301(b).

[45] *See* 19 CFR 351.301(b)(2).

[46] *See* section 782(b) of the Act.

[47] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on E&C's website at *http://enforcement.trade.gov/apo.*

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[48]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.,* ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

[FR Doc. 2020–07864 Filed 4–13–20; 8:45 am]

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[48] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of a partially closed Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a partially closed meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, July 23, 2020, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5:00 p.m. Eastern Standard Time (EST) on Friday, July 17, 2020.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Herbert C. Hoover Building, Commerce Research Library, 1401 Constitution Ave. NW, Washington, DC 20230. Requests to register to participate (including to speak or for auxiliary aids) and any written comments should be submitted to: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

The Department of Commerce renewed the CINTAC charter on August 10, 2018. This meeting is being convened under the sixth charter of the CINTAC.

Topics to be considered: The agenda for the CINTAC meeting on Thursday, July 23, 2020, is as follows:

Closed Session (9:00 a.m.–1:00 p.m.)—Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App.

§§ (10)(a)(1) and 10(a)(3). The session will be closed to the public pursuant to Section 10(d) of FACA as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409, and in accordance with Section 552b(c)(4) and Section 552b(c)(9)(B) of Title 5, United States Code, which authorize closure of meetings that are ''likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and ''likely to significantly frustrate implementation of a proposed agency action,'' respectively. The part of the meeting that will be closed will address (1) nuclear cooperation agreements; (2) encouraging ratification of the Convention on Supplementary Compensation for Nuclear Damage; and (3) identification of specific trade barriers impacting the U.S. civil nuclear industry.

Public Session (1:00 p.m.–4:00 p.m.)—Subcommittee work, review of deliberative recommendations, and opportunity to hear from members of the public.

Members of the public wishing to attend the public session of the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Friday, July 17, 2020 in order to pre-register to participate. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted but may not be possible to fill. A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, July 17, 2020. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Friday, July 17, 2020. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: April 1, 2020.

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2020–07797 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Oil Country Tubular Goods From the People's Republic of China: Rescission of Countervailing Duty Administrative Review: 2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain oil country tubular goods (OCTG) from the People's Republic of China (China) for the period of review (POR) January 1, 2019, through December 31, 2019, based on the timely withdrawal of the requests for review.

DATES: Applicable April 14, 2020.

FOR FURTHER INFORMATION CONTACT: Dusten Hom, 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) 482–5075.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2020, Commerce published a notice of opportunity to request an administrative review of the CVD order on OCTG from China for the POR of January 1, 2019, through December 31, 2019.[1] On January 29, 2020, Commerce received a timely-filed request from the United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., IPSCO Tubulars Inc., Vallourec Star, L.P., and Welded Tube USA (collectively ''Domestic Interested Parties'') for an administrative review of 173 producers and exporters, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b).[2]

On March 10, 2020, pursuant to these requests, and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the countervailing duty order on OCTG from China for the 173 producers and exporters.[3] On April 1, 2020, the Domestic Interested Parties withdrew their request for an administrative review of all 173 producers and exporters.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The Domestic Interested Parties withdrew their request for review of all of the 173 producers and exporters for which they had requested an administrative review. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of OCTG from China. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 85 FR 64 (January 2, 2020).

[2] *See* letter from the Domestic Interested Parties, ''Oil Country Tubular Goods from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order,'' dated January 29, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 6896 (February 6, 2020).

[4] *See* letter from the Domestic Interested Parties, ''Oil Country Tubular Goods from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated April 1, 2020.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[5]

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: April 8, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–07836 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX051]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Approved Industry-Funded Monitoring Service Providers

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

ACTION: Notice of approved industry-funded monitoring service providers.

SUMMARY: NMFS has approved four companies to provide industry-funded monitoring services (observing, at-sea monitoring, and/or portside sampling) to Atlantic herring vessels during industry-funded monitoring years 2020–2021 (April 1, 2020–March 31, 2022). Monitoring coverage regulations require that any entities seeking to provide monitoring services, including services for industry-funded monitoring programs, must apply for and obtain approval from NMFS. This action will allow Atlantic herring vessels to secure industry-funded monitoring services from any of the approved providers during 2020–2021.

ADDRESSES: The list of NMFS-approved industry-funded monitoring service providers is available at: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/fisheries-observers/industry-funded-monitoring-northeast,* or by sending a written request to: 55 Great Republic Drive, Gloucester, MA 01930, Attn: Maria Fenton.

FOR FURTHER INFORMATION CONTACT: Maria Fenton, Fishery Management Specialist, (978) 281–9196.

SUPPLEMENTARY INFORMATION:

Background

The New England Industry-Funded Monitoring (IFM) Omnibus Amendment created an IFM program in the Atlantic herring fishery and set a 50-percent monitoring coverage target on vessels issued an All Areas (Category A) or Areas 2/3 (Category B) limited access Atlantic herring permit. This 50-percent coverage target includes a combination of Standardized Bycatch Reporting Methodology (SBRM) coverage and IFM coverage. Prior to any trip declared into the herring fishery, representatives for vessels issued Category A or B permits are required to notify NMFS for monitoring coverage. If NMFS informs a vessel that a trip is selected for IFM coverage, the vessel is required to obtain at-sea monitoring coverage from a NMFS-approved service provider for that trip. Midwater trawl vessels may also obtain an IFM observer coverage in order to fish in a Groundfish Closed Area on a trip that was not selected for SBRM or IFM coverage.

Some midwater trawl herring vessels may enroll in an Exempted Fishing Permit (EFP) to use an electronic monitoring and portside sampling program in lieu of carrying a human at-sea monitor to fulfill the requirements of the IFM Amendment. If NMFS informs a vessel participating in the EFP that a trip has been selected for IFM coverage, that vessel would be required to obtain portside sampling services for that trip. Vessels participating in the EFP could also obtain portside sampling coverage in lieu of carrying an observer in order to fish in a Groundfish Closed Area on a trip that was not selected for SBRM or IFM coverage.

Monitoring Service Provider Approval Process

Monitoring coverage regulations at § 648.11(h)(1) require that any entities seeking to provide monitoring services, including services for IFM programs, must apply for and obtain approval from NMFS. The regulations at § 648.11(h)(4) describe the criteria for evaluating and approving a monitoring services provider application. NMFS approves service providers based on: (1) Completeness of the applications; and (2) determination of the applicant's ability to perform the duties and responsibilities of a monitoring service provider, as demonstrated in the application. Once approved, service providers must meet the requirements, conditions, and responsibilities specified at § 648.11(h)(5) and (6) in order to maintain eligibility. NMFS must notify service providers, in writing, if approval is withdrawn for any reason.

Approved Industry-Funded Monitoring Service Providers

NMFS received complete applications from four companies to provide IFM services to Atlantic herring vessels during IFM years 2020–2021: Fathom Resources, LLC; A.I.S., Inc.; East West Technical Services LLC; and Saltwater Inc. We approved all four companies to provide IFM services to Atlantic herring vessels during IFM years 2020–2021 because they have met the application requirements and demonstrated their ability to perform the duties and responsibilities of a monitoring service provider. Fathom Resources, LLC; A.I.S., Inc.; and East West Technical Services LLC are currently approved to provide at-sea monitoring services for the Northeast multispecies fishery and industry-funded observer services for the Atlantic sea scallop fishery. A.I.S. Inc. and Saltwater Inc. are currently permitted to provide observer services for the North Pacific Observer Program. NMFS will closely monitor the performance of approved providers and will be prepared to withdraw approval during the current approval term, or disapprove a future application to provide monitoring services, if it is determined that monitoring provider requirements, conditions, and responsibilities are not being met.

[5] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

TABLE 1—COMPANIES APPROVED TO PROVIDE IFM SERVICES TO ATLANTIC HERRING VESSELS DURING IFM YEARS 2020–2021

Provider	Approved IFM service(s)	Address	Phone	Fax	Website
Fathom Resources, LLC.	Industry-funded observer, at-sea monitoring, portside sampling.	855 Aquidneck Ave, Unit 9, Middletown, RI 02842.	508–990–0997	508–991–7372	*www.fathomresources.com.*
A.I.S., Inc	Industry-funded observer, at-sea monitoring, portside sampling.	540 Hawthorn St, North Dartmouth, MA 02747.	508–990–9054	508–990–9055	*www.aisobservers.com.*
East West Technical Services LLC.	At-sea monitoring, portside sampling.	PO Box 643864, Vero Beach, FL 32964.	860–910–4957	860–223–6005	*www.ewts.com.*
Saltwater Inc	Portside sampling	733 N St, Anchorage, AK 99501.	907–276–3241	907–258–5999	*www.saltwaterinc.com.*

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

Dated: April 9, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–07859 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR109]

Endangered Species; File No. 20528

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that the South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412 (Responsible Party: Bill Post), has requested a modification to scientific research Permit No. 20528–01.

DATES: Written, telefaxed, or email comments must be received on or before May 14, 2020.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20528–06 from the list of available applications. These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Erin Markin or Malcolm Mohead, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 20528–01, issued on April 16, 2019 (84 FR 15595), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20528–01 authorizes the permit holder to conduct research on Atlantic and shortnose sturgeon to determine their presence, status, health, habitat use, and movements in South Carolina waters. Researchers may use gill nets to capture Atlantic and shortnose sturgeon to measure, weigh, passive integrated transponder (PIT) tag, tissue sample, and photograph prior to release. A subset of individuals may be acoustically tagged, fin ray sampled, and gonadal biopsied. Early life stages of each species may be lethally sampled to document occurrence of spawning in systems. Up to two sturgeon of each species may unintentionally die annually during sampling activities. The permit holder requests authorization to expand research beyond the Waccamaw River to include Winyah Bay, its tributaries, and the contiguous channels of the Intracoastal Waterway. The permit holder requests authorization to, within the Winyah Bay system, (1) increase the number of juvenile Atlantic sturgeon that may be taken from 150 to 500, annually, (2) acoustically tag 10 juvenile Atlantic and shortnose sturgeon, annually, prior to release, (3) increase the number of juvenile shortnose sturgeon that may be taken from 50 to 100, annually, (4) capture, biologically sample, PIT tag, weigh, measure, and photograph/video 200 adult/subadult Atlantic sturgeon and 50 adult/subadult shortnose sturgeon, annually, and (5) collect 50 early life stages of Atlantic and shortnose sturgeon in the Great Pee Dee River, annually. The permit holder also requests to collect up to 50 early life stages of shortnose sturgeon in both the Santee River and Lakes Marion and Moultrie, annually. The permit expires March 31, 2027.

Dated: April 9, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–07828 Filed 4–13–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Climate-Related Market Risk Subcommittee Under the Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is seeking public comment on topics and issues being addressed by the Climate-Related Market Risk Subcommittee (Subcommittee, or MRAC Climate Subcommittee) under the Market Risk Advisory Committee (MRAC). The MRAC is a discretionary advisory committee established by the Commission in accordance with the Federal Advisory Committee Act.

DATES: The deadline for the submission of nominations is May 14, 2020.

ADDRESSES: Comments should be submitted online by going to the following website: *https://www.cftc.gov/MRACclimate.* If you are unable to submit comments online, contact David M. Gillers, the Subcommittee Alternate Designated Federal Officer and Chief of Staff to Commissioner Rostin Behnam, via the contact information listed below to discuss alternate means of submitting your comments. All comments must be submitted in English, or if not, accompanied by an English translation. Comments must be limited to the shorter of 4 pages or 1,000 words. Comments will be posted as received.

FOR FURTHER INFORMATION CONTACT: David M. Gillers, MRAC Climate Subcommittee Alternate Designated Federal Officer and Chief of Staff to Commissioner Rostin Behnam at (202) 418–6026 or email: *MRAC_Submissions@cftc.gov.*

SUPPLEMENTARY INFORMATION: The Subcommittee was established to provide a report to the MRAC that will identify and examine climate change-related financial and market risks, including for derivatives markets. Within this charge, the Subcommittee may consider, but is not limited to, the following issues and topics:

- Identifying challenges or impediments to evaluating and managing climate-related financial and market risks;
- Identifying how market participants can improve integration of climate-related scenario analysis, stress testing, governance initiatives, and disclosures into financial and market risk assessments and reporting;
- Identifying policy initiatives and best practices for risk management and disclosure of financial and market risks related to climate change that support financial stability;
- Identifying appropriate methods by which market participants' data and analyses can enhance and contribute to the assessment of climate-related financial and market risks and their potential impacts on agricultural production, energy, food, insurance, real estate, and other financial stability indicators; and
- Identifying financial and market risks arising from potential economic policy responses to climate change.

The Subcommittee will provide its report directly to the MRAC and will not provide reports and/or recommendations directly to the Commission. The Subcommittee has no authority to make decisions on behalf of the MRAC, and no determination of fact or policy will be made by the Subcommittee on behalf of the Commission.

The CFTC invites the public to provide comments on the above-mentioned issues and topics. Please note that comments received, including any attachments and other supporting material, will be shared with the Subcommittee and posted on the CFTC website. Therefore, do not include any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display.

(Authority: 5 U.S.C. App. II)

Dated: April 9, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–07860 Filed 4–13–20; 8:45 am]

BILLING CODE 6351–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m., April 16, 2020.

PLACE: This meeting will be held via teleconference.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Tara Tadlock, Director of Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: April 9, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2020–07899 Filed 4–10–20; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 9690–115; Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC

Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 9690–115.

c. *Date Filed:* March 31, 2020.

d. *Applicant:* Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC (collectively referred to as Eagle Creek).

e. *Name of Project:* Rio Hydroelectric Project (Rio Project).

f. *Location:* The existing project is located on the Mongaup River in Sullivan and Orange Counties, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Gates, Senior Vice President—Regulatory, Eagle Creek Renewable Energy, LLC., 116 N State Street, P.O. Box 167, Neshkoro, WI 54960–0167; (973) 998–8400 or *bob.gates@eaglecreekre.com.*

i. *FERC Contact:* Nicholas Ettema at (312) 596–4447 or email at *nicholas.ettema@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The Rio Project consists of: (1) A reservoir with a gross storage capacity of 14,536 acre-feet and a surface area of 444 acres; (2) a 264-foot-long, gravity-type concrete spillway with a maximum height of 101 feet at a crest elevation of 810 feet National Geodetic Vertical Datum of 1929

(NGVD29); (3) a 22-foot-long, concrete gravity intake structure; (4) a 99-foot-long, concrete gravity non-overflow section; (5) a 540-foot-long, earth-fill embankment; (6) a 102-foot-long, concrete gravity non-overflow section; (7) a 460-foot-long, earth-fill embankment with a 20-foot-wide crest at an elevation of 825 feet NGVD29; (8) a 1.5-mile-long bypassed reach; (9) a 7,000-foot-long, 11-foot-diameter steel penstock connected to a 40-foot-diameter by 65-foot-high steel surge tank; (10) a 10-foot-diameter, 280-foot-long underground steel penstock from the surge tank branching into two 7-foot-diameter, 100-foot-long steel penstocks leading to the main and minimum flow powerhouses; (11) a 22-foot-square reinforced-concrete gatehouse; (12) a 15-foot-wide by 46-foot-high trashrack with 2.9-inch bar clear spacing; (13) a 82-foot-long by 30-feet-wide by 33-foot-high brick and steel main powerhouse containing two 5 megawatt (MW) vertical-axis turbines; (14) a 30-foot-long by 27-foot-wide by 24-foot-high reinforced concrete minimum flow powerhouse containing one 0.8 MW horizontal-axis turbine; (15) a 45-foot-wide by 225-foot-long tailrace with a 65-foot-long concrete weir from the main powerhouse; (16) a 10-foot-wide by 38-foot-long tailrace from the minimum flow powerhouse; and (17) a 760-foot-long, 4-kilovolt aboveground transmission line. The project generates an average of 24,859 megawatt-hours annually. The megawatt-hours represents Units 1 through 3 from 2014–2019, including an extended outage of Unit 3 in 2015. Eagle Creek proposes to continue to operate the project in a peaking mode.

l. A copy of the application is available for review on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak, issued by the President on March 13, 2020. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	November 2020.
Commission issues Environmental Assessment (EA)	May 2021.
Comments on EA	June 2021.
Modified terms and conditions	August 2021.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07811 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10482–122]

Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC; Notice of Application Tendered for Filing With The Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 10482–122.

c. *Date Filed:* March 31, 2020.

d. *Applicant:* Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC (collectively referred to as Eagle Creek).

e. *Name of Project:* Swinging Bridge Hydroelectric Project (Swinging Bridge Project).

f. *Location:* The existing project is located on the Mongaup River and Black Lake Creek in Sullivan County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Gates, Senior Vice President—Regulatory, Eagle Creek Renewable Energy, LLC., 116 N State Street, PO Box 167, Neshkoro, WI 54960–0167; (973) 998–8400 or *bob.gates@eaglecreekre.com.*

i. *FERC Contact:* Nicholas Ettema at (312) 596–4447 or email at *nicholas.ettema@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The Swinging Bridge Project includes the Toronto Development, the Cliff Lake Development, and the Swinging Bridge Development. Water stored in Toronto Reservoir is released into Cliff Lake Reservoir, which is connected to Swinging Bridge Reservoir via a tunnel.

The Toronto Development consists of: (1) A reservoir with a gross storage capacity of 27,064 acre-feet and a surface area of 843 acres; (2) a 1,620-foot-long by 103-foot-high earth-fill dam with a 25-foot-wide crest at elevation 1,230 feet National Geodetic Vertical Datum of 1929 (NGVD29); (3) a 700-foot-long by 50-foot-wide concrete and rock side-channel spillway equipped with 5-foot-high by 50-foot-wide pin-type flashboards; (4) a 17.5-foot-wide by 11.5-foot-long gated concrete tower; (5) an upper 4-foot-wide by 5-foot-high gate and a lower 3-foot-wide by 5-foot-high gate; and 6) a 565-foot-long by 8-foot-wide by 8-foot-high horseshoe-shaped concrete conduit.

The Cliff Lake Development consists of: (1) A reservoir with a gross storage capacity of 3,200 acre-feet and a surface area of 183 acres; (2) a 95-foot-long by 20-foot-wide by 36-foot-high east earthen embankment; (3) a 150-foot-long by 44-foot-wide by 36-foot-high concrete non-overflow section; (4) a 100-foot-long by 5-foot-wide by 26-foot-high concrete overflow spillway section with 13-inch-high flashboards; (5) a 270-foot-long by 20-foot-wide by 50-foot-high west earthen embankment; (6) a 5.3-footwide, 6.7-foot-high, 2,100-foot-long horseshoe-

shaped tunnel; (7) a 4-foot by 4-foot sluice gate; and (8) a 5-foot-wide by 5-foot-high lift gate.

The Swinging Bridge Development consists of: (1) A reservoir with a gross storage capacity of 35,925 acre-feet and a surface area of 980 acres; (2) a 965-foot-long by 135-foot-high earth-fill dam with a 25-foot-wide crest at elevation 1,080 feet NGVD29; (3) a 750-foot-long by 250-foot-wide concrete side channel spillway; (4) a 5-foot-high by 122.5-foot-wide gate section and five motor driven 22.5-foot-wide by 5-foot-high vertical-lift timber gates; (5) a 692-foot-long, 10-foot-diameter steel lined concrete penstock (which has been retired in place); (6) 784-foot-long, 9.75-foot-diameter concrete-lined tunnel connected to a 188-foot-long, 10-foot-diameter all-steel penstock; (7) a 10-foot-long, 4-foot-diameter penstock; (8) a 30-foot-diameter steel surge tank; (9) a 48-foot-wide by 33-foot-long by 35-foot, 8-inch-high brick and steel Unit 2 powerhouse containing one 6.75 megawatt (MW) generating unit; (10) a 30-foot-long by 30-foot-wide by 20-foot-high concrete and steel Unit 3 powerhouse containing one 1.1 MW generating unit; (11) one 25-foot-wide by 75-foot-long tailrace and one 6-foot-wide by 20-foot-long tailrace; (12) a 150-foot-long, 2.3 kilovolt (kV) transmission line and a 250-foot-long, 4 kV transmission line. The project generates an average of 11,639 megawatt-hours annually (Unit 2 only). Eagle Creek proposes to continue to operate the project in a peaking mode.

l. A copy of the application is available for review on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak, issued by the President on March 13, 2020. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental.	July 2020.
Analysis	
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	November 2020
Commission issues Environmental Assessment (EA).	May 2021.
Comments on EA	June 2021.
Modified terms and conditions	August 2021.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07809 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–118–000]

Trans-Foreland Pipeline Company, LLC; Notice Suspending Environmental Review Schedule

The Federal Energy Regulatory Commission (FERC or Commission) is suspending the environmental review schedule for Trans-Foreland Pipeline Company, LLC's (Trans-Foreland) application for the Kenai LNG Cool Down Project in Nikiski, Alaska. The notice of revised schedule, issued on December 12, 2019, identified an April 24, 2020 environmental assessment (EA) issuance date. This schedule was based upon Trans-Foreland providing complete and timely responses to any data requests. In its March 18, 2020 response to FERC staff's March 3, 2020 data request, Trans-Foreland stated it was pursuing an equivalency determination from the United States Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) pertaining to the trim vaporizer it proposes to locate within the liquefied natural gas (LNG) storage tank impoundment area.[1]

Because the PHMSA equivalency determination is necessary for completion of the EA, the Commission will suspend the environmental review schedule for the project. Once staff has reviewed the PHMSA equivalency determination, FERC will issue an additional revised schedule for the EA. This is not a suspension of the FERC staff's review of Trans-Foreland's project. Staff will continue to process Trans-Foreland's proposal to the extent possible based upon the information it has filed to date.

[1] While PHMSA issued a letter of determination (LOD) on March 25, 2020 that addresses the siting of LNG facilities, including the vaporizer, under Subpart B of its regulations, the LOD does not address Trans-Foreland's March 17, 2020 equivalency determination request.

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.,* CP19–118), 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: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07812 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–40–000]

Brookfield Asset Management, Inc.; Notice of Petition for Declaratory Order

Take notice that on April 7, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Brookfield Asset Management Inc. (Petitioner), on behalf of itself and its current and future subsidiary companies that are holding

companies or associated service companies (collectively, the BAM Companies), filed a petition for a declaratory order seeking waiver from the accounting, record-retention, and reporting requirements of 18 CFR 366.21, 366.22, and 366.23 following the acquisition by certain BAM Companies of indirect voting securities in Arcadia Fuel Cell, LLC, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *ferconlinesupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on May 7, 2020.

Dated: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07808 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3267–020]

ECOsponsible, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3267–020.

c. *Date Filed:* March 31, 2020.

d. *Applicant:* ECOsponsible, LLC.

e. *Name of Project:* Ballard Mill Hydroelectric Project.

f. *Location:* On the Salmon River, in the Town of Malone, Franklin County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Dennis Ryan, Manager, ECOsponsible, LLC, PO Box 114, West Falls, NY 14170; (716) 222–2188; email—*denryan@gmail.com.*

i. *FERC Contact:* John Stokely at (202) 502–8534; or email at *john.stokely@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: May 30, 2020.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. The Ballard Mill Project consists of the following existing facilities: (1) A 110-foot-long concrete capped timber crib overflow dam; (2) a 105-foot-long earth embankment dam with 2-foot-high flashboards; (3) a 4.75-foot-wide sluice gate located at the west abutment of the existing timber crib dam; (4) two 8-foot-wide flood sluice gates located between the existing timber crib dam and powerhouse; (5) an impoundment with a surface area of 10 acres and a volume of 50 acre-feet at the normal maximum pool elevation of 698 feet National Geodetic Vertical Datum of 1929; (6) a 20-foot-wide, 28-foot-long concrete masonry powerhouse with a single 255-kilowatt horizontal shaft Kaplan turbine-generator unit; (7) a 17.5-foot-wide, 16.67-foot-high concrete intake leading to a trashrack with 1-inch clear spacing; (8) a 10- to 20-foot-wide, 250-foot-long excavated earth and rock channel tailrace; (9) a 150-foot-long underground cable connecting to a transformer pole; (10) a 0.48/13.2-kilovolt (kV) transformer; (11) a 13.2-kV, 170-foot-long overhead transmission line; and (12) appurtenant facilities.

The Ballard Mill Project is operated in a run-of-river mode with an average annual generation of 1,620 megawatt-hours.

o. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary).	May 2020.
Request Additional Information ..	May 2020.
Issue Acceptance Letter August	2020.
Issue Scoping Document 1 for comments.	September 2020.
Request Additional Information (if necessary).	November 2020.
Issue Scoping Document 2	December 2020.
Issue Notice of Ready for Environmental Analysis.	December 2020.
Commission issues EA	June 2021.
Comments on EA	July 2021.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07810 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10481–069, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC]

Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 10481–069.

c. *Date Filed:* March 31, 2020.

d. *Applicant:* Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC (collectively referred to as Eagle Creek).

e. *Name of Project:* Mongaup Falls Hydroelectric Project (Mongaup Falls Project).

f. *Location:* The existing project is located on the Mongaup River and Black Brook in Sullivan County, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert Gates, Senior Vice President—Regulatory, Eagle Creek Renewable Energy, LLC., 116 N State Street, P.O. Box 167, Neshkoro, WI 54960–0167; (973)998–8400 or *bob.gates@eaglecreekre.com*.

i. *FERC Contact:* Nicholas Ettema at (312) 596–4447 or email at *nicholas.ettema@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The Mongaup Falls Project includes the Mongaup Falls Development and the Black Brook Development. The Black Brook Development has been permanently out of service since 1984, when portions of the penstock, stoplogs, and flashboards were removed.

The Mongaup Fall Development consists of: (1) A reservoir with a gross storage capacity of 1,782 acre-feet and a surface area of 133 acres; (2) a 155-foot-long by 40-foot-high, ungated, concrete gravity spillway with 4-foot, 10-inch-high flashboards; (2) an 83-foot-long, by 25-foot, 4-inch-high earth dam section with a concrete core wall along the right abutment; (3) a 125-foot-long, 127-foot-high concrete retaining wall along the left abutment; (4) a 11-foot-high, 22-foot-square intake and gatehouse; (5) a 250-foot-long by 4.5-foot-high earthen closure dike; (6) a 6,650-foot-long bypassed reach; (7) a 2,650-foot-long, 8-foot-diameter wood-stave penstock; (8) a 26-foot-diameter, 106-foot-high steel surge tank; (9) a 9-foot-diameter steel manifold branching into four 5-foot-diameter steel penstocks; (10) a 14-foot-wide by 32-foot-high inclined trashracks with 1.7-inch bar clear spacing; (11) a 90-foot-long by 25-foot, 2-inch-wide by 33-foot-high reinforced concrete powerhouse containing four 1-megawatt vertical-axis turbines; and (12) a 100-foot-long, 2.3-kilovolt underground transmission line. The project generates an average of 10,860 megawatt-hours annually. Eagle Creek proposes to continue to operate the project in a peaking mode.

The Black Brook Development consists of a 70-foot-long dam with a 34-foot-long concrete spillway section and 10-foot-long stoplog section. The stoplog section consists of a 2-foot-wide concrete pier that divides the 8-foot-long stoplog section from the spillway. The concrete spillway is approximately 10-foot-high from the base to the crest and is keyed into bedrock with a 3-foot by 3-foot keyway. Prior to removal of the penstock, pond control was accomplished with an 8-foot-wide stoplog section and 34-foot-wide flashboard section, each erected to a height of 5 feet above the dam crest. The failure of the penstock in 1984, resulted in the removal of the 8-foot-wide, 5-foot-high stoplog section on the right side of the dam and the 5-foot-high flashboards. Currently, the Black Brook Development is a run-of-river, uncontrolled spillway with a crest elevation of 943 feet National Geodetic Vertical Datum of 1929 (NGVD29) and a dam/spillway toe elevation of approximately 930–933 feet NGVD29 (including the 3-foot by 3-foot keyway).

l. A copy of the application is available for review on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak, issued by the President on March 13, 2020. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: The application will be processed according to the following preliminary schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	November 2020.
Commission issues Environmental Assessment (EA)	May 2021.
Comments on EA	June 2021.

Milestone	Target date
Modified terms and conditions	August 2021.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–07807 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 16, 2020, 10:00 a.m.

PLACE: Open to the public via audio Webcast only.[1]

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link.

1066TH—MEETING
OPEN MEETING
[April 16, 2020, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD20–1–000	Agency Administrative Matters.
A–2	AD20–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM19–5–001	Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes.
E–2	OMITTED.	
E–3	OMITTED.	
E–4	EL16–49–001	Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll County Energy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC v. PJM Interconnection, L.L.C.
	EL18–178–001, ER18–1314–002, (Consolidated).	PJM Interconnection, L.L.C.
E–5	EL16–49–002	Calpine Corporation, Dynegy Inc., Eastern Generation, LLC, Homer City Generation, L.P., NRG Power Marketing LLC, GenOn Energy Management, LLC, Carroll CountyEnergy LLC, C.P. Crane LLC, Essential Power, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Lakewood Cogeneration, L.P., GDF SUEZ Energy Marketing NA, Inc., Oregon Clean Energy, LLC and Panda Power Generation Infrastructure Fund, LLC v. PJM Interconnection, L.L.C.
	EL18–178–002, (Consolidated)	PJM Interconnection, L.L.C.
E–6	EL18–169–000	CPV Power Holdings, L.P., Calpine Corporation and Eastern Generation, LLC v. PJM Interconnection, L.L.C.
E–7	EL19–59–000	Consumers Energy Company v. Midcontinent Independent System Operator, Inc. and Michigan Electric Transmission Company, LLC.
E–8	EL19–38–000	City and County of San Francisco v. Pacific Gas and Electric Company.
E–9	ER20–511–002	Wilderness Line Holdings, LLC.
E–10	ER20–519–000, TS20–2–000	Wilderness Line Holdings, LLC.
E–11	ER19–211–001	Entergy Arkansas, Inc.
E–12	EC19–18–001	Entergy Services, LLC, Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, LLC, and Entergy Texas, Inc.

[1] Join FERC online to listen live at *http://ferc.capitolconnection.org/.*

1066TH—MEETING—Continued
OPEN MEETING
[April 16, 2020, 10:00 a.m.]

Item No.	Docket No.	Company
E–13	OMITTED.	
E–14	EL17–62–000	Potomac Economics, Ltd. v. PJM Interconnection, L.L.C.
E–15	EL18–183–000	Radford's Run Wind Farm, LLC v. PJM Interconnection, L.L.C.
E–16	OMITTED.	
E–17	ER15–2563–002, EL15–95–002	PJM Interconnection, L.L.C., Delaware Public Service Commission and Maryland Public Service Commission v. PJM Interconnection, L.L.C. and Certain Transmission Owners Designated under CTOA RS FERC No. 42.
E–18	ER19–105–004	PJM Interconnection, L.L.C.
E–19	ER19–6–003	Delmarva Power & Light Company and PJM Interconnection, L.L.C.
E–20	ER20–922–000	New York Independent System Operator, Inc.
E–21	ER19–1927–002	Portland General Electric Company.
E–22	ER09–1165–000	Duke Energy Progress, LLC.
E–23	ER19–1900–002	Golden Spread Electric Cooperative, Inc.
E–24	ER19–470–003	ISO New England Inc.
E–25	ER19–1920–002	Tampa Electric Company.
E–26	EL10–65–006	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy Texas, Inc.
	ER14–2085–002, ER11–3658–002, ER12–1920–002, ER13–1595–002, (Consolidated).	Entergy Services, Inc.
	HYDRO	
H–1	P–2266–102	Nevada Irrigation District.
H–2	P–943–131	Public Utility District No. 1 of Chelan County, Washington.
H–3	P–14858–002	McMahan Hydroelectric, LLC.
	CERTIFICATES	
C–1	CP19–477–000	Mountain Valley Pipeline, LLC.
C–2	CP20–2–000	National Fuel Gas Supply Corporation.
C–3	CP17–101–001	Transcontinental Gas Pipe Line Company, LLC.
C–4	CP18–18–001	Transcontinental Gas Pipe Line Company, LLC.
C–5	RP20–41–001	PennEast Pipeline Company, LLC.
C–6	CP18–46–002	Adelphia Gateway, LLC.
C–7	CP19–104–001	Texas Eastern Transmission, LP.
	CP19–103–001	Columbia Gas Transmission, LLC.
C–8	OMITTED.	
C–9	CP14–57–000	Freeport LNG Development, L.P.

The public is invited to listen to the meeting live at *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to hear this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its audio webcast. The Capitol Connection provides technical support for this free audio webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Issued: April 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07925 Filed 4–10–20; 11:15 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: ER16–1404–002.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance filing re: Renewable Exemption under BSM rules to be effective 6/9/2020.
Filed Date: 4/7/20.
Accession Number: 20200407–5191.
Comments Due: 5 p.m. ET 4/28/20.

Docket Numbers: ER20–862–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–04–07_Compliance Filing—NIPSCO-Interregional Cost Allocation Filing to be effective 3/20/2020.
Filed Date: 4/7/20.
Accession Number: 20200407–5195.
Comments Due: 5 p.m. ET 4/28/20.

Docket Numbers: ER20–1398–000.
Applicants: Ocean State BTM, LLC.
Description: Report Filing: Ocean State BTM, LLC Supplemental Filing to be effective N/A.
Filed Date: 4/3/20.
Accession Number: 20200403–5187.
Comments Due: 5 p.m. ET 4/24/20.

Docket Numbers: ER20–1399–000.
Applicants: Rumford ESS, LLC.
Description: Report Filing: Rumford ESS, LLC Supplemental Filing to be effective N/A.
Filed Date: 4/3/20.
Accession Number: 20200403–5185.
Comments Due: 5 p.m. ET 4/24/20.

Docket Numbers: ER20–1491–001.
Applicants: Wind Wall 1 LLC.

Description: Tariff Amendment: Supplement to MBR Application and Request for Waivers to be effective 12/31/9998.

Filed Date: 4/8/20.

Accession Number: 20200408–5085.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1511–000.

Applicants: Little Bear Solar 5, LLC.

Description: Baseline eTariff Filing: Certificate of Concurrence Shared Gen-Tie Facilities Common Ownership Agreement to be effective 4/8/2020.

Filed Date: 4/7/20.

Accession Number: 20200407–5190.

Comments Due: 5 p.m. ET 4/28/20.

Docket Numbers: ER20–1512–000.

Applicants: Monterey NY, LLC.

Description: Tariff Cancellation: cancellation tariff to be effective 4/13/2020.

Filed Date: 4/7/20.

Accession Number: 20200407–5193.

Comments Due: 5 p.m. ET 4/28/20.

Docket Numbers: ER20–1513–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: PG&E Coyote Valley BESS SGIA (SA 450) to be effective 6/8/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5100.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1514–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: Adjacent Balancing Authority Operating Agreement with Nevada Power Company to be effective 4/30/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5117.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1515–000.

Applicants: Milligan 1 Wind LLC.

Description: Baseline eTariff Filing: Initial MBR Petition of Milligan 1 Wind to be effective 6/8/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5124.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1516–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 3097, Queue No. W2–040 re: Suspension to be effective 1/21/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5125.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1517–000.

Applicants: Little Bear Solar 3, LLC.

Description: § 205(d) Rate Filing: Filing of Shared Gen-Tie Facilities Common Ownership Agreement to be effective 4/9/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5126.

Comments Due: 5 p.m. ET 4/29/20.

Docket Numbers: ER20–1518–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC—Cube Hydro Dynamic Transfer Agreement (RS No. 550) to be effective 6/8/2020.

Filed Date: 4/8/20.

Accession Number: 20200408–5128.

Comments Due: 5 p.m. ET 4/29/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–19–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Michigan Electric Transmission Company, LLC.

Filed Date: 4/8/20.

Accession Number: 20200408–5092.

Comments Due: 5 p.m. ET 4/29/20.

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: April 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07831 Filed 4–13–20; 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 Numbers: CP20–132–000.

Applicants: Black Hills Wyoming Gas, LLC.

Description: Application for Limited Jurisdiction Blanket Certificate of Black Hills Wyoming Gas, LLC.

Filed Date: 3/31/20.

Accession Number: 20200331–5479.

Comments Due: 5 p.m. ET 4/14/20.

Docket Numbers: RP20–773–000.

Applicants: Leaf River Energy Center LLC.

Description: § 4(d) Rate Filing: Leaf River Energy Center, LLC Tariff Update to be effective 5/6/2020.

Filed Date: 4/6/20.

Accession Number: 20200406–5124.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: RP20–678–001.

Applicants: Enable Gas Transmission, LLC.

Description: Tariff Amendment: Errata to EGT Fuel Tracker Filing—Effective May 1, 2020 to be effective 5/1/2020.

Filed Date: 4/7/20.

Accession Number: 20200407–5147.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: RP20–775–000.

Applicants: Alliance Pipeline L.P.

Description: § 4(d) Rate Filing: Negotiated Rates Cleanup—Adding K1011506 K1011507 K1011508 to be effective 11/1/2019.

Filed Date: 4/7/20.

Accession Number: 20200407–5073.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: RP20–776–000.

Applicants: WBI Energy Transmission, Inc.

Description: Compliance filing 2020 Compliance Filing for Abandonment of Baker Gathering Assets to be effective 4/17/2020.

Filed Date: 4/7/20.

Accession Number: 20200407–5159.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: RP20–777–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing Tariff Waiver- ROFR Posting.

Filed Date: 4/7/20.

Accession Number: 20200407–5197.

Comments Due: 5 p.m. ET 4/20/20.

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: April 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–07833 Filed 4–13–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0169; FRS 16652]

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 (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 June 15, 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 Number: 3060–0169.

Title: Section 43.51, Reports and Records of Communications Common Carriers and Affiliates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 55 respondents; 1,210 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement, annual reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections: 1–4, 10, 11, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 160, 161, 201, 205, 211, 218, 220, 226, 303(g), 303(r) and 332.

Total Annual Burden: 3,397 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information.

Needs and Uses: In 2011, the Commission released a *First Report and Order and Further Notice of Proposed Rulemaking* (FCC 11–76). The Commission, among other things, removed section 43.53 on the grounds that it was no longer in the public interest. However, the Commission did not alter section 43.51, which requires certain communications common carriers to file with the Commission, within 30 days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and any amendments thereto. Section 43.51 also requires carriers to maintain copies of certain contracts, to have them readily accessible to Commission staff and members of the public upon request, and to forward individual contracts to the Commission as requested.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07813 Filed 4–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0917; FRS 16650]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, 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. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission 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 and recommendations for the proposed information collection should be submitted on or before May 14, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0917.

Title: CORES Registration Form, FCC Form 160.

Form Number: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents and Responses: 79,922 respondents; 79,922 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the *Debt Collection Act of 1996* (DCCA), *Public Law 104–134,* Chapter 10, Section 31001.

Total Annual Burden: 13,347 hours.

Total Annual Costs: No Cost.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) covering the PII in the CORES information system is being updated. Upon completion it will be posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: The FCC is not requesting that respondents submit 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.* The FCC has a system of records, FCC/OMD–25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160, which is posted at: *https://www.fcc.gov/general/privacy-act-information#systems.*

Needs and Uses: Respondents use FCC Form 160 to register in FCC's Commission Registration System (CORES). Entities must register in CORES to do regulatory transactions with FCC, including receiving licenses, paying fees, participating in auctions, etc. Without this collection of information, FCC would not have a database of the identity and contact information of the entities it does regulatory business with.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–07815 Filed 4–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0061; –0125; and –0176]]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0061; –0125; and –0176).

DATES: Comments must be submitted on or before June 15, 2020.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Summary of Deposits.

OMB Number: 3064–0061.

Affected Public: FDIC-insured depository institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Summary of Deposits	Reporting	Mandatory	4,299	Annually	3	12,897

Total Estimated Annual Burden: 12,897 hours.

General Description of Collection: The Summary of Deposits (SOD) is the annual survey of branch office deposits as of June 30 for all FDIC-insured institutions, including insured U.S. branches of foreign banks. All FDIC-insured institutions that operate a main office and one or more branch locations (including limited service drive-thru locations) as of June 30 each year are required to file the SOD Survey. Insured branches of foreign banks are also required to file. All data collected on the SOD submission are available to the public. The survey data provides a basis for measuring the competitive impact of bank mergers and has additional use in research on banking.

2. *Title:* Foreign Banking Investments by Insured State Nonmember Banks.

OMB Number: 3064–0125.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Notices or Applications to establish, move, or close a foreign branch (303.182).	Reporting	Mandatory	1	On Occasion	2	2
Filings for authorization for foreign branch to engage in activities other than those permitted in 347.115 (303.121).	Reporting	Mandatory	1	On Occasion	40	40
Merger transactions involving foreign organizations (303.185(b) referencing 303.62).	Reporting	Mandatory	1	On Occasion	6	6
Filings to invest in foreign organizations, or to engage in certain activities through foreign organizations (303.183(b) and\or 303.121).	Reporting	Mandatory	2	On Occasion	60	120
Notice of foreign divestiture of foreign organization (303.183)(d).	Reporting	Mandatory	2	On Occasion	1	2
Document Policies and Procedures for Supervision of Foreign Activities of foreign activities (347.116) (Implementation).	Recordkeeping ..	Mandatory	10	On Occasion	400	4,000

Total Estimated Annual Burden: 4,170 hours.

General Description of Collection: The Federal Deposit Insurance (FDI) Act requires state nonmember banks to obtain FDIC consent to establish or operate a foreign branch, or to acquire and hold, directly or indirectly, stock or other evidence of ownership in any foreign bank or other entity. The FDI Act also authorizes the FDIC to impose conditions for such consent and to issue regulations related thereto. This collection is a direct consequence of those statutory requirements.

3. *Title:* Reverse Mortgage Products.

OMB Number: 3064–0176.

Affected Public: Insured state nonmember banks and state savings associations making reverse mortgage.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Reverse Mortgage Products—Implementation.	Third-Party Disclosure.	Voluntary	1	1	40	40
Reverse Mortgage Products—Ongoing.	Third-Party Disclosure.	Voluntary	31	1	8	248

Total Estimated Annual Burden: 288 hours.

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 8, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–07747 Filed 4–13–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Advisory Board on Radiation and Worker Health (ABRWH), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through March 22, 2022.

FOR FURTHER INFORMATION CONTACT: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, NE, MS E–20, Atlanta, Georgia 30329–4027, telephone (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07784 Filed 4–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Date: June 16–17, 2020.

Time: 11:00 a.m.—5:00 p.m., EDT.

Place: Teleconference.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

FOR FURTHER INFORMATION CONTACT: Michael Goldcamp, Ph.D., Scientific Review Officer, NIOSH, CDC, 1095 Willowdale Road, Morgantown, WV 26506, Telephone (304) 285–5951; *mgoldcamp@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07783 Filed 4–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)-PAR 18–812, NIOSH Member Conflict.

Date: June 23, 2020.

Time: 1:00 p.m.–5:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Reviewer Officer, Office of Extramural Programs, NIOSH, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone (304) 285–5951, *ehg8@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for

both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07785 Filed 4–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA OH–20–007, National Center of Excellence for the Prevention of Childhood Agricultural Injury.

Date: July 8, 2020.

Time: 8:00 a.m.–7:00 p.m., EDT.

Date: July 9, 2020.

Time: 8:00 a.m.–5:00 p.m., EDT.

Place: Virtual Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Marilyn Ridenour, B.S.N., M.P.H., Scientific Review Official, Office of Extramural Programs, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone (304) 285–5879; *dvn7@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2020–07786 Filed 4–13–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Guidance for Tribal Temporary Assistance for Needy Families (TANF) (OMB #0970–0157)

AGENCY: Office of Family Assistance; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of form ACF–123: Guidance for Tribal Temporary Assistance for Needy Families (TANF) (OMB #0970–0157, expiration date: 6/30/2020). There are minor clarifying changes requested to the guidance.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *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 (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act) requires each Indian tribe that elects to administer and operate a TANF program to submit a TANF Tribal Plan. The TANF Tribal Plan is a mandatory statement submitted to the Secretary of HHS by the Indian tribe, which consists of an outline of how the Indian tribes' TANF program will be administered and operated. It is used by the Secretary to determine whether the plan is approvable and to determine that the Indian tribe is eligible to receive a TANF assistance grant. It is also made available to the public.

Respondents: Indian tribes applying to operate a TANF program and to renew their Tribal Family Assistance Plan.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Guidance For The Tribal Temporary Assistance For Needy Families (TANF) Program	75	1	68	5,100	1700

Estimated Total Annual Burden Hours: 1700.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 612.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–07819 Filed 4–13–20; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0597]

Request for Information on Vaping Products Associated With Lung Injuries; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the request for information (RFI) entitled ''Request for Information on Vaping Products Associated with Lung Injuries'' that appeared in the **Federal Register** of February 18, 2020. In the RFI, FDA opened a docket to obtain data and information related to the use of vaping products that are associated with recent lung injuries. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the request for information published February 18, 2020 (85 FR 8875). Submit either electronic or written comments by June 19, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 19, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 19, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *MAIL/HAND DELIVERY/COURIER (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–0597 for ''Request for Information on Vaping Products Associated with Lung Injuries; Extension of Comment Period.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Samantha LohCollado, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, email: *CTPRegulations@fda.hhs.gov,* 1–877–287–1373.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 18, 2020 (85 FR 8875), FDA published a request for information with a 60-day comment period to open a docket to obtain data and information related to the use of vaping products associated with recent lung injuries. The request for information responded to direction from Congress to gather information from the public that could help identify and evaluate additional steps the Agency could take to ''address the recent pulmonary illnesses reported to be associated with the use of e-cigarettes and vaping products.'' FDA seeks to obtain information on product design and potential ways to prevent consumers from modifying or adding substances to these products that are not intended by the manufacturers. In particular, FDA requests data and information in the form of reports and manuscripts that are unpublished or not available through indexed bibliographic databases. FDA has searched the publicly available scientific literature and is now seeking to supplement that with information not included in the published scientific literature.

The Agency has received requests for an extension of the comment period for the request for information. The requests conveyed concern that the current 60-day comment period does not allow sufficient time to submit data and information related to the use of

vaping products associated with recent lung injuries.

FDA has considered the requests and is extending the comment period for the draft guidance for industry for 60 days, until June 19, 2020. The Agency believes that a 60-day extension allows adequate time for interested persons to submit comments.

Dated: April 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07748 Filed 4–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4662]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV; 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 final guidance for industry (GFI) #259 entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV'' (VICH GL58). This guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH guidance document is an annex to the VICH parent stability guidance, GFI #73 (VICH GL3(R)), ''Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision),'' and provides guidance regarding the stability data package for a new veterinary drug substance and medicinal product to be included in a registration or application submitted within the regions in climatic zones III and IV.

DATES: The announcement of the guidance is published in the **Federal Register** on April 14, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–4662 for ''Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Mai Huynh, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0669, *Mai.Huynh@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of final GFI #259 entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV'' (VICH GL58). In recent years, many important

initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based, harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify, and then reduce, differences in technical requirements for drug development among regulatory agencies in different countries. FDA has actively participated in the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission and European Medicines Agency, International Federation for Animal Health—Europe; FDA; the U.S. Department of Agriculture; the U.S. Animal Health Institute; the Japanese Ministry of Agriculture, Forestry, and Fisheries; and the Japanese Veterinary Products Association. Six observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, one representative from the industry in Canada, one representative from the government of South Africa, and one representative from the industry in South Africa. The VICH Secretariat, which coordinates the preparation of documentation, is provided by HealthforAnimals.

II. Guidance for Industry on Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV

In the **Federal Register** of December 28, 2018 (83 FR 67289), FDA published the notice of availability for a draft guidance entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV'' (VICH GL58), giving interested persons until February 26, 2019, to comment on the draft guidance. FDA did not receive comments on the draft guidance. Comments received by other VICH member regulatory agencies were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated December 2018.

The VICH Steering Committee held a meeting in September 2019 and agreed that the final guidance document entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products in Climatic Zones III and IV'' (VICH GL58) should be made available for implementation. This guidance document is an annex to the VICH parent stability guidance, GFI #73 (VICH GL3(R)), ''Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision),'' [1] and provides guidance regarding the stability data package for a new veterinary drug substance and medicinal product to be included in a registration or application submitted within the regions in climatic zones III and IV. This guidance provides additional guidance on the storage conditions for stability testing in countries located in Climatic Zones III (hot and dry) and IVB (hot and very humid), which are not covered by GFI #73 (VICH GL3(R)). This guidance document seeks to exemplify the core stability data package for new veterinary drug substances and medicinal products, but leaves flexibility to encompass the variety of different practical situations that may be encountered due to specific scientific considerations and characteristics of the materials being evaluated.

III. Significance of Guidance

This guidance, developed under the VICH process, is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents do not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The guidance represents the current thinking of FDA on this topic. 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.

[1] *https://www.fda.gov/media/70241/download.*

IV. Paperwork Reduction Act of 1995

This 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 collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

V. Electronic Access

Persons with access to the internet may obtain the final guidance at either *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry* or *https://www.regulations.gov.*

Dated: April 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07752 Filed 4–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; 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 final guidances for industry entitled ''Guidance on Chloroquine Phosphate'' and ''Guidance on Hydroxychloroquine Sulfate.'' These guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidance entitled ''Guidance on Hydroxychloroquine Sulfate'' was developed using the process described in that guidance and finalizes the draft guidance of the same title issued in April 2011. The guidance entitled ''Guidance on Chloroquine Phosphate'' is being implemented without prior public comment because FDA has determined that prior participation for

this guidance is not feasible or appropriate in light of the Coronavirus Disease 2019 (COVID–19) public health emergency but remains subject to comment in accordance with the Agency's good guidance practices.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: Mara Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4709C, Silver Spring, MD 20993–0002, 301–796–0683.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on March 3, 2020. This notice announces final product-specific guidances that are posted on FDA's website.

The guidance entitled ''Guidance on Hydroxychloroquine Sulfate'' was developed using the process described in that guidance and finalizes the draft guidance of the same title issued in April 2011.

The guidance entitled ''Guidance on Chloroquine Phosphate'' is being implemented without prior public comment because FDA has determined that prior participation for this guidance is not feasible or appropriate (see 21 CFR 10.115(g)(2)). This document is being implemented immediately but remains subject to comment in accordance with the Agency's good guidance practices, and FDA intends to revise the guidance as warranted and appropriate after reviewing any public comment we receive.

There is currently an outbreak of respiratory disease caused by a novel coronavirus. The virus has been named ''SARS–CoV–2'' and the disease it causes has been named ''Coronavirus Disease 2019'' (COVID–19). On January 31, 2020, the Department of Health and Human Services (HHS) issued a

declaration of a public health emergency related to COVID–19 and mobilized the Operating Divisions of HHS.[1] In addition, on March 13, 2020, the President declared a national emergency in response to COVID–19.[2] Due to the need to act quickly and efficiently to respond to the COVID–19 public health emergency, the guidance entitled ''Guidance on Chloroquine Phosphate'' is being issued as a final guidance and not as a draft guidance as is usual under the guidance for industry entitled ''Bioequivalence Recommendations for Specific Products.''

II. Drug Products for Which New Final Product-Specific Guidances are Available

FDA is announcing the availability of new final product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—FINAL PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Chloroquine phosphate Hydroxychloroquine sulfate

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These final guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These final guidances, represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons with access to the internet may obtain the guidances at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs* or *https://www.regulations.gov.*

[1] Secretary of Health and Human Services Alex M. Azar II, Determination that a Public Health Emergency Exists. (Jan. 31, 2020), *available at https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx*).

[2] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (Mar. 13, 2020), *available at https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

The guidances also are available at FDA's web page titled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders'' (*https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders*) and through FDA's web page titled ''Search for FDA Guidance Documents'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Dated: April 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07751 Filed 4–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3380]

Developing and Labeling In Vitro Companion Diagnostic Devices for a Specific Group of Oncology Therapeutic Products; 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 final guidance for industry entitled ''Developing and Labeling In vitro Companion Diagnostic Devices for a Specific Group of Oncology Therapeutic Products'' and encourages the submission of premarket approval application (PMA) supplements containing the needed information to modify the intended use of specific companion diagnostics as described in this notice (*i.e.,* companion diagnostics that identify patients with nonsmall cell lung cancer (NSCLC) whose tumors have epidermal growth factor receptor (EGFR) exon 19 deletions or exon 21 (L858R) substitution mutations and are suitable for treatment with a tyrosine kinase inhibitor approved by FDA for that indication). This guidance describes considerations for the development and labeling of in vitro companion diagnostic devices (referred to as companion diagnostics in this document) to support the indicated uses of multiple drug or biologic oncology products (referred to as *therapeutic products* or *oncology therapeutic products* in this document), when appropriate. The guidance includes factors for considering when broader labeling (*i.e.,* labeling that is expanded) of a companion diagnostic would be appropriate. Oncology companion diagnostics with broader indications will optimally facilitate clinical use. The guidance announced in this notice finalizes the draft guidance entitled ''Developing and Labeling In Vitro Companion Diagnostic Devices for a Specific Group or Class of Oncology Therapeutic Products'' dated December 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on April 14, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3380 for ''Developing and Labeling In vitro Companion Diagnostic Devices for a Specific Group of Oncology Therapeutic Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Office Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; 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 guidance document.

Submit PMA supplements to the Center for Devices and Radiological Health Document Control Center, 10903 New Hampshire Ave., Bldg. 66, Rm. G609, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Reena Philip, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3316, Silver Spring, MD 20993–0002, 301–796–6179; Julie Schneider, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2208, Silver Spring, MD 20993–0002, 240–402–4658; 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 final guidance for industry entitled ''Developing and Labeling In vitro Companion Diagnostic Devices for a Specific Group of Oncology Therapeutic Products.'' This guidance describes considerations for the development and labeling of companion diagnostics to support the indicated uses of multiple therapeutic oncology products, when appropriate. This guidance builds upon existing policy regarding labeling of companion diagnostics. In a prior guidance entitled ''In Vitro Companion Diagnostic Devices'' (August 2014), the Agency stated that if evidence is sufficient to conclude that the companion diagnostic is appropriate for use with a specific group of therapeutic products (as discussed in the guidance), the companion diagnostic's intended use/indications for use should name the specific group, rather than specific products. This guidance expands on the policy statement in the 2014 guidance by recommending that companion diagnostic developers consider a number of factors, including but not limited to those discussed in this guidance, when determining whether their test could be developed, or the labeling for approved companion diagnostics could be revised through a supplement, to support a broader labeling claim such as use with a specific group of oncology therapeutic products (rather than listing an individual therapeutic product(s)). To describe FDA's thinking on the topic, the guidance discusses a specific example of companion diagnostics for a specific biomarker, disease, and specimen type (specific epidermal growth factor receptor mutations in tumors of patients with nonsmall cell lung cancer in tissue specimens).

Trials designed to support approval of a specific therapeutic product and a specific companion diagnostic have led to companion diagnostic labels that reference only a specific therapeutic product(s). Such specificity in labeling can limit a potentially broader use of a companion diagnostic that may be scientifically appropriate. In clinical practice, an oncologist generally considers the mutation profile of the tumor along with other factors when determining the treatment for a patient, such as the toxicity profile of the therapeutic product, the patient's preference, and formulary options. When a companion diagnostic is labeled for use with a specific therapeutic product, the clinician may need to order a different companion diagnostic (*i.e.,* one that includes other therapeutic products in the labeling), obtain an additional biopsy(ies) from a patient, or both, to have additional therapy treatment options.

The guidance describes considerations for when broader labeling may be scientifically appropriate and when it may not. FDA recommends developers of therapeutic oncology products and associated companion diagnostics collaboratively consider development programs that may result in broader labeling of companion diagnostics that are most clinically useful. Developers are encouraged to discuss development programs that could result in broader labeling with the Center for Biologics Evaluation and Research (CBER), Center for Devices and Radiological Health (CDRH), or Center for Drug Evaluation and Research, in coordination with the Oncology Center of Excellence, as appropriate, early to determine if the approach described in this guidance is appropriate for consideration.

Developers whose approved companion diagnostics may be appropriate for broader labeling are encouraged to contact CDRH or CBER, as appropriate to discuss. Developers of the companion diagnostics discussed in the guidance as an example should see the ''Other Issues for Consideration'' section of this notice for information regarding broader labeling for those companion diagnostics.

This guidance finalizes the draft guidance entitled ''Developing and Labeling In Vitro Companion Diagnostic Devices for a Specific Group or Class of Oncology Therapeutic Products'' dated December 2018 (83 FR 63166). Comments received on the draft guidance were taken into consideration when finalizing the guidance. Based on the comments received, clarifications were made and information regarding the content of broader labeling was added.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Developing and Labeling In Vitro Companion Diagnostic Devices for a Specific Group of Oncology Therapeutic Products.'' 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. Other Issues for Consideration

Based on publicly available information, which includes valid scientific evidence (*i.e.,* clinical and scientific experience) with specific companion diagnostics and the associated therapeutic products, FDA has concluded that certain statements set forth in the FDA-approved labels of these companion diagnostics, related to intended use with therapeutic products, can be modified. The specific companion diagnostics are those discussed as an example in the guidance announced in this notice (*i.e.,* companion diagnostics that identify patients with NSCLC whose tumors have EGFR exon 19 deletions or exon 21 (L858R) substitution mutations and are suitable for treatment with a tyrosine kinase inhibitor approved by FDA for that indication). FDA believes it is appropriate for sponsors to consider modifying the intended use of these companion diagnostics to describe the specific group of oncology therapeutic products, rather than listing individual therapeutic product(s). The guidance states that, rather than listing individual therapeutic product(s), the intended use for the indication for the specific companion diagnostics would be, ''identifying patients with NSCLC whose tumors have EGFR exon 19 deletions or exon 21 (L858R) substitution mutations and are suitable for treatment with a tyrosine kinase inhibitor approved by FDA for that indication.'' It is possible for the companion diagnostics to also have other indications, not captured by the broader indication. FDA encourages the submission of PMA supplements, identifying the change and referring to this notice as the reason for the change, to request modification of the intended use of these companion diagnostics. This broader labeling may enable greater flexibility for clinicians in choosing the most appropriate therapeutic product based on a patient's biomarker status.

In the **Federal Register** document that announced the availability of the draft guidance, FDA requested feedback on specific issues, including challenges with developing the evidence needed to support broader companion diagnostic labeling, challenges with submitting a PMA supplement to broaden the labeling of an approved companion diagnostic and actions FDA can take to facilitate or encourage broader companion diagnostic labeling in oncology. Comments that stakeholders submitted to the docket for the draft guidance are generally supportive of the concept of broader labeling for companion diagnostics in oncology to facilitate the treatment of patients with cancer. To encourage implementation of broader labeling of companion diagnostics in oncology, FDA is finalizing the guidance and encouraging submission of PMA supplements containing the needed information for FDA review of the modified labeling of the companion diagnostics discussed in the guidance as an example.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332; the collections of information in the guidance document ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' have been approved under OMB control number 0910–0756; and the collections of information in the guidance ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844.

IV. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products, 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: April 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–07816 Filed 4–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Early Career Reviewer Program Online Application and Vetting System (Center for Scientific Review)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular

information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Hope Cummings, Project Clearance Liaison, Center for Scientific Review, NIH, Room 4134, 6701 Rockledge Drive, Bethesda, Maryland, 20892 or call non-toll-free number (301) 402–4706 or Email your request, including your address to: *hope.cummings@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on January 31, 2020, pages 5677–5678 (85 FR 21) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Center for Scientific Review (CSR), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Early Career Reviewer Program Online Application and Vetting System—0925–0695, REVISION—expiration date 05/31/2020, Center for Scientific Review (CSR), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Scientific Review (CSR) is the portal for NIH grant applications and their review for scientific merit. Our mission is to see that all NIH grant applications receive fair, independent, expert, and timely reviews—free from inappropriate influences—so NIH can fund the most promising research. To accomplish this goal, Scientific Review Officers (SRO) form study sections consisting of scientists who have the technical and scientific expertise to evaluate the merit of grant applications. Study section members are generally scientists who have established independent programs of research as demonstrated by their publications and their grant award experiences.

The CSR Early Career Reviewer program was developed to identify and train qualified scientists who are early in their scientific careers and who have not had prior CSR review experience. The goals of the program are to expose these early career scientists to the peer review experience so that they become more competitive as applicants as well as to enrich the existing pool of NIH reviewers. Currently, the online application software, the Early Career Reviewer Application and Vetting System, is accessed online by applicants to the Early Career Reviewer Program who provide information such as their name, contact information, a description of their areas of expertise, their study section preferences, and their professional Curriculum Vitae. This Information Collection Request (ICR) is to revise the Early Career Reviewer Application and Vetting System to include additional questions and be more user friendly. Additional questions are in line with NIH's renewed Interest in Diversity (NOT–OD–20–031) and include questions such as applicants' race, ethnicity, gender, disability, and disadvantage backgrounds. Applicants can choose if they would like to answer these additional questions (*i.e.* optional). Applicants are also now able to check their eligibility before applying to the program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 505.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Research scientists	1212	1	25/60	505
Total		1212		505

Dated: March 30, 2020.

Hope M. Cummings,

Project Clearance Liaison, Center for Scientific Review (CSR), National Institutes of Health.

[FR Doc. 2020–07708 Filed 4–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4485–DR; Docket ID FEMA–2020–0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4485–DR), dated March 25, 2020, and related determinations.

DATES: The declaration was issued March 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Texas resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020,

and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, George A. Robinson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of Texas.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Texas.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07846 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4486–DR; Docket ID FEMA–2020–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4486–DR), dated March 25, 2020, and related determinations.

DATES: The declaration was issued March 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Florida resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of Florida.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Florida.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07847 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4488–DR; Docket ID FEMA–2020–0001]

New Jersey; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4488–DR), dated March 25, 2020, and related determinations.

DATES: The declaration was issued March 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

March 25, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of New Jersey resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of New Jersey.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of New Jersey.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07849 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4484–DR; Docket ID FEMA–2020–0001]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4484–DR), dated March 24, 2020, and related determinations.

DATES: The declaration was issued March 24, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 24, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Louisiana resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, George A. Robinson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of Louisiana.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Louisiana.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07845 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4487–DR; Docket ID FEMA–2020–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina

(FEMA–4487–DR), dated March 25, 2020, and related determinations.

DATES: The declaration was issued March 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 25, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of North Carolina resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of North Carolina.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07848 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4480–DR; Docket ID FEMA–2020–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4480–DR), dated March 20, 2020, and related determinations.

DATES: The declaration was issued March 20, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of New York resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Seamus K. Leary, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of New York.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of New York.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07843 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4489–DR; Docket ID FEMA–2020–0001]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4489–DR), dated March 26, 2020, and related determinations.

DATES: The declaration was issued March 26, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 26, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Illinois resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of Illinois.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct Federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Illinois.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07850 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4482–DR; Docket ID FEMA–2020–0001]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4482–DR), dated March 22, 2020, and related determinations.

DATES: The declaration was issued March 22, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 22, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of California resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert J. Fenton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of California.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of California.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07844 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4483–DR; Docket ID FEMA–2020–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4483–DR), dated March 23, 2020, and related determinations.

DATES: The declaration was issued March 23, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 23, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Iowa resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Paul Taylor, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Iowa.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07842 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4481–DR; Docket ID FEMA–2020–0001]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4481–DR), dated March 22, 2020, and related determinations.

DATES: The declaration was issued March 22, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 22, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in the State of Washington resulting from the Coronavirus Disease 2019 (COVID–19) pandemic beginning on January 20, 2020, and continuing, are of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to the Crisis Counseling Program and assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael F. O'Hare, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Individual Assistance limited to the Crisis Counseling Program in all areas in the State of Washington.

Emergency protective measures (Category B) not authorized under other Federal statutes, including direct federal assistance, under the Public Assistance program at 75 percent federal funding for all areas in the State of Washington.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–07841 Filed 4–13–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2020–0006]

Notice of the President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA announces a public meeting of the President's National Infrastructure Advisory Council (NIAC). To facilitate public participation, CISA invites public comments on the agenda items and any associated briefing materials to be considered by the council at the meeting.

DATES: *Meeting Registration:* Individual registration to attend the meeting by phone is required and must be received no later than 5:00 p.m. EST on May 18, 2020.

Speaker Registration: Individuals may register to speak during the meeting's public comment period must be received no later than 5:00 p.m. EST on May 18, 2020.

Written Comments: Written comments must be received no later than 5:00 p.m. EST on May 18, 2020.

NIAC Meeting: The meeting will be held on Thursday, May 21, 2020 from 1:00 p.m.—4:00 p.m. ET.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to participate, please email *NIAC@hq.dhs.gov* by 5:00 p.m. ET on May 18, 2020.

Comments: Written comments may be submitted on the issues to be considered by the NIAC as described in the **SUPPLEMENTARY INFORMATION** section below and any briefing materials for the meeting. Any briefing materials that will be presented at the meeting will be made publicly available *before the meeting* at the following website: *https://www.dhs.gov/national-infrastructure-advisory-council.*

Comments identified by docket number ''*CISA–2020–0006*'' may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NIAC@hq.dhs.gov.* Include docket number *CISA–2019–0017* in the subject line of the message.
- *Mail:* Ginger K. Norris, Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security, 245 Murray Lane, Mail Stop 0612, Arlington, VA 20598–0612.

Instructions: All submissions received must include the agency name and docket number for this notice. All written comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on participating in the upcoming NIAC meeting, see the ''PUBLIC PARTICIPATION'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket and comments received by the NIAC, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ginger K. Norris, 202–441–5885, *ginger.norris@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NIAC is established under Section 10 of E.O. 13231 issued on October 16, 2001. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The NIAC shall provide the President, through the Secretary of Homeland Security, with advice on the security and resilience of the Nation's critical infrastructure sectors.

The NIAC will meet in an open meeting on May 21, 2020, to discuss the following agenda items.

Agenda

I. Call to Order
II. Opening Remarks
III. CICC Study Update
IV. Work Force Panel Discussion
V. COVID–19 Panel Discussion
VI. Public Comment
VII. New NIAC Business
VIII. Closing Remarks
IX. Adjournment

Public Participation

Meeting Registration Information

Requests to attend via conference call will be accepted and processed in the order in which they are received. Individuals may register to attend the NIAC meeting by phone by sending an email to *NIAC@hq.dhs.gov.*

Public Comment

While this meeting is open to the public, participation in FACA deliberations are limited to council members. A public comment period will be held during the meeting from approximately 3:30 p.m.–3:45 p.m. ET. Speakers who wish to comment must register in advance and can do so by emailing *NIAC@hq.dhs.gov* no later than Monday, May 18, 2020, at 5:00 p.m. EST. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact *NIAC@hq.dhs.gov* as soon as possible.

Ginger K. Norris,

Designated Federal Official, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2020–07851 Filed 4–13–20; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF JUSTICE

[Docket No. OAG–167; AG Order No. 4666–2020]

Certification of Arizona Capital Counsel Mechanism

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Notice.

SUMMARY: Federal law makes certain procedural benefits available to States in federal habeas corpus review of capital cases, where the Attorney General certifies that the State has established a postconviction capital counsel mechanism satisfying the chapter's requirements. The Attorney General certifies in this notice that Arizona has such a mechanism, which was established on May 19, 1998.

DATES: Pursuant to 28 U.S.C. 2265(a)(2), the effective date of the certification in this notice is May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Laurence Rothenberg, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone (202) 532–4465.

Certification: Chapter 154 of title 28, United States Code, provides special federal habeas corpus review procedures for state capital cases where (i) the Attorney General has certified that the State has established a postconviction counsel appointment mechanism for indigent capital defendants that meets the requirements stated in the chapter, and (ii) counsel was appointed pursuant to the certified mechanism, the defendant validly waived or retained counsel, or the defendant was not indigent. 28 U.S.C. 2261(b). Chapter 154 directs the Attorney General to determine, if requested by an appropriate state official, whether the State has established a qualifying mechanism for appointment of postconviction capital counsel, the date on which the mechanism was established, and whether the State provides standards of competency for such appointments. *Id.* § 2265(a).

Having considered the relevant statutes, rules, and policies in Arizona, submissions by the Arizona Attorney General, and the extensive public comments thereon, and exercising the authority conferred on me by 28 U.S.C. 2265, I determine and certify that Arizona has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state postconviction proceedings brought by indigent prisoners who have been sentenced to death, including provision of standards of competency for the appointment of counsel in such proceedings, which satisfies the requirements of chapter 154. I further determine and certify that Arizona had an established capital counsel mechanism satisfying the requirements of chapter 154 as of May 19, 1998, and that Arizona has continuously had a capital counsel mechanism satisfying the requirements of chapter 154 since that date. Arizona has not requested certification of its postconviction capital counsel mechanism as it was prior to May 19, 1998, and this certification reflects no judgment or opinion whether Arizona had a postconviction capital counsel mechanism satisfying the requirements of chapter 154 before that date.

SUPPLEMENTARY INFORMATION: The remainder of this notice explains the background of, and reasons for, my certification of Arizona's postconviction capital counsel mechanism under the following headings:

I. Procedural History

Chapter 154 applies to cases arising under 28 U.S.C. 2254 brought by prisoners in State custody who are subject to a capital sentence if ''(1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265,'' and ''(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.'' 28 U.S.C. 2261(b). Where the chapter applies, federal habeas review is conducted in conformity with special provisions relating to stays of execution, the time available for federal habeas filing, the scope of federal habeas review, and the time for completing the adjudication of federal habeas petitions. *See* 28 U.S.C. 2262–66.

Chapter 154 derives from a proposal developed in 1989, under the leadership of Justice Lewis F. Powell, to address the problem of protracted and repetitive litigation in capital cases and to fill a gap in representation for capital defendants at the stage of state postconviction review. The proposal contemplated that more expeditious procedures would apply, with greater finality, in federal habeas corpus review of capital cases in States that appoint counsel for indigent capital defendants in state collateral proceedings. *See* 135 Cong. Rec. 24694–98 (1989); 137 Cong. Rec. 6012–14 (1991); H.R. Rep. 104–23, at 10–11 (1995) (House Judiciary Committee Report).

Congress enacted chapter 154 as part of the Antiterrorism and Effective Death Penalty Act of 1996. *See* Public Law 104–132, sec. 107(a), 110 Stat. 1214, 1221–26. Under chapter 154 in its original form, federal habeas courts determined the applicability of chapter 154's expedited federal habeas review procedures in the context of adjudicating federal habeas petitions filed by state capital defendants. Litigation relating to States' satisfaction of chapter 154's requirements ensued in various States, resulting in a substantial body of district court and court of appeals precedent interpreting chapter 154, as well as a related decision by the Supreme Court in *Calderon* v. *Ashmus,* 523 U.S. 740 (1998).

In relation to Arizona, in particular, the Ninth Circuit Court of Appeals, in *Spears* v. *Stewart,* 283 F.3d 992 (9th Cir. 2002), considered the question with which I am now presented—whether Arizona has established a postconviction capital counsel mechanism that satisfies chapter 154's requirements. The Ninth Circuit answered that question in the affirmative. *See id.* at 1008–18. However, the court concluded that chapter 154's expedited federal habeas review procedures would not apply in the case before it because Arizona had not appointed counsel for petitioner in conformity with the mechanism. *See id.* at 1018–19.

In 2006, Congress enacted amendments that brought chapter 154 into its current form. *See* Public Law 109–177, sec. 507, 120 Stat. 250, 250–51 (codified in part at 28 U.S.C. 2265). The amendments transferred responsibility for determining a State's satisfaction of chapter 154's requirements from the regional federal courts to the Attorney General, subject to de novo review by the D.C. Circuit Court of Appeals. *See* 28 U.S.C. 2265. Under the revised scheme, the Attorney General, if requested by an appropriate state official, makes a determination and certification whether the State has established a postconviction capital counsel mechanism satisfying the chapter's requirements, with exclusive review of the certification by the D.C. Circuit. *See* 28 U.S.C. 2265(a), (c).

The 2006 amendments reflected a legislative judgment that the Attorney General and the D.C. Circuit would best be able to make disinterested determinations regarding state counsel systems' satisfaction of chapter 154. The amendments also added a provision stating that there are no requirements for certification or application of chapter 154 other than those expressly stated in the chapter, 28 U.S.C. 2265(a)(3), reflecting congressional concern that some courts had declined to apply chapter 154 on grounds going beyond those Congress had deemed to be warranted in its formulation of

chapter 154, *see* 152 Cong. Rec. 2441, 2445–46 (2006) (remarks of Sen. Kyl); 151 Cong. Rec. E2640 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake).

Chapter 154 directs the Attorney General to promulgate regulations to implement the certification procedure. 28 U.S.C. 2265(b). Attorney General Mukasey in 2008 issued an initial implementing rule for chapter 154. *See* 73 FR 75327, 75327–39 (Dec. 11, 2008). The original rule tracked chapter 154's express requirements in light of 28 U.S.C. 2265(a)(3)'s specification that ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' Attorney General Holder rescinded the original rule and replaced it in 2013 with the current rule. *See* 28 CFR 26.20–26.23; *see also* 78 FR 58160, 58160–84 (Sept. 23, 2013).

The regulations provide for the Attorney General to publish a notice in the **Federal Register** of a State's requests for chapter 154 certification, to include solicitation of public comment on the request, and for the Attorney General to review the request and consider timely public comments received in response to the notice. 28 CFR 26.23(b)–(c). The certification procedure was delayed for a number of years because a district court enjoined the regulations from taking effect. The Ninth Circuit later vacated the injunction, allowing the regulations to take effect. *See Habeas Corpus Resource Ctr.* v. *U.S. Dep't of Justice,* 816 F.3d 1241 (9th Cir. 2016), *cert. denied,* 137 S. Ct. 1338 (2017).

Arizona has requested that the Attorney General certify its capital counsel mechanism under chapter 154. The materials relating to Arizona's request are available at *www.justice.gov/olp/pending-requests-final-decisions.* The main occurrences in the certification process relating to Arizona have been as follows:

Arizona initially requested chapter 154 certification by letter from its Attorney General dated April 18, 2013. After the Ninth Circuit vacated the injunction against the certification process, the Department of Justice (''Department'') published a notice in the **Federal Register** inviting public comment on Arizona's request for certification and providing a 60-day comment period. 82 FR 53529 (Nov. 16, 2017). Because of the passage of time since Arizona's original request, the Department sent a letter to the Arizona Attorney General dated November 16, 2017, advising of the publication, seeking confirmation that the materials previously submitted by the State were still current, and asking whether the State wished to supplement, modify, or update its request for certification. The Arizona Attorney General responded by letter of November 27, 2017, which provided updated information. The Department then published a second notice, which noted the updated request from Arizona and provided 60 days for public comment running from publication of the notice. 82 FR 61329 (Dec. 27, 2017).

The Department received 140 comments from organizations and individuals in response to these solicitations. The most extensive comment was from the Federal Public Defender for the District of Arizona (AFPD), consisting of a 163-page document and voluminous exhibits. Other organizational commenters included the Arizona Capital Representation Project, the American Bar Association, the Innocence Project, the Arizona Justice Project, Federal Public Defenders, Arizona Voice for Crime Victims, the Phillips Black Project, the American Civil Liberties Union, and Arizona Attorneys for Criminal Justice. Many comments were also received from persons under sentence of death in Arizona or their lawyers.

On June 29, 2018, the Department sent a letter to the Arizona Attorney General requesting that the State provide additional information about its postconviction capital counsel mechanism, based on questions that had arisen during the Department's review of the State's request for certification and the public comments received. The Arizona Attorney General sent a responsive letter on October 16, 2018. The following month, the Department published a third notice to provide an opportunity for public comment with respect to the additional information the Arizona Attorney General had submitted. 83 FR 58786 (Nov. 21, 2018). The Department received 17 comments during the 45-day comment period in response to this notice.

The ensuing section of this statement explains the basis for granting chapter 154 certification to Arizona. I discuss initially certain issues with cross-cutting significance and then analyze Arizona's capital counsel mechanism in relation to the elements required by chapter 154, including appointment, competency standards, compensation, and payment of reasonable litigation expenses for postconviction capital counsel. With respect to each element, I (i) identify the statutory basis of the requirement and the pertinent Arizona laws and policies, (ii) review judicial precedent and its continuing relevance (or not) given later changes in Arizona's mechanism and chapter 154, and (iii) explain the interpretation of chapter 154's requirements in the Department's regulations and Arizona's satisfaction of these requirements as construed in the regulations. The concluding section discusses additional matters, including objections to certification of Arizona's mechanism based on time limitation rules appearing in chapter 154, the validity of the implementing rule, and a request that I stay the certification.

II. Assessment of Arizona's Mechanism Under Chapter 154

A. Chapter 154—As Enacted in 1996 and As Amended in 2006

Chapter 154 directs the Attorney General, if requested by an appropriate state official, to determine (i) whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state postconviction proceedings brought by indigent prisoners who have been sentenced to death, and (ii) whether the State provides standards of competency for the appointment of such counsel. 28 U.S.C. 2265(a). Additional specifications relating to the appointment of postconviction counsel appear in 28 U.S.C. 2261(c)–(d).

As noted above, I do not write on a clean slate in addressing Arizona's request for certification. Prior to 2006, the Attorney General was not involved in chapter 154 determinations, which were instead made by the federal courts entertaining federal habeas petitions filed by state prisoners under sentence of death. In particular, in 2002, the Ninth Circuit concluded that Arizona had established a capital counsel mechanism satisfying chapter 154's requirements. *See Spears,* 283 F.3d at 1007–19.

The analysis in *Spears* remains relevant because Arizona's capital counsel mechanism has remained largely the same since the Ninth Circuit's decision in that case, and the elements of an adequate state capital counsel mechanism as required by chapter 154 are largely the same as those required by chapter 154 at the time of that decision. Moreover, the case law under chapter 154, and particularly *Spears,* provided the background for the development of the Department's implementing regulations for chapter 154 that I now apply. The judicial precedent accordingly elucidates and supports many aspects of the Department's rule in its application to Arizona. *See, e.g.,* 78 FR at 58170, 58172, 58178, 58180.

Discussion of *Spears* and other decisions was also prominent in the public comments on Arizona's request for certification. The comments argued that aspects of the judicial decisions that would support Arizona's certification should be considered no longer relevant or applicable, based on changes in Arizona's capital counsel mechanism over time or for other reasons, but they pointed to other aspects of the decisions as still pertinent and as implying that certification should be denied. I accordingly discuss below, in relation to each required element of an adequate state capital counsel mechanism under chapter 154, to what extent later changes affect the relevance of the Ninth Circuit's decision and other judicial interpretations of chapter 154.

Before turning to the analysis of particular issues, I should address public comments on Arizona's request for certification which suggested that the Ninth Circuit's determination regarding Arizona's capital counsel mechanism should be dismissed as dictum. The basis for the objection is that the court in *Spears* found that Arizona's mechanism satisfies chapter 154's requirements, but it nevertheless denied the State the benefit of chapter 154's review procedures on the ground that the State had not fully complied with its rules for appointing counsel in that case. In *Railroad Companies* v. *Schutte,* 103 U.S. 118 (1880), the Supreme Court explained the precedential weight of decisions of this nature:

> It cannot be said that a case is not authority on one point because, although that point was properly presented and decided in the regular course of the consideration of the cause, something else was found in the end which disposed of the whole matter. Here the precise question was properly presented, fully argued, and elaborately considered in the opinion. The decision on this question was as much a part of the judgment of the court as was that on any other of the several matters on which the case as a whole depended . . . . If the decision is not conclusive on us, it is of high authority under the circumstances, and we are not inclined to disregard it. *Id.* at 143.

The Supreme Court's discussion in *Schutte* fits exactly the Ninth Circuit's decision in *Spears.* I similarly view the Ninth Circuit's determination that Arizona's mechanism satisfies chapter 154 as persuasive authority of substantial weight and I am ''not inclined to disregard it,'' *id.*

At the same time, I note a change in chapter 154 that makes my analysis different in an important respect from the preceding judicial consideration of these issues. Public comments opposing Arizona's request for certification have noted judicial decisions that held that a State could not receive the procedural benefits of chapter 154 in a particular case if the State did not comply with the requirements of its capital counsel mechanism in that case. *See, e.g., Spears,* 283 F.3d at 1018–19 (failure to appoint counsel within time required by state mechanism); *Tucker* v. *Catoe,* 221 F.3d 600, 604–05 (4th Cir. 2000) (failure to appoint counsel meeting state competency standards). Based on these decisions, the comments argued, I should deny Arizona's request for certification if, for example, the State's competency standards for appointment have not been consistently satisfied.

Judicial decisions of this nature, however, reflected the pre-2006 version of chapter 154, under which requests to apply chapter 154's procedures were presented to federal habeas courts in particular cases. In that posture, courts could consider both the general question whether the State had established a mechanism satisfying chapter 154 and, if so, whether counsel for the petitioner in the particular case had been appointed in compliance with that mechanism. Following the 2006 amendments to chapter 154, however, only the general certification function is assigned to the Attorney General, *see* 28 U.S.C. 2265, and ascertaining whether counsel was appointed pursuant to the certified mechanism, as provided in section 2261(b)(2), is reserved to federal habeas courts. *See* 78 FR at 58162–63, 58165. Consequently, comments supposing that I must undertake case-specific review of the operation of Arizona's mechanism, and deny certification based on asserted deficiencies in practice, misapprehend the current division of labor under chapter 154 between the Attorney General and federal habeas courts.

B. Appointment Requirement and Procedures

Subsection (c) of 28 U.S.C. 2261 provides that a qualifying capital counsel mechanism must offer postconviction counsel to all prisoners under capital sentence and provide for court orders appointing such counsel for indigent prisoners (absent waiver). Subsection (d) provides that postconviction counsel may not be the trial counsel unless the prisoner and trial counsel expressly request continued representation. The Department's implementing regulations for chapter 154, 28 CFR 26.22(a), track these statutory requirements.

Arizona's capital counsel mechanism satisfies these requirements. Its statutes and rules provide for the appointment by court order of postconviction counsel for prisoners under sentence of death, unless waived, and provide that postconviction counsel cannot be the same as trial counsel unless the defendant and counsel expressly request continued representation. *See* Ariz. Rev. Stat. 13–4041(B)–(E) (''[T]he supreme court . . . or . . . the presiding judge . . . shall appoint counsel to represent the capital defendant in the state postconviction relief proceeding . . . . Counsel . . . shall . . . [n]ot previously have represented the capital defendant . . . in the trial court . . . unless the defendant and counsel expressly request continued representation . . . . [T]he capital defendant may . . . waive counsel . . . . [i]f . . . knowing and voluntary . . . .''); *id.* 13–4234(D) (''All indigent state prisoners under a capital sentence are entitled to the appointment of counsel to represent them in state postconviction proceedings. A competent indigent defendant may reject the offer of counsel with an understanding of its legal consequence.''); Ariz. R. Crim. P. 6.5(a) (''The court must appoint counsel by a written order . . . .''); *id.* 32.4(b) (''After the Supreme Court has affirmed a capital defendant's conviction and sentence, it must appoint counsel [for postconviction proceedings] . . . . If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court.'').

In *Spears,* the Ninth Circuit concluded that the relevant Arizona provisions, which did not differ significantly from their current versions with respect to the 28 U.S.C. 2261(c)–(d) requirements, satisfied this aspect of chapter 154. *See* 283 F.3d at 1009–12, 1017. I agree that this continues to be the case.

C. Counsel Competency

Subsection (a) of 28 U.S.C. 2265 requires the Attorney General to determine whether a State has established a mechanism for the appointment of competent postconviction capital counsel and whether it provides standards of competency for the appointment of such counsel.

Analysis of this issue includes consideration of federal and state law on counsel competency standards, prior judicial assessment of Arizona's standards, and various issues raised in the public comments on Arizona's request for certification.

1. Counsel Competency Standards Under State and Federal Law

Arizona statutory provisions, in effect since 1996, regarding eligibility for appointment as postconviction capital counsel, have required that counsel (i) be a member in good standing of the state bar for at least five years immediately preceding the appointment, and (ii) have practiced in the area of state criminal appeals or postconviction proceedings for at least three years immediately preceding the appointment. *See* Ariz. Rev. Stat. 13–4041(C). The statute directs the Arizona Supreme Court to maintain a list of eligible attorneys and authorizes the Arizona Supreme Court to establish by rule more stringent standards of competency. *See id.* At the time of the decision in *Spears,* there was also a provision—since repealed—allowing the Arizona Supreme Court to appoint non-list counsel if no qualified counsel were available. *See Spears,* 283 F.3d at 1009–10.

The experience requirements of the Arizona statute are similar to counsel competency standards that Congress has adopted for federal court proceedings in capital cases, including both federal habeas corpus review of state capital cases and collateral proceedings under 28 U.S.C. 2255 in federal capital cases. *See* 18 U.S.C. 3599. The federal standard for post-conviction counsel is not less than five years of admission to practice and three years of experience in handling felony appeals. Exceptions are allowed as provided in section 3599(d), which permits the court, for good cause, to appoint other attorneys whose background, knowledge, or experience would otherwise enable them to properly represent capital defendants. Under the regulations implementing chapter 154 that I apply, and as a matter of common sense, it is significant that a State has adopted experience requirements similar to those that Congress has adopted for federal court proceedings, because it is implausible that Congress would have deemed inadequate under chapter 154 standards that it has deemed adequate for the corresponding federal proceedings. *See* 78 FR at 58170.

In addition, the Arizona Supreme Court has adopted a rule, Ariz. R. Crim. P. 6.8, that sets more stringent counsel competency standards than those appearing in the state statute that emulates the federal competency standards. At the time of the appointment considered in *Spears,* the rule required appointed counsel: (i) To have been a member in good standing of the Arizona Bar for at least five years immediately before appointment; (ii) to have practiced state criminal litigation for three years immediately before appointment; (iii) to have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate for capital cases; (iv) within three years immediately before appointment, to have been lead counsel in an appeal or postconviction proceeding in a capital case, and have prior experience as lead counsel in the appeal of at least three felony convictions and at least one postconviction proceeding with an evidentiary hearing *or* have been lead counsel in the appeal of at least six felony convictions, including at least two appeals from murder convictions, and lead counsel in at least two postconviction proceedings with evidentiary hearings; and (v) to have attended and successfully completed within one year of appointment at least 12 hours of relevant training or educational programs in the area of capital defense. *See Spears,* 283 F.3d at 1010–11. The rule further provided that postconviction capital counsel not fully satisfying these qualifications may be appointed in exceptional circumstances, but only if: (i) The Arizona Supreme Court consents, (ii) the attorney's experience, stature, and record establish that the attorney's ability significantly exceeds the full suite of qualifications, and (iii) the attorney associates with a lawyer who does meet the rule's qualifications. *See Spears,* 283 F.3d at 1010–11.

The Ninth Circuit concluded in *Spears* that these counsel competency standards were sufficient under chapter 154. *See id.* at 1013–15. The court noted that Congress did not envision any specific competency standards but, rather, ''intended the states to have substantial discretion to determine the substance of the competency standards.'' *Id.* at 1013. The court dismissed an objection based on the rule's exception allowing the appointment of lawyers not meeting its specific criteria, noting that the exception required that such a lawyer significantly exceed those criteria and that the lawyer associated with one who did meet the rule's qualifications. *See id.* The court also dismissed an objection that the competency standards were insufficient because they allowed appointment of lawyers without experience defending a capital case, reasoning that ''[n]othing in 28 U.S.C. 2261(b) or in logic requires that a lawyer must have capital experience to be competent.'' *Id.* Finally, the court dismissed an objection based on the statutory allowance of other counsel if qualified counsel were unavailable, because the Arizona Supreme Court had bound itself by the rule it adopted to appoint counsel meeting the rule's standards. *See id.* at 1012–15.

Arizona's postconviction capital counsel competency standards have changed in some particulars during the period considered in this certification. An amendment adopted in 2000—before the decision in *Spears* but after the appointment considered in that case—changed the training requirement to successful completion within one year before initial appointment of at least six hours of relevant training or education in the area of capital defense, and successful completion within one year before any later appointment of at least 12 hours of relevant training or education in the area of criminal defense. A requirement was later added that counsel be familiar with and guided by the American Bar Association guidelines for capital defense counsel. And an amendment adopted in 2011 modified the detailed litigation experience requirements in Rule 6.8, in places where the text had required postconviction litigation experience, to require instead trial or postconviction litigation experience.

As modified, Arizona's postconviction counsel competency standards have continued to exceed the standards of 18 U.S.C. 3599, which Congress has deemed adequate for postconviction counsel in federal court proceedings in capital cases. Nevertheless, public comments on Arizona's request for certification have questioned the current relevance of *Spears* with respect to Arizona's counsel competency standards, focusing mainly on the change in 2011 affecting the requirement of postconviction litigation experience. These comments were based on the 2011 amendment's addition of the following language in Rule 6.8, underlined below in the current text of Rule 6.8(d):

(d) Post-Conviction Counsel. To be eligible for appointment as post-conviction counsel, an attorney must meet the qualifications set forth in (a) and the attorney must:

(1) Within 3 years immediately before the appointment, have been lead counsel in a trial in which a death sentence was sought or in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, and prior experience as lead counsel in the appeal of at least three felony convictions and a *trial or* post-conviction proceeding with an evidentiary hearing; or

(2) have been lead counsel in the appeal of at least 6 felony convictions, including two appeals from first- or second-degree murder convictions, and lead counsel in at least two

felony trials or post-conviction proceedings with evidentiary hearings.

Nothing in *Spears* suggests that the modifications of Rule 6.8 since 1998—and in particular, the rule's allowance of trial *or* postconviction litigation experience—place the rule beyond Arizona's ''substantial discretion to determine the substance of the competency standards.'' *Spears,* 283 F.3d at 1007. Indeed, in an earlier case, the Ninth Circuit considered this very question and concluded that postconviction litigation experience is not a necessary element of adequate counsel competency standards under chapter 154. *See Ashmus* v. *Calderon,* 123 F.3d 1199, 1208 (9th Cir. 1997), *rev'd on other grounds,* 523 U.S. 740 (1998). Responding to a challenge to California's standards because they did not require any familiarity with or experience in postconviction litigation—referred to as ''habeas corpus'' in California—the court observed that ''[m]any lawyers who could competently represent a condemned prisoner would not qualify under such a standard. We conclude a state's competency standards need not require previous experience in habeas corpus litigation.'' *Ashmus,* 123 F.3d at 1208.

2. Counsel Competency in the Department's Regulations

Postconviction litigation experience is also not an essential element of adequate counsel competency standards under the Department's interpretation of this aspect of chapter 154. The Department's regulations address counsel competency in 28 CFR 26.22(b), which says that a State's ''mechanism must provide for appointment of competent counsel as defined in State standards of competency for such appointments.'' To aid in the determination regarding this requirement, section 26.22(b)(1) provides two benchmark criteria and says that a State's standards of competency are presumptively adequate if they meet or exceed either of the benchmarks. Section 26.22(b)(2) further states that competency standards not satisfying the benchmark criteria will be deemed adequate only if they otherwise reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases.

In applying section 26.22(b)(2), the benchmark criteria continue to function as reference points in the evaluation. State competency standards that are likely to result in significantly lower levels of proficiency than the benchmarks risk being found inadequate under chapter 154, while state competency standards that are likely to result in similar or even higher levels of proficiency than the benchmarks weigh in favor of a finding of adequacy under chapter 154. *See* 78 FR at 58172, 58179.

The first benchmark criterion, appearing in section 26.22(b)(1)(i), is appointment of counsel ''who have been admitted to the bar for at least five years and have at least three years of postconviction litigation experience.'' The basic standard is subject to the proviso that ''a court, for good cause, may appoint other counsel whose background, knowledge, or experience would otherwise enable them to properly represent the petitioner, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation.'' 28 CFR 26.22(b)(1)(i).

Arizona's standards of competency for appointment, appearing in Arizona Rule of Criminal Procedure 6.8(a)–(e), compare favorably to section 26.22(b)(1)(i). Section 26.22(b)(1)(i) could be satisfied, for example, by a lawyer admitted to the bar for five years who handled one or two postconviction proceedings in which the litigation continued over three years. It could be satisfied even if the postconviction proceedings concerned offenses dissimilar from capital murder offenses and even if the postconviction proceedings did not involve evidentiary hearings. By comparison, Arizona requires, in addition to five years of bar admission and three years of recent criminal litigation practice: (i) Demonstrated proficiency and commitment exemplifying the quality of representation appropriate for capital cases; (ii) relevant training or education in the area of capital defense and other criminal defense; (iii) familiarity with the American Bar Association guidelines for capital defense counsel; and (iv) recent experience as lead counsel in capital litigation with prior experience as lead counsel in at least three felony appeals and a trial or postconviction proceeding with an evidentiary hearing *or* experience as lead counsel in at least six felony appeals, including two murder conviction appeals, and experience as lead counsel in at least two felony trials or postconviction proceedings with evidentiary hearings. *See* Ariz. R. Crim. P. 6.8(a), (d).

The nature and extent of Arizona's standards of competency justify the conclusion that they are ''likely to result in even higher levels of proficiency,'' 78 FR at 58172, than the benchmark set forth in 28 CFR 26.22(b)(1)(i). The same was true of earlier iterations of Arizona's counsel competency standards, which have evolved in some respects as discussed above. It follows that Arizona's capital counsel mechanism provides (and has provided) adequate standards of competency for appointments. *See* 28 CFR 26.22(b)(2); *see also* 78 FR at 58172.

A number of public comments argued that Arizona's standards are inadequate because, following the 2011 amendments to Rule 6.8, they do not require postconviction litigation experience. These comments are of a piece with those, discussed above, that attempted to distinguish *Spears* on this ground. In relation to section 26.22(b)(2), the objection assumes that postconviction litigation experience is critical, if not essential, under the Department's rule.

The comments misunderstand the regulation. As explained above, in applying section 26.22(b)(2), the benchmark criteria of section 26.22(b)(1) serve as reference points. The ''section 26.22(b)(1)(i) [benchmark] is based on the qualification standards Congress has adopted in 18 U.S.C. 3599 for appointment of counsel in Federal court proceedings in capital cases'' and ''[t]he formulation of the benchmark . . . does not take issue . . . with Congress's judgments regarding counsel competency standards that are likely to be adequate.'' 78 FR at 58169. The federal statutory competency standards are themselves appropriate reference points in assessing the adequacy of corresponding state standards, because it is implausible that Congress would have deemed inadequate for state postconviction proceedings standards similar to those it has deemed adequate for federal postconviction proceedings. *See* 78 FR at 58169–70. Significantly, 18 U.S.C. 3599 does not require prior postconviction litigation experience. Rather, it deems sufficient having prior experience in the litigation of felony appeals. *See id.* As detailed above, Arizona's standards throughout the timeframe of this certification have required substantial experience litigating felony appeals.

Moreover, Arizona's competency standards do not deem appellate experience alone to be sufficient but rather also require postconviction litigation experience or trial experience. Where that element of the standard is satisfied by trial experience rather than postconviction experience, it remains relevant to postconviction litigation, equipping postconviction counsel to assess the adequacy of trial counsel's performance and enhancing his ability to raise in postconviction proceedings claims of ineffectiveness of trial counsel and other claims relating to the trial

proceedings. And, as discussed above, Arizona's standards have consistently involved other requirements, going beyond both the section 22.62(b)(1)(i) benchmark and 18 U.S.C. 3599, which are relevant to counsel's ability to provide competent representation in capital postconviction proceedings.

3. Specific Criticisms

Some public comments objected that Arizona's qualification standards are inadequate because Arizona Rule of Criminal Procedure 6.8(e) (formerly 6.8(d)) allows the appointment of counsel who do not meet some of the qualification standards, an allowance that the comments say has been relied on in nearly 25 percent of capital cases in Arizona. However, the proviso in Rule 6.8(e) is similar to language in 28 CFR 26.22(b)(1)(i) and 18 U.S.C. 3599(d) that allows the court, for good cause, to appoint counsel not satisfying the basic standard if the attorney's background, knowledge, or experience would otherwise enable him to properly represent the defendant. Indeed, the Rule 6.8(e) proviso is narrower in some respects than the proviso in the federal provisions in that it requires that: (i) The Arizona Supreme Court consent to the appointment; (ii) the attorney satisfy certain of Rule 6.8's requirements, including successful completion of relevant training or educational programs; (iii) the attorney's experience, stature, and record establish that the attorney's ability significantly exceeds the full set of qualification standards; and (iv) the attorney associate with an attorney appointed by the court who fully meets the standards of Rule 6.8. Ariz. R. Crim. P. 6.8(e)(1)–(4). Put simply, Rule 6.8(e) requires more to ensure that appointed counsel will provide competent representation than do its federal counterparts, and this has been true throughout the timeframe of this certification.

Some comments argued that Arizona's counsel competency standards are insufficient because they lack an appropriate appointing authority, adequate training requirements, adequate qualitative evaluation, an adequate system for monitoring the performance of counsel following appointment, and adequate means to terminate the eligibility of counsel whose performance is inadequate or who engages in misconduct. States can qualify for chapter 154 certification by establishing capital counsel mechanisms that incorporate elements addressing these matters. *See* 78 FR at 58170–71. But neither the terms of chapter 154 and the implementing regulations nor judicial precedent support the notion that these things are required. Congress intended that States have substantial discretion in defining competency standards under chapter 154. *See Spears,* 283 F.3d at 1012–13; 78 FR at 58170, 58172. Arizona's competency standards are well within the bounds of its discretion, as measured against 18 U.S.C. 3599(d), 28 CFR 26.22(b), and the judgment in *Spears.*

Finally, some public comments argued that Arizona's competency standards should be deemed inadequate in practice, alleging that many appointed postconviction counsel in Arizona do not perform competently, that some had not been considered proficient by a Maricopa County selection committee for trial and appellate capital counsel, and that the qualification requirements for appointment are not consistently enforced. Comments of this nature also pointed to language in the rule preamble that observed that a State may fail to establish in practice a necessary element of its capital counsel mechanism and to judicial decisions (preceding the transfer of the certification function to the Attorney General) that concluded that States must comply with their capital counsel mechanisms to have the benefit of the chapter 154 review procedures.

Arizona disagrees that there are systemic problems relating to the competency of the State's appointed postconviction capital counsel. Arizona asserts that the critical comments largely focus on 12 attorneys out of 86, none of whom have been disciplined, removed from cases, or judicially determined to be incompetent based on their alleged deficiencies. Arizona also asserts that the Arizona Supreme Court need not agree with or defer to a committee of defense lawyers in Maricopa County and can instead reasonably appoint postconviction counsel who satisfy the State's competency standards in its own judgment. Furthermore, regarding the comments' presentation of criticisms by counsel involved in later stages of capital case litigation, Arizona asserts that ''[r]arely . . . is there a capital case in which habeas counsel does not raise new claims or fault the work of earlier lawyers as flawed and ineffective'' but ''the strategy has never succeeded'' with respect to ''any of the 12 attorneys at issue.'' Letter from Office of the Arizona Attorney General, Oct. 16, 2018, at 8–10.

The critical comments on this issue misunderstand the allocation of responsibilities under the current version of chapter 154 and the Attorney General's function in making certification decisions.

Regarding a State's compliance with its own capital mechanism, the current statutory scheme does not call for or allow case-specific oversight by the Attorney General. As discussed above, following the amendments that Congress enacted in 2006, chapter 154 includes only two preconditions to its applicability in a particular case: ''The Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265,'' 28 U.S.C. 2261(b)(1); and ''counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent,'' *id.* 2261(b)(2). Only the general certification function referenced in section 2261(b)(1), and set forth fully in section 2265, is assigned to ''the Attorney General of the United States.'' Ascertaining whether counsel was appointed pursuant to the certified mechanism, as provided in section 2261(b)(2), is reserved to federal habeas courts, ''which can address individual irregularities and decide whether the Federal habeas corpus review procedures of chapter 154 will apply in particular cases.'' 78 FR at 58162.

In this regard, the current law differs from chapter 154 as it was prior to the 2006 amendments, when requests to apply the chapter 154 federal habeas review procedures were presented to federal habeas courts in the context of particular cases they were reviewing. Courts in that posture considered whether the State had established a mechanism satisfying chapter 154, and if so, whether counsel for the petitioner in the particular case before the court had been appointed in compliance with that mechanism. Consequently, if counsel had not been appointed on collateral review in a particular case, or if the attorney provided did not satisfy the State's competency standards for such appointments, the courts could find chapter 154 inapplicable on that basis, regardless of whether the State had established a capital counsel mechanism that otherwise satisfied the requirements of chapter 154. *See* 78 FR at 58162–63, 58165; s*ee also, e.g., Tucker,* 221 F.3d at 604–05 (''We accordingly conclude that a State must not only enact a 'mechanism' and standards for postconviction review counsel, but those mechanisms and standards must in fact be complied with before the State may invoke the time limitations of 28 U.S.C. 2263.'').

In contrast, in entertaining a State's request for chapter 154 certification

under the current law, the Attorney General has no individual case before him and is not responsible for determining whether a State has complied with its mechanism in any particular case. Rather, as discussed above, 28 U.S.C. 2261(b)(1) assigns to the Attorney General the general certification function under chapter 154, which makes him responsible for determining whether an appointment mechanism has been established by the State and whether the State provides standards of competency. If the state mechanism is certified, appointment of counsel pursuant to the certified mechanism (absent waiver or retention of counsel or a finding of non-indigence) continues to be a further condition for the applicability of chapter 154. Whether that has occurred in any individual case is, under 28 U.S.C. 2261(b)(2), a matter to be decided by the federal habeas court to which the case is presented, not the Attorney General. *See* 78 FR at 58162–63, 58165.

Likewise, the contention that the Attorney General should certify a State's mechanism only if he is satisfied with the actual performance of postconviction counsel following appointment misconceives the Attorney General's role under the current law. Chapter 154 provides that the Attorney General ''shall determine'' whether a State ''has established a mechanism for the appointment . . . of competent counsel'' in state capital postconviction proceedings, and whether the State ''provides standards of competency for the appointment of counsel'' in such proceedings. 28 U.S.C. 2265(a). The statute does not provide that the Attorney General is to inquire into counsel's performance following appointment in all or even some cases. Instead, it frames its requirements regarding counsel competency as matters relating to appointment, contemplating an inquiry into whether a State has standards determining eligibility for appointment. *See* 78 FR at 58162–63, 58165. This understanding is supported by the Powell Committee Report, the original reform proposal from which chapter 154 derives. The report explained that federal review would examine whether a State's mechanism for appointing capital postconviction counsel comports with the statutory requirements ''as opposed to [examining] the competency of particular counsel.'' 135 Cong. Rec. at 24696. It further explained that, in contrast to the focus on ''the performance of a capital defendant's trial and appellate counsel,'' ''[t]he effectiveness of State and Federal postconviction counsel is a matter that can and must be dealt with in the appointment process.'' *Id.; see* 78 FR at 58162–63, 58165.

Regarding the ''establishment'' of a mechanism meeting chapter 154's requirements, 28 U.S.C. 2265(a), the rule's preamble posited that the Attorney General might need to address situations involving ''a wholesale failure to implement one or more material elements of a mechanism described in a State's certification submission, such as when a State's submission relying on section 26.22(b)(1)(ii) in the rule points to a statute that authorizes a State agency to create and fund a statewide attorney monitoring program, but the agency never actually expends any funds, or expends funds to provide for monitoring of attorneys in only a few of its cities.'' 78 FR at 58162–63. (The section 26.22(b)(1)(ii) benchmark referenced in the example involves a state post-appointment monitoring system, *see* 34 U.S.C. 60301(e)(2)(E)(i).) One could imagine similar situations in connection with other chapter 154 requirements—for example, if a state statute authorizes appointment and compensation of postconviction capital counsel for indigent prisoners, but the state legislature never appropriates any funds that can lawfully be used for that purpose.

As the preamble discussion makes clear, however, ''a wholesale failure'' to implement a necessary element under chapter 154 is an extreme situation, and no such situation exists or has existed with respect to Arizona's appointment of postconviction counsel. ''Other than in these situations, should they arise, questions of compliance by a State with the standards of its capital counsel mechanism will be a matter for the Federal habeas courts.'' 78 FR at 58163.

4. The Arizona Capital Postconviction Public Defender Office

Some comments suggested that Arizona's mechanism does not satisfy chapter 154's counsel competency requirements because Arizona had, between 2007 and 2011, a public postconviction capital counsel agency—the Arizona Capital Postconviction Public Defender Office—and counsel employed by that agency did not have to satisfy the standards of competency for appointment under Rule 6.8. *See* Letter from Martin Lieberman, Dec. 27, 2018; Letter from AFPD, Feb. 22, 2018, at 38–41. This agency, which the commenters describe as inadequately funded and ultimately unsuccessful, was created by legislation enacted in 2006 that provided for the agency's termination on July 1, 2011. 2006 Ariz. Legis. Serv. Ch. 369, sec. 3, 4, 6. During the limited period of its existence, the agency did not supplant Arizona's general capital counsel mechanism, which continued to provide counsel for postconviction representation outside of the few cases handled by the agency. The comments relating to the agency do not go to the question whether Arizona had a capital counsel mechanism adequate under chapter 154 before the agency's establishment or after its termination, but at most to whether there was an intermediate period in 2007 to 2011 in which it did not.

With respect to that period, the comments amount to a claim that agency counsel were not appointed pursuant to the mechanism I now certify in the few cases the agency handled, because the agency counsel were not required to satisfy state standards of competency. *Cf. Tucker,* 221 F.3d at 604. Under the current formulation of chapter 154, such a claim could be presented to the federal habeas court under 28 U.S.C. 2261(b)(2) in the cases in which the agency provided postconviction representation and, if found to have merit, it could provide a basis for finding chapter 154's review procedures inapplicable in those cases. It does not have implications outside of those cases or affect my determination that Arizona has had a mechanism for appointment of postconviction counsel satisfying chapter 154's requirements continuously since May 19, 1998.

I also conclude that Arizona has had a capital counsel mechanism adequate under chapter 154 continuously since May 19, 1998, because Arizona's capital counsel mechanism in the period between 2007 and 2011 comprised its general mechanism established in 1998 together with the provision for representation by the public agency. Arizona law required that the agency's Director meet or exceed the Rule 6.8 competency standards. 2006 Ariz. Legis. Serv. Ch. 369, sec. 7. The Director in turn hired experienced attorneys who operated under his supervision. *See* Letter from Martin Lieberman, Apr. 5, 2009, at 3. With respect to the agency's staff counsel, hiring and employment by a dedicated office whose function is capital postconviction representation, under a Director having those qualifications, is a reasonable means of ensuring proficiency appropriate for such representation. I therefore find that this aspect of Arizona's mechanism satisfies section 26.22(b)(2).

The comments' criticisms relating to the public agency's funding do not impugn this conclusion. Nor do they show a failure by Arizona to satisfy chapter 154's other requirements,

relating to compensation and payment of reasonable litigation expenses, which are fully discussed in the ensuing portions of this notice. Rather, the information in the comments indicates that the agency was generally able to limit its caseload to a level compatible with its resources. Its attorneys were compensated by salary, which is allowed under chapter 154 for public defender personnel. *See Spears,* 283 F.3d at 1010 (requirement regarding hourly rate of compensation inapplicable to counsel in publicly funded offices); 78 FR at 58180 (such counsel may be compensated by salary). Litigation expenses were paid from the agency's budget with the possibility of requesting additional funds from the court. The comments state that a budgetary shortfall in 2009 resulted in delay in the processing of two cases. *See* Decl. of Martin Lieberman, Dec. 26, 2017, at 2–4; Letter from Martin Lieberman, Apr. 5, 2009, at 3–4. But chapter 154 does not condition certification on all cases being processed without delay.

5. International Issues

Beyond the general comments regarding Arizona's counsel competency standards, the Government of Mexico submitted a comment asserting that the Attorney General should deny certification because Arizona has no provision ensuring that foreign national defendants receive competent representation. *See* Letter from Amb. José Antonio Zabalgoitia, Jan. 5, 2017. The comment states that attorneys representing foreign nationals need expertise specific to such clients, including expertise regarding international law. *See id.* at 2–3. The comment further asserts that foreign nationals present other special needs affecting the requirements for competent representation, including defense teams that can communicate in the defendant's native language, culturally competent experts who can understand the defendant's cultural background and work with him and his family in appropriate ways, and foreign travel to investigate the defendant's circumstances and life in his home country. *See id.*

The comment does not provide a basis for denying certification. Prisoners under sentence of death could be divided into many subcategories, each of which might benefit from representation by lawyers with special expertise. But chapter 154 does not require that a State define special competency standards for lawyers with respect to each such class. Instead, it provides that a State must provide standards of competency for appointment. *See* 28 U.S.C. 2265(a)(1)(C).

The comment provides no persuasive reason to believe that lawyers satisfying Arizona's standards for appointment will be unable to handle competently any legal issues involved in representing foreign clients. The counsel competency standards Congress has enacted for federal court proceedings in capital cases, 18 U.S.C. 3599, impose no special requirements for cases involving foreign defendants. It is implausible that Congress intended to impose such requirements with respect to state postconviction proceedings under chapter 154. Likewise, the implementing rule for chapter 154 does not require special counsel competency standards for cases involving foreign defendants. Neither of the section 26.22(b)(1) benchmark criteria require special competency standards for counsel representing foreign clients, and there is no basis for reading such a requirement into the section 26.22(b)(2) authorization of standards that otherwise reasonably assure a level of proficiency appropriate for state capital postconviction litigation.

Other matters raised in this comment—relating to language skills, culturally competent experts, and foreign travel—go to the question whether Arizona provides for payment of reasonable litigation expenses. I answer that question in the affirmative for reasons discussed in Part II.E of this notice.

D. Compensation of Counsel

Chapter 154 requires the Attorney General to determine whether a state has established a mechanism for the compensation of appointed postconviction capital counsel. 28 U.S.C. 2265(a). Throughout the period considered in this certification, Arizona Revised Statutes section 13–4041 has provided that ''[u]nless counsel is employed by a publicly funded office, counsel appointed to represent a capital defendant in state postconviction relief proceedings shall be paid an hourly rate of not to exceed one hundred dollars per hour.'' Ariz. Rev. Stat. 13–4041(F). The statute has also consistently required the court (or the court's designee) to approve reasonable fees and costs, and has provided for recourse through a special action with the Arizona Supreme Court where the attorney believes that the court has set an unreasonably low hourly rate or the court found that the hours the attorney spent were unreasonable. *See* Ariz. Rev. Stat. 13–4041(G). The statute formerly required that counsel establish good cause to receive compensation for more than 200 hours of work—amounting to a presumptive $20,000 cap on compensation at the maximum hourly rate of $100—but legislation enacted in 2013 eliminated this limitation. *See* 2013 Ariz. Legis. Serv. Ch. 94.

1. Judicial Assessment of Compensation Under Chapter 154

In *Spears,* the Ninth Circuit ''conclude[d] that Arizona's compensation mechanism complied with Chapter 154.'' 283 F.3d at 1015. The court rejected petitioner's argument that the then-existing 200-hour limit was ''unduly burdensome to appointed counsel,'' reasoning that ''to receive compensation for hours beyond the threshold, the lawyer need[ ] only to establish that he or she worked more than 200 hours on the case and that the time expended was reasonable.'' *Id.* The court observed that ''[n]othing in Chapter 154 suggests that the mechanism to ensure compensation must be a blank check. The statute simply requires that the appointment mechanism reasonably compensate counsel.'' *Id.* Consequently, consistent with chapter 154, ''a state can require an appointed lawyer to account for the reasonableness of the number of hours worked before it compensates that lawyer.'' *Id.*

Considering the State's submissions and the public comments thereon, there appears to be agreement that the Arizona Supreme Court consistently orders compensation at the maximum hourly rate of $100. The comments noted, however, that the $100 hourly rate has not been changed since 1998, during which time its real value has been eroded by inflation. The comments pointed to recommendations that the hourly rate be increased, with $125 sometimes mentioned as a more appropriate figure.

As an initial matter, the reduction of the value of $100 by inflation during the period of the certification does not imply that it is now an inadequate maximum hourly rate. A State may establish a rate of compensation high enough that it is adequate at the outset and continues to be adequate even after inflation's erosion of its real value over time. The hourly rate established by Arizona, in particular, continues to be adequate under chapter 154.

Simple computation allows a general assessment of the remuneration postconviction capital counsel may be afforded in Arizona. Assuming that a regular work week is 40 hours, and that a regular work year consists of about 50 weeks, the number of hours in a full year of work is 2000. Applying

Arizona's maximum hourly rate of $100, postconviction counsel would receive $4,000 for a week of full-time work on a capital case, and would receive $200,000 for a year's work.

Judicial precedent finding state compensation inadequate under chapter 154 has involved much more restrictive compensation provisions than Arizona's. In *Baker* v. *Corcoran,* 220 F.3d 276 (4th Cir. 2000), the Fourth Circuit concluded that Maryland's scheme failed to satisfy chapter 154. *Id.* at 287. Maryland at the time compensated postconviction capital counsel $30 per hour for out-of-court time and $35 per hour for in-court time, subject to an overall cap of $12,500. *Id.* at 285. Examining attorney overhead costs and the effects of the hourly rates and fee cap, the court concluded that accepting postconviction capital cases resulted in a net loss to attorneys. *Id.* The court stated that ''[a] compensation system that results in substantial losses to the appointed attorney or his firm simply cannot be deemed adequate.'' *Id.* at 285–86.

The compensation scheme at issue in *Baker* bears no resemblance to Arizona's system, which, as discussed above, may compensate postconviction capital counsel $200,000 for a year's work (reckoned as 2,000 hours). Even assuming overhead costs of 40% of revenue for private counsel, as a commenter suggested, the net authorized income for a year of postconviction work in Arizona would be $120,000 (= $200,000 − 40% × $200,000). This is far from the concern reflected in *Baker* regarding attorneys having to operate at a substantial loss. *See* 220 F.3d at 285–86; *see also Mata* v. *Johnson,* 99 F.3d 1261, 1266 (5th Cir. 1996) (finding that Texas's mechanism, which capped compensation at $7,500 and expenses at $2,500, satisfied chapter 154 for those elements), *vacated in part on other grounds,* 105 F.3d 209 (5th Cir. 1997).

Arizona's submissions provided extensive information about how appointed counsel are compensated in practice. Arizona's 2017 application letter explained that ''[c]ounsel employed by publicly-funded offices are compensated by salary'' and that ''[a]ppointed private counsel are compensated at an hourly rate of up to $100 per hour,'' as provided by statute. Letter from Office of the Arizona Attorney General, Nov. 27, 2017, at 2. The application further reported that ''Arizona regularly spends well over $200,000 in attorney fees and litigation costs in capital post-conviction cases, and has spent over $500,000 in more than one case.'' *Id.* In 2018, Arizona provided additional information and documentation, including identifying a number of cases in which the State paid over $500,000 in attorney fees and litigation costs. Letter from Office of the Arizona Attorney General, Oct. 16, 2018. Arizona reported that the average compensation of postconviction capital counsel in Maricopa County exceeds $165,000, that the average compensation in Pima County exceeds $110,000, and that even smaller counties spend significantly more than $20,000 per case.

Public comments on Arizona's submissions state that Arizona's examples and data are variously irrelevant, ambiguous, unrepresentative, misleading, incomplete, and inaccurate; that the average and high-end case figures mask or highlight variations among counties and cases, which may involve relatively low levels of compensation; and that use of the median instead of the mean yields lower representative figures.

I do not find it necessary to resolve the conflicting factual claims because I find Arizona's compensation mechanism to be adequate under chapter 154, as the Ninth Circuit concluded in *Spears,* on uncontroverted grounds discussed above, and for additional reasons I discuss below in connection with the Department's regulations.

2. Counsel Compensation in the Department's Regulations

Turning to the implementing regulations for chapter 154, 28 CFR 26.22(c) provides that a State's ''mechanism must provide for compensation of appointed counsel.'' The regulation provides four benchmark criteria and says that a State's provision for compensation is presumptively adequate if it is comparable to or exceeds any of the benchmarks. The benchmarks are: (i) Compensation of appointed capital federal habeas counsel; (ii) compensation of retained state postconviction capital counsel meeting state standards of competency; (iii) compensation of appointed state capital trial or appellate counsel; and (iv) compensation of state attorneys in state capital postconviction proceedings, taking account of relative overhead costs. *See* 28 CFR 26.22(c)(1).

The rule further states in section 26.22(c)(2) that provisions for compensation not satisfying the benchmark criteria will be deemed adequate only if the state mechanism is otherwise reasonably designed to ensure the availability for appointment of counsel who meet state standards of competency sufficient under section 26.22(b). *See* 78 FR at 58172–73, 58179–80 (further explaining the regulatory provisions). The rule preamble explains that section 26.22(c)(2) recognizes that compensation provisions ''have been deemed adequate for purposes of chapter 154 . . . independent of any comparison to the benchmarks in paragraph (c)(1),'' citing the *Spears* decision and Arizona's hourly rate of up to $100 by way of illustration. 78 FR at 58180.

Arizona's 2017 letter says that postconviction capital representation is provided by two classes of lawyers who are compensated differently. *See* Letter from Office of the Arizona Attorney General, Nov. 27, 2017, at 2. This is consistent with the rule. *See* 78 FR at 58180 (''A State may . . . provide for compensation of different counsel or classes of counsel in conformity with different standards.'').

One of the classes is ''[c]ounsel employed by publicly-funded offices'' who ''are compensated by salary.'' Letter from Office of the Arizona Attorney General, Nov. 27, 2017, at 2. This is adequate under section 26.22(c)(2); such personnel do not require financial incentives beyond their salaries to provide representation in capital postconviction proceedings. *See* 78 FR at 58180 (noting, in relation to section 26.22(c)(2), that ''a State may secure representation for indigent capital petitioners in postconviction proceedings by means not dependent on any special financial incentive for accepting appointments, such as by providing sufficient salaried public defender personnel to competently carry out such assignments as part of their duties'').

With respect to private counsel, the information I have received from the State and public comments is insufficient to enable me to determine whether Arizona's mechanism for compensation has satisfied the benchmarks of section 26.22(c)(1) because it does not include comparative information for the benchmarks' reference points—such as compensation of trial and appellate counsel, and compensation of attorneys representing the State in postconviction proceedings—for all parts of the State throughout the period of the certification. I accordingly consider whether the mechanism is reasonably designed to ensure the availability for appointment of counsel meeting the State's standards of competency for appointment, as provided in section 26.22(c)(2).

Some comments maintained that Arizona's provision for compensation is inadequate because between 1998 and

2013 there was a presumptive limit of 200 compensable hours, implying a $20,000 limit on total compensation at the maximum $100 hourly rate. That presumptive limit is consistent with the rule, however, because there were means for authorizing compensation beyond the presumptive maximum. Indeed, the rule preamble cited the Ninth Circuit's approval in *Spears* of Arizona's presumptive 200-hour limit because, as the Ninth Circuit observed, compensation was available for work beyond that limit if reasonable. 78 FR at 58180.

Variations in compensation among cases and counties, which were noted in the State's submissions and the public comments, do not call into question the adequacy of Arizona's compensation mechanism under the rule's standard. It would be unreasonable to expect attorneys' compensation to be similar in all cases, because different cases require different amounts of work, depending on their particular issues and characteristics. Aggregate and average compensation may vary in different geographic areas because of differences among counties in the nature and number of capital cases or other factors. Whatever the reasons for such variations, Arizona's mechanism has authorized and does authorize, on a statewide basis, compensation of counsel at a rate of up to $100 an hour, with no inflexible limit on the number of hours that can be compensated. Chapter 154 does not require greater statewide uniformity in compensation and there are no requirements for certification beyond those that chapter 154 states. *See* 28 U.S.C. 2265(a)(3).

Finally, some commenters argued that section 26.22(c)(2) is not satisfied on the ground that Arizona's $100 hourly rate has been inadequate to attract counsel who perform adequately in practice. As discussed above, the State disputes the commenters' claims of systemic inadequacies in the performance of counsel, and reviewing counsel's performance in particular cases is not among the Attorney General's functions under chapter 154. Moreover, the criterion under section 26.22(c)(2) is whether the State's provision for compensation is ''reasonably designed to ensure the availability for appointment of counsel who meet State standards of competency sufficient under [section 26.22(b)],'' which refers to the standards for appointment under the State's capital counsel mechanism. Arizona has been able to recruit attorneys who were found by the appointing authority to satisfy these standards. Commenters maintain that such counsel have been appointed only after excessive delays, but timeliness of appointment is a different issue that I discuss separately below.

Accordingly, I find that Arizona's provision for compensation of appointed postconviction capital counsel satisfies the requirements of chapter 154.

E. Payment of Reasonable Litigation Expenses

Chapter 154 requires the Attorney General to determine whether a State has established a mechanism for payment of reasonable litigation expenses of appointed postconviction capital counsel. 28 U.S.C. 2265(a). Arizona's mechanism provides for the payment of reasonable litigation expenses in Arizona Revised Statutes sections 13–4041(G), (I), and 13–4013(B).

In *Spears,* the Ninth Circuit found that Arizona's provisions for payment of reasonable litigation expenses—which have not changed in the intervening years in any material respect— were adequate under chapter 154. *See* 283 F.3d at 1016. The Ninth Circuit reasoned that chapter 154 requires ''only that the state mechanism provide for the payment of reasonable litigation expenses'' and ''assumes that a state can assess reasonableness as part of its process.'' *Id.* Nothing has transpired since *Spears* that calls this conclusion into question, notwithstanding comments claiming that expense payments in Arizona are too low and that the level of such payments varies among cases and in different parts of the State. Chapter 154 has not at any time required payment of any particular quantum of expenses and it has not provided that a State lacks a qualifying mechanism if different amounts of expenses are found to be reasonable in different areas or cases. Differences among cases may result from different needs for investigation, expert witnesses, and other resources, depending on the characteristics of the individual case. Differences among counties may result from differences in the nature and number of capital cases, differences in cost-of-living and wages, and other factors. Whatever the reasons for such variations, Arizona Revised Statutes sections 13–4041(G), (I), and 13–4013(B) provide for payment of reasonable litigation expenses on a statewide basis, which satisfies chapter 154's requirement. *Spears* did not go beyond chapter 154 to require more definite criteria or greater statewide uniformity in the payment of litigation expenses, and adding to chapter 154's express requirements is now barred. *See* 28 U.S.C. 2265(a)(3).

A frequent point of criticism in the public comments was that Arizona's provisions regarding payment of litigation expenses include both mandatory and permissive language. *Compare* Ariz. Rev. Stat. 13–4041(G) (court ''shall'' review and approve all reasonable fees and costs) *with id.* 13–4041(I) (court ''may'' authorize additional monies to pay for reasonably necessary investigative and expert services). The same variation in language existed when the Ninth Circuit decided *Spears,* however, and the court understood these provisions to ''requir[e] the payment of reasonable costs, as well as reasonable fees to investigators and experts, whenever the court deemed them reasonably necessary.'' 283 F.3d at 1016. Chapter 154 requires a mechanism for payment of reasonable litigation expenses but does not say that all of a State's provisions relating to the matter must use facially mandatory language. Notably, in the same act that added chapter 154 to title 28 of the United States Code, Congress changed the wording of the provision for payment of reasonably necessary litigation expenses in federal capital cases, and in federal habeas corpus review of state capital cases, from ''shall'' to ''may.'' *See Ayestas* v. *Davis,* 138 S. Ct. 1080, 1087, 1094 (2018) (regarding 18 U.S.C. 3599(f), formerly designated 21 U.S.C. 848(q)(9)). It is implausible that Congress, in chapter 154, would have rejected the propriety of the term ''may'' while at the same time using the term ''may'' in a nearby, related provision. Arizona denies that the variation in language is significant, and it has not been shown that Arizona courts interpret the term ''may'' to afford boundless discretion to refuse to pay for expenses that are reasonably necessary.

Consequently, I find no basis for doubting the continuing validity of the Ninth Circuit's determination in *Spears* that Arizona has a mechanism for payment of reasonable litigation expenses of postconviction capital counsel as required by chapter 154. Nor do the Department's regulations provide any basis for a contrary conclusion. Following the statutory requirement, paragraph (d) of 28 CFR 26.22 provides that a state capital counsel mechanism must provide for payment of reasonable litigation expenses of appointed counsel. The paragraph provides a nonexhaustive list of types of litigation expenses. It further states that presumptive limits on payment are allowed but only if means are authorized for payment of necessary expenses above such limits.

Arizona has explained that it ''provides for payment of all reasonable litigation expenses, such as for investigative and expert assistance, as required by 28 U.S.C. 2265(a)(1)(A) and 28 CFR 26.22(d).'' Letter from Office of the Arizona Attorney General, Nov. 27, 2017, at 2. This is correct. Arizona's provisions for payment of reasonable litigation expenses do not exclude payment for any types of reasonable litigation expenses, including those listed in section 26.22(d), and do not have presumptive limits on the amount of payment. Ariz. Rev. Stat. 13–4041(G), (I); *id.* 13–4013(B).

Some comments objected that judges have denied postconviction counsel's requests for payment of litigation expenses in some cases, that county expense systems may fail to provide adequate resources, and that there are no more definite standards to ensure statewide uniformity in payment of litigation expenses. However, the rule does not require state judges or other authorities to agree in all instances that the litigation expenses counsel wants are reasonably necessary, and it does not authorize or require the Attorney General to second-guess their determinations.

Rather, it is sufficient under the rule if the capital counsel mechanism provides for payment of reasonable litigation expenses in general terms. In this connection, the rule preamble observed that the statutory directive to the Attorney General is to determine whether the State has established a mechanism for the ''payment of reasonable litigation expenses.'' 28 U.S.C. 2265(a)(1)(A). The preamble noted that there was no persuasive reason why a State should be denied chapter 154 certification if its mechanism requires the payment of reasonable litigation expenses in terms similar to chapter 154 itself, or at some other level of generality less specific than that urged by commenters on the rule. The rulemaking cited the Ninth Circuit's reasoning in *Spears,* discussed above, that chapter 154 '' 'requires only that the state mechanism provide for the payment of reasonable litigation expenses. The federal statute thus assumes that a state can assess reasonableness as part of its process.' '' 78 FR at 58173 (quoting *Spears,* 283 F.3d at 1016).

The submissions concerning Arizona's current request for certification provided extensive information about the practical operation of the State's mechanism for payment of reasonable litigation expenses. Arizona's submissions pointed to a number of cases in which payment of fees and litigation expenses exceeded $500,000, and advised that the average reimbursement for litigation expenses was over $140,000 per case in Maricopa County and over $50,000 per case in Pima County. The rejoinder in public comments was similar to that concerning compensation, characterizing Arizona's examples and data as variously irrelevant, ambiguous, unrepresentative, misleading, incomplete, and inaccurate; stating that the average and high-end case figures mask or highlight variations among counties and cases, which may involve relatively low levels of expense payment; and that use of the median instead of the mean yields lower representative figures.

As with compensation, I find it unnecessary to resolve these factual disputes regarding the amounts attorneys have received for litigation expenses, and how these payments have varied among different cases and different parts of the State. For the reasons explained above, Arizona's mechanism provides for the payment of reasonable litigation expenses in a manner that satisfies chapter 154's requirements.

F. Timeliness of Appointment

Chapter 154 does not specify a timeline for appointment of postconviction capital counsel. Nevertheless, the issue of timeliness has come up in judicial decisions, in the Department's regulations, and in the public comments on Arizona's request for certification.

1. Historical Assessment of Timeliness

In *Spears,* the court acknowledged that ''the text of the statute does not specify how soon after affirmance of a defendant's conviction and sentence the state must extend its offer of post-conviction counsel.'' 283 F.3d at 1016. Nevertheless, the court believed that a requirement to offer counsel ''expeditiously'' was implicit in the context of chapter 154 and its legislative history. *Id.* The court then concluded that this implicit requirement was satisfied by an Arizona statutory provision, existing at the time of the appointment considered in that case, that required appointment of postconviction capital counsel within 15 days of the filing of the notice of postconviction relief. *See* 283 F.3d at 1016–18.

Arizona law no longer requires appointment of postconviction counsel within a 15-day period. The change could lead some to question whether Arizona is now in compliance with the implicit timeliness requirement discerned by the court in *Spears.* Chapter 154 has since been amended, however, to specify that ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.'' 28 U.S.C. 2265(a)(3). Hence, whether Arizona's statutes in their current form would satisfy the implicit timeliness requirement discerned in *Spears* is irrelevant to whether Arizona's capital counsel mechanism satisfies chapter 154's current requirements.

The court in *Spears* also concluded that Arizona was not entitled to the benefit of chapter 154's expedited review procedures in the case before it, notwithstanding its determination that Arizona had in place a system meeting the chapter 154 criteria, because ''a state must appoint counsel in compliance with its own system before a federal court will enforce the Chapter 154 time line on its behalf in a particular case.'' 283 F.3d at 1018. The court noted that counsel had not been appointed within the then-existing 15-day timeframe under Arizona's statutes. *Id.* at 1018–19. As discussed above, however, the current provisions of chapter 154 assign the determination whether a State has appointed counsel in compliance with its own system in a particular case to the federal habeas court presented with the case. It is not part of the Attorney General's determination whether the State has established a capital counsel mechanism satisfying the requirements of chapter 154. *See* 28 U.S.C. 2261(b); 78 FR at 58166. Hence, this aspect of *Spears* is also not relevant to my determination whether Arizona's capital counsel mechanism satisfies chapter 154's current requirements.

2. Timeliness Under Current Chapter 154

The regulations implementing chapter 154 define the term ''appointment'' to include a timeliness requirement. *See* 28 CFR 26.21. Arizona's mechanism satisfies this requirement.

Specifically, section 26.21 defines ''appointment'' to mean ''provision of counsel in a manner that is reasonably timely in light of the time limitations for seeking State and Federal postconviction review and the time required for developing and presenting claims in the postconviction proceedings.'' *Id.* The regulatory interpretation of ''appointment'' is related to chapter 154's time limit for applying for federal habeas corpus review. As provided in 28 U.S.C. 2263, an application for habeas corpus under chapter 154 must be filed not later than 180 days from the date the conviction and sentence become final on direct

review, subject to tolling (i) during the pendency of a petition for certiorari in the Supreme Court, (ii) ''from the date on which the first petition for postconviction review or other collateral relief is filed until the final State court disposition of such petition,'' and (iii) for an additional period not exceeding 30 days on a showing of good cause. 28 U.S.C. 2263. The second ground for tolling allows the 180-day time limit to run until a state postconviction petition is filed and allows it to resume upon the conclusion of state postconviction proceedings. This effectively limits the time available both to initiate state postconviction proceedings and to file for federal habeas corpus review thereafter.

Against this background, the Department's rulemaking reflected a concern that appointment of counsel may not be meaningful unless it is reasonably prompt. For if it is delayed, little or no time may remain for the prisoner to file a petition for state postconviction review with the assistance of counsel, and little or no time may remain for the prisoner to apply for federal habeas corpus review after the conclusion of state postconviction review. The rule accordingly provides that appointment in the context of chapter 154 means appointment that is reasonably timely in light of the time limitations for seeking state and federal postconviction review and the time required for developing and presenting related claims. *See* 78 FR 58165–67, 58176–77.

Assessment of this issue in relation to Arizona's capital counsel mechanism requires consideration of its procedures relating to applications for postconviction relief and appointment of counsel. In a capital case, the time limit for filing a state postconviction petition begins to run with the filing of a notice of postconviction relief. The clerk of the Arizona Supreme Court files the notice after the court issues its mandate affirming the conviction and sentence. The mandate is not issued until the conclusion of any proceedings for certiorari from the U.S. Supreme Court. *See* Ariz. Rev. Stat. 13–4243(D); Ariz. R. Crim. P. 31.22(c), 32.4(a)(2)(B), (c)(1); *see also Spears,* 283 F.3d at 1011–12, 1018.

The timing rules concerning appointment of postconviction capital counsel have existed in three forms during the period considered in this certification. Initially, the rules required appointment of counsel within 15 days from the filing of the notice of postconviction relief. An amendment preceding the *Spears* decision removed the 15-day time frame. The current rules direct appointment of counsel after the Arizona Supreme Court's affirmance of the conviction and sentence. *See* Ariz. Rev. Stat. 13–4041(B); Ariz. R. Crim. P. 32.4(b)(1); *Spears,* 283 F.3d at 1000, 1012, 1018.

Thus, Arizona law currently allows for the appointment of counsel as soon as the Arizona Supreme Court affirms the conviction and sentence. This precedes the issuance of the Arizona Supreme Court's mandate and the filing of the notice of postconviction relief, which are deferred pending any petition for certiorari from the U.S. Supreme Court. If suitable counsel is not available for appointment at that time, the Arizona Supreme Court may avoid prejudice to the defendant with respect to the time available for seeking state postconviction relief by delaying the notice of postconviction relief or staying the time limit for applying for postconviction relief. *See* Letter from the Office of the Arizona Attorney General, Oct. 16, 2018, at 10–11. The materials submitted by the State and public commenters include numerous Arizona Supreme Court orders that show that the time limit for seeking state postconviction relief was suspended pending the appointment of counsel.

Whether this process results in timely appointment of counsel, as defined in the Department's regulations, presents different issues in relation to state postconviction filing and federal habeas filing. I discuss these matters separately.

3. State Postconviction Filing

Comments on the issue of timeliness in appointment agree that any delays in the appointment of counsel in Arizona do not prevent timely filing of state postconviction petitions. *See* Letter from AFPD, Nov. 5, 2018, at 16–17 (commenter ''agrees that Arizona's delays in appointing postconviction counsel will not prevent a prisoner from filing a first *state* petition for postconviction review''); Letter from AFPD, Jan. 7, 2019, at 27 (commenter ''does not generally disagree'' that ''delays in appointing postconviction counsel will not prevent a prisoner from filing a timely first *state* petition for postconviction review''). The comments nevertheless contend that ''Arizona's customary practice'' of appointing counsel in a manner allowing the timely filing of state postconviction petitions ''cannot substitute for a valid statewide mechanism that mandates timely appointment'' because ''[a] practice can change at any time and is not governed by rule or statute.'' *Id.* at 27–28 n.15.

Chapter 154 does not require that the elements of a qualifying capital counsel mechanism be adopted or articulated in any particular manner or form. Chapter 154 originally included language that made the chapter applicable if a State established a qualifying capital counsel mechanism by ''statute'' or by ''rule of its court of last resort.'' *See* 28 U.S.C. 2261(b), 2265(a) (1996). In two decisions, the Ninth Circuit deemed California's capital counsel mechanism inadequate under chapter 154 because it was not fully articulated in a ''statute'' or ''rule,'' dismissing as insufficient other ''policy,'' ''practice,'' or ''compliance in practice'' by the California Supreme Court. *See Ashmus* v. *Woodford,* 202 F.3d 1160, 1165–66, 1169 (9th Cir. 2000); *Ashmus* v. *Calderon,* 123 F.3d at 1207–08. Congress reacted by amending chapter 154 to eliminate the statute-or-rule language. *See* Public Law 109–177, sec. 507, 120 Stat. at 250–51; *see also* 152 Cong. Rec. at 2446 (remarks of Sen. Kyl) (''The 'statute or rule of court' language construed so severely by Ashmus is removed, allowing the States flexibility on how to establish the mechanism within the State's judicial structure.''); 78 FR at 58164–65; 73 FR at 75332, 75334. Consequently, conceding that Arizona appoints counsel in a manner that allows prisoners to file timely state postconviction petitions, but characterizing this aspect of Arizona's system as a ''customary practice,'' does not negate the State's satisfaction of chapter 154's requirements.

Moreover, the comment that customary practices can change at any time does not establish a material difference from rules and statutes, because rules and statutes can also change over time, by action of the rulemaking authority or the legislature. If such a change occurs, its significance may be addressed in a future request for recertification of the State's mechanism. *See* 78 FR at 58181; 28 CFR 26.23(d). Regardless of the form of the relevant policy, speculation that a future change in Arizona's mechanism will deny prisoners adequate time to seek state postconviction review because of delay in the appointment of counsel does not bear on my determination that Arizona's existing mechanism is consistent with chapter 154's requirements as interpreted in the Department's regulations. Arizona has in fact ''established a mechanism for the appointment . . . of . . . counsel,'' 28 U.S.C. 2265(a)(1)(A), ''in a manner that is reasonably timely in light of the time limitation[] for seeking State . . . postconviction review,'' 28 CFR 26.21.

4. Federal Habeas Filing

I next consider the question of timely appointment of counsel with respect to the time available for seeking state and federal postconviction review under 28 U.S.C. 2263.

In assessing this question, I start with the Ninth Circuit's decision in *Isley* v. *Arizona Department of Corrections,* 383 F.3d 1054 (9th Cir. 2004). In that case, the court considered a similar issue in relation to the general time limit for federal habeas filing under 28 U.S.C. 2244(d). Section 2244(d) parallels 28 U.S.C. 2263 in relevant respects, providing that its limitation period normally starts to run at the conclusion of direct review, but is tolled during the time period in which ''a properly filed application for State post-conviction or other collateral review . . . is pending.'' 28 U.S.C. 2244(d)(2). The question presented was whether the relevant application for state postconviction review is the defendant's ''notice of post-conviction relief'' or his later-filed petition for post-conviction relief. *See Isley,* 383 F.3d at 1055–56.

The court concluded that the earlier notice of postconviction relief was the relevant filing that stopped the clock. The court reasoned that the notice of postconviction relief is ''a critical stage'' that ''set[s] in motion'' Arizona's postconviction review mechanism and begins the running of the time limit for filing the formal petition for postconviction relief. *Id.* at 1055–56. Consequently, ''Isley's state petition was 'pending' within the meaning of 28 U.S.C. 2244(d)(2),'' and he was entitled to tolling, from the date the notice of postconviction relief was filed. *Id* at 1056.

In capital cases, Arizona does not place on the defendant the burden of filing the notice of postconviction relief that initiates postconviction review proceedings. Instead, it directs the clerk of the Arizona Supreme Court to file the notice of postconviction relief once the Arizona Supreme Court has issued its mandate affirming the conviction and sentence in capital cases. *See* Ariz. Rev. Stat. 13–4041(B), 13–4234(D). It is this filing that commences the state postconviction proceedings and tolls the federal habeas time limit. *See Isley,* 383 F.3d at 1056.

The *Isley* understanding of the trigger for tolling the federal habeas time limit is logical whether the applicable time limit is provided by section 2244(d) or section 2263. It resolves the concern that delay in the appointment of counsel, and consequent delay in filing a clock-stopping formal petition, will result in the erosion or expiration of the time to seek federal habeas relief, which would bring into play the timeliness concerns underlying the definition of appointment in 28 CFR 26.21.

As noted above, comments on this issue ''agree that Arizona's delays in appointing postconviction counsel will not prevent a prisoner from filing a first *state* petition for postconviction relief,'' but they question whether the same is true with respect to filing a federal habeas petition. Letter from AFPD, Nov. 5, 2018, at 16–18. The underlying concern is that, under *Isley,* ''the Notice tolls the [federal] statute of limitations'' but ''it is unclear whether it does the same under Chapter 154.'' Letter from AFPD, Feb. 22, 2018, at 138. The comments point in this connection to a statement in *Spears,* 283 F.3d at 1017, that ''the statute does not provide for the [statute of limitations] to be tolled during the time a petitioner is awaiting appointment of counsel.'' Letter from AFPD, Feb. 22, 2018, at 138; *see id.* at 157–58.

However, the court in *Spears* did not consider the possibility that, in the context of Arizona's system, it is the notice of postconviction relief, rather than a later filing presenting the defendant's claims for relief, that commences state postconviction proceedings and tolls the federal time limit. When the Ninth Circuit was presented with this question two years later in *Isley,* it held that the notice is the critical filing. As discussed above, it would be illogical to distinguish between section 2244(d) and section 2263 in this regard, and there is no reason to believe that federal habeas courts will do so.

More broadly, I expect that the federal courts will interpret and apply section 2263 fairly so as to afford prisoners under sentence of death a reasonable amount of time to seek state and federal postconviction review, as they have done with the general federal habeas time limit under section 2244(d) and the corresponding time limit for motions by federal prisoners under 28 U.S.C. 2255. *See, e.g., Goodman* v. *United States,* 151 F.3d 1335, 1337 (11th Cir. 1998). Speculation to the contrary provides no ground for concluding that Arizona's mechanism fails to satisfy the rule's requirement of reasonably timely appointment.

Many of the public comments provided information about the time required for appointment of postconviction capital counsel in Arizona. Prisoners under sentence of death in Arizona often stated, in their comments, how long it took to appoint counsel in their individual cases. AFPD advised that the average delay in appointment of counsel from the Arizona Supreme Court's decision affirming a capital case to the appointment was 711 days from 2000 to 2011 and 256 days from 2011 to the present. *See* Letter from AFPD, Feb. 22, 2018, at 140.

These figures are uninformative, however, regarding satisfaction of 28 CFR 26.21's timeliness requirement, because the time limits for state and federal postconviction review do not run continuously from the date of the Arizona Supreme Court's decision affirming a capital conviction and sentence. Ascertaining whether Arizona's mechanism provides for reasonably timely appointment, considering the time limits for seeking state and federal postconviction review and the time required for developing and presenting related claims, requires a more discriminating analysis of the rules and policies affecting the time available for filing postconviction petitions and their interaction with the timing of the appointment of counsel. This analysis, as set forth above, indicates that Arizona's mechanism does provide for appointment of counsel that is reasonably timely in the relevant sense.

Finally, there is no concern about executions being carried out in Arizona during delay in the appointment of postconviction counsel, because Arizona does not carry out executions prior to the conclusion of the initial state postconviction proceedings. *See* Ariz. Rev. Stat. 13–759(A).

Consequently, Arizona's capital counsel mechanism comports with the definition of appointment in section 26.21, including its timeliness requirement.

III. Date the Mechanism Was Established

Arizona has requested that I determine that it established its qualifying capital counsel mechanism as of July 17, 1998, referring to the date of appointment of postconviction counsel for the defendant in *Spears,* the case in which the Ninth Circuit determined that Arizona had established a mechanism satisfying the requirements of chapter 154. However, the elements of the mechanism approved by the Ninth Circuit in *Spears* were in place as of May 19, 1998. Specifically, the final element was the amendment of Arizona Revised Statutes section 13–4041 relating to compensation and payment of litigation expenses, which became effective on May 19, 1998. *See* 1998 Ariz. Sess. Laws, Ch. 120, sec. 1. Consequently, I determine that the date

Arizona established the mechanism I now certify is May 19, 1998.

IV. Other Matters

Some of the public comments opposed certification of Arizona's mechanism on grounds that amounted to criticisms of chapter 154 itself, often relating to chapter 154's time limit for federal habeas filing or its time limits for federal habeas courts to complete the adjudication of capital habeas petitions. Granting certification as requested by the State, they maintained, with the resulting applicability of chapter 154's federal habeas review procedures, would have unconstitutional or unfair effects on capital defendants in Arizona.

My responsibility under chapter 154 is to determine whether a State has established a postconviction capital counsel mechanism that satisfies the chapter's requirements. It is not to entertain constitutional challenges or policy objections to the underlying statutes. Nevertheless, I will address these objections because they have been raised as grounds for denying certification to Arizona and because they misrepresent chapter 154 itself and the Constitution as it bears on the validity of chapter 154.

Before turning to particular issues, I note by way of background that, at the time of the Powell Committee Report in 1989, the average delay between imposition and execution of a capital sentence was about 8 years. Since that time, the average delay between imposition and execution of a capital sentence has increased, standing at around 20 years (243 months) at the end of 2017. In relation to Arizona, in particular, the submissions elicited by the State's request for chapter 154 certification show capital cases in which the litigation has continued for more than 20 years. On a nationwide basis, there were 2,703 prisoners under sentence of death at the end of 2017—and 23 executions were carried out in that year. *See* Bureau of Justice Statistics, *Capital Punishment, 2017: Selected Findings,* at 2 tbl. 1; *id.* at 4 tbl. 3. Thus, the litigation problems to which chapter 154 is addressed have compounded over time, with profound effects on the justice system's ability to use the sanction of capital punishment for the gravest crimes.

A. Time Limits Under Chapter 154

As noted above, the criticisms of chapter 154 in the public comments largely relate to the chapter's time limitation rules for federal habeas litigation in capital cases.

1. Time Limit for Federal Habeas Filing

Some commenters objected to the 180-day time limit for federal habeas filing under 28 U.S.C. 2263, which is shorter than the 1-year period under 28 U.S.C. 2244(d). The possibility that a shorter time limit might apply to pending cases following a certification, commenters stated, creates difficulty in advising clients and leads to the hasty filing of pro forma petitions for protective reasons. They expressed the concern that application of the reduced time limit may result in retrospective determinations that federal habeas filings, though consistent with the currently applicable section 2244(d) time limit, were untimely under section 2263 and subject to dismissal on that basis. Consequently, they maintain, certifying Arizona's capital counsel mechanism may deny prisoners due process or result in the execution of prisoners who would have obtained relief had their claims been heard. Commenters also raised other objections to section 2263, including that its time limit is too short to allow adequate investigation and preparation of claims or to secure evidence of their clients' innocence, or that the section 2263 time limit's starting point will leave insufficient time for seeking postconviction review when taken in conjunction with the timing rules for the U.S. Supreme Court's certiorari process.

Regarding uncertainty about the time limit that will apply, that possibility is inherent in Congress's design of the statutory scheme for federal habeas review and the fact that Congress sometimes decides to make changes. Essentially the same issue was presented by the enactment in 1996 of 28 U.S.C. 2244(d), which created a 1-year time limit for federal habeas filing, where there had previously been no time limit for federal habeas filing. Courts did not apply the new section 2244(d) time limit so as to unfairly bar petitions filed in existing cases, but rather ensured the availability of the 1-year period to all petitioners. *See, e.g., Calderon* v. *U.S. Dist. Ct. for the Cent. Dist. of Cal.,* 128 F.3d 1283, 1287 (9th Cir. 1997); *see also Calderon* v. *Ashmus,* 523 U.S. at 748 & n.3 (explaining that uncertainty about applicable time limit does not confer standing to challenge application of chapter 154); *Habeas Corpus Resource Ctr.,* 816 F.3d at 1250 (same, regarding challenge to regulations implementing chapter 154). I expect that the federal courts will similarly apply the chapter 154 time limit, where it is newly applicable, in a manner that ensures fundamental fairness. However the courts address this issue, it is not a matter under the control of the Attorney General or the State of Arizona, and it does not bear on whether Arizona has established a capital counsel mechanism satisfying the requirements of chapter 154.

The same is true regarding such matters as the adequacy of the time provided for federal habeas filing under chapter 154. Congress evidently regarded the 180-day period for federal habeas filing under 28 U.S.C. 2263, subject to tolling, as adequate and warranted, considering the availability of counsel to the petitioner throughout the state court litigation, and the unique problem of litigation delay in capital cases. *See* 137 Cong. Rec. at 6013; 135 Cong. Rec. at 24694–95, 24697–98 (Powell Committee Report). Congress has broad authority under the Constitution to determine federal habeas procedure. *See Felker* v. *Turpin,* 518 U.S. 651, 664 (1996) (''judgments about the proper scope of the writ are 'normally for Congress to make' '') (quoting *Lonchar* v. *Thomas,* 517 U.S. 314, 323 (1996)). Even if I were to agree—and I do not—that such adjustments of federal habeas procedure are problematic on constitutional or prudential grounds, I have no authority to overrule Congress's decisions in these matters. Nor do I have authority to add to chapter 154's express requirements, *see* 28 U.S.C. 2265(a)(3), which forecloses requiring the State to waive chapter 154's time limits—as some commenters may wish—as a condition of certification.

Noting that section 2263(b)(1) does not provide for tolling until a petition for certiorari is filed or the time for seeking certiorari expires, some comments expressed a concern that much of the limitation period may be consumed if the defendant does not petition for certiorari soon after ''final State court affirmance of the conviction and sentence on direct review.'' 28 U.S.C. 2263(a). However, the comments recognized that this will not occur if the triggering event under section 2263(a) is understood to be the Arizona Supreme Court's issuance of its mandate—which does not occur until after the U.S. Supreme Court's certiorari process. The interpretation of section 2263 on this point is a matter under the control of the federal courts, not the Attorney General or the State of Arizona, and it does not conflict with my determination that Arizona has established a qualifying capital counsel mechanism under chapter 154.

2. Time Limits for Federal Habeas Adjudication

Beyond the criticisms of the chapter 154 time limit for federal habeas filings, some comments objected that the 28 U.S.C. 2266 time limits for federal district courts and courts of appeals to adjudicate federal habeas petitions are unfair and unconstitutional, contrasting them to the longer periods of time that federal courts typically take now in adjudicating federal habeas petitions in capital cases. Like the other constitutional and policy critiques of chapter 154 appearing in the public comments, these comments do not bear on the question I am charged with answering: Whether Arizona has established a capital counsel mechanism satisfying chapter 154's requirements. And like the other criticisms of chapter 154, these objections are not well founded.

Defining rules of federal judicial procedure is an exercise of legislative power that the Constitution vests in Congress. *See Sibbach* v. *Wilson & Co.,* 312 U.S. 1, 9–10 (1941) (''Congress has undoubted power to regulate the practice and procedure of federal courts'') (footnote omitted). Congress may delegate some rulemaking authority to the courts, as it has done in the Rules Enabling Act, 28 U.S.C. 2071–77, and courts may decide such matters in default of legislative action—neither of which detracts from Congress's paramount authority in this area. *See id.; see also, e.g., Mistretta* v. *United States,* 488 U.S. 361, 386–88 (1989); *Palermo* v. *United States,* 360 U.S. 343, 345–48 (1959). That includes the authority to determine the procedures for federal review of state prisoners' applications for habeas corpus. *See Felker,* 518 U.S. at 664; *Lonchar,* 517 U.S. at 323.

The principal timing rules for adjudications under chapter 154 are as follows: Section 2266(a) provides that federal habeas applications subject to chapter 154 are to be given priority by the district court and by the court of appeals over all noncapital matters. Section 2266(b) provides that a district court is to complete its adjudication of a capital habeas petition within 450 days of filing or 60 days of submission for decision, subject to a possible 30-day extension. Section 2266(c) provides that appellate panels are to render their decisions within 120 days of completion of briefing, that requests for rehearing or rehearing en banc are to be decided within 30 days of the request or a responsive pleading, and that a rehearing or rehearing en banc is to be decided within 120 days of the date it is granted.

The public comments provided no persuasive reason why these time periods for adjudication should be considered unreasonable or beyond Congress's authority over matters of judicial procedure. Nor did the comments provide any persuasive reason to reach such a conclusion with respect to the application of these time limits to pending cases. In relation to such cases, the sponsor of the 2006 amendments to chapter 154 explained the application of the amendments' effective-date provision, appearing in section 507(d) of Public Law 109–177, as starting the time limits when the Attorney General certifies that the State has established a qualifying capital counsel mechanism. So understood, they will not impose impossible requirements on courts to conclude the adjudication of pending capital cases within time frames that have already passed. *See* 152 Cong. Rec. at 2449 (remarks of Sen. Kyl); *cf.* Br. for Appellants at 22–23, *Habeas Corpus Resource Ctr.* v. *U.S. Dep't of Justice,* 816 F.3d 1241 (9th Cir. 2016) (No. 14–16928) (explaining similar application of section 2244(d) time limit to pending cases).

Because protracted collateral litigation impedes the execution of capital sentences, it is reasonable for Congress to provide that courts are to prioritize these proceedings and to set limits on their duration. *See* 152 Cong. Rec. at 2441–48 (2006) (remarks of Sen. Kyl); 151 Cong. Rec. at E2639 (extension of remarks of Rep. Flake); 137 Cong. Rec. at 6013–14 (legislative history); 135 Cong. Rec. at 24694–95 (Powell Committee Report). If petitioners believe that the time limits for adjudicating petitions are unconstitutional as applied to their cases, they may so argue to the federal habeas courts that adjudicate their petitions. However the courts may rule on such claims, it has no bearing on the question whether Arizona has established a capital counsel mechanism satisfying the requirements of chapter 154.

3. Litigation Burdens

In addition to criticisms based on the differences between the chapter 154 time limits and the time now required for capital federal habeas litigation, public comments expressed concerns about novel litigation burdens under chapter 154, such as having to litigate under 28 U.S.C. 2261(b)(2) the question whether the defendant's state postconviction counsel was appointed pursuant to the certified state mechanism. But litigation of this nature will not necessarily be common or burdensome. *See* 152 Cong. Rec. at 2446 (remarks of Sen. Kyl) (discussing limited nature of inquiry).

Moreover, the critical comments did not consider the ways in which the application of chapter 154 may reduce burdens for defense counsel. *See* 73 FR at 75336 (''the chapter 154 procedures eliminate a number of burdens that defense counsel would otherwise bear''). The differences include the automatic stay provisions of 28 U.S.C. 2262, which should reduce the need to engage in litigation over stays of execution. Chapter 154 also provides, in section 2264, clearer and tighter rules concerning claims cognizable in federal habeas review. This will relieve federal habeas counsel of the need to develop and present claims that may be cognizable under the general habeas rules but are not cognizable under chapter 154. *See* 152 Cong. Rec. at 2448–49 (remarks of Sen. Kyl). Federal habeas counsel will not need to litigate questions concerning the exhaustion of state remedies, and will be relieved of other burdens incident to the movement of cases between the state courts and the federal courts resulting from the exhaustion requirement of 28 U.S.C. 2254(b)–(c), because it does not apply under chapter 154. *See* 28 U.S.C. 2264(b) (''Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.''); *see also* 152 Cong. Rec. at 2447–48 (remarks of Sen. Kyl); 135 Cong. Rec. at 24695, 24698 (Powell Committee Report).

Likewise, chapter 154 reduces or eliminates a number of burdens and causes of delay for federal habeas courts. The automatic stay provision reduces the need to adjudicate requests for stays of execution. Courts will not need to review and decide claims that are disallowed under section 2264. Adjudication of questions concerning exhaustion of state remedies will not be required because the exhaustion requirement does not apply under chapter 154. For the same reason, delays that result from sending unexhausted claims back to state court for exhaustion of state remedies will no longer occur.

Consequently, the time required under currently applicable law for counsel to prepare federal habeas petitions, and for federal habeas courts to complete their adjudications, are not reliable indicators of how much time will be needed under the chapter 154 procedures. Objections to certification of Arizona's mechanism premised on the assumption that the time requirements in either case must be similar are not well-founded.

B. Validity of the Implementing Rule

Some comments challenged the implementing rule for chapter 154, Subpart B of 28 CFR part 26, arguing that it is invalid on procedural and substantive grounds. These criticisms are not well founded and in any event do not bear on this certification. *See* Br. for Appellants at 28–49 and Reply Br. for Appellants at 15–28, *Habeas Corpus Resource Ctr.* v. *U.S. Dep't of Justice,* 816 F.3d 1241 (9th Cir. 2016) (No. 14–16928).

C. Request for a Stay

Some comments asked that I stay my certification of Arizona's mechanism pending judicial review of my determination, arguing the matter on the terms a court would consider in deciding whether to order a stay—likelihood that the determination will be overturned on judicial review, alleged irreparable harm to the commenters and their clients, alleged lack of harm to Arizona and other interested parties, and the public interest. Chapter 154 creates no requirement that I grant a stay, however, and I decline to do so.

Chapter 154 conditions its applicability on the Attorney General's determination that a State has established a capital counsel mechanism satisfying its requirements—not on the completion of judicial review of my determination. *See* 28 U.S.C. 2261(b), 2265. Also, 28 U.S.C. 2265(a)(1)(B), (a)(2) directs me to determine the date on which the state capital counsel mechanism was established and makes that date the effective date of the certification. Thus, chapter 154 applies to cases in which postconviction counsel was appointed pursuant to the mechanism, though the appointment occurred prior to the publication of this notice. *See* 152 Cong. Rec. at 2449 (remarks of Sen. Kyl) (explaining effect of section 2265(a)(2)); 151 Cong. Rec. at E2640 (extension of remarks of Rep. Flake) (same); *Habeas Corpus Resource Ctr.,* 816 F.3d at 1245 (''[t]he certification is effective as of the date the Attorney General finds the state established its adequate mechanism''). A stay would mean, however, that the certification would not yet be effective in relation to cases in which state postconviction counsel was appointed on or after May 19, 1998—notwithstanding my determination that Arizona established a capital counsel mechanism satisfying chapter 154 on that date—but would only take effect at some unpredictable future time when litigation relating to the certification has run its course.

Moreover, the commenters' arguments for a stay were not convincing. It is not likely that a challenge to the certification will prevail on the merits because Arizona has in fact established a mechanism satisfying the requirements of chapter 154, as explained in this notice. The Ninth Circuit's determination in *Spears* that Arizona has established a capital counsel mechanism satisfying the requirements of chapter 154—a mechanism that has not changed materially since the time of that decision—makes it particularly unlikely that another court will reach a different conclusion.

Even if there were a likelihood of a challenge succeeding on the merits, there is no public interest, or prospect of irreparable injury, that justifies a stay. The commenters' claims on these points largely relate to a concern that the time available to seek federal habeas review will be severely curtailed or eliminated if the time limit of 28 U.S.C. 2263 becomes applicable. This concern is not well founded and does not bear on the validity of the certification as explained above. Commenters also raised, in this connection, criticisms of other aspects of chapter 154, including provisions of 28 U.S.C. 2264 and 2266 that limit review of procedurally defaulted claims and amendment of petitions, and the provisions that set time limits for federal habeas courts to conclude their review of state capital cases. These features of chapter 154 are legislative responses to the unique problems of delay in capital litigation and are within Congress's constitutional authority over matters of judicial procedure in federal habeas review, as discussed above. The litigation and adjudication of cases in conformity with the applicable legal rules are not sources of ''injury'' supporting a stay. All of these claims amount to criticisms of chapter 154 itself. They may arise in future habeas corpus litigation, but they do not bear on the question before me. *See Calderon* v. *Ashmus,* 523 U.S. at 746–49.

On the other side of the ledger, Arizona will be harmed if it is denied the benefits of the chapter 154 review procedures, to which it is legally entitled based on its establishment of a capital counsel mechanism satisfying the requirements of chapter 154. The survivors of victims murdered by persons under sentence of death in Arizona will be harmed by a stay, prolonging their suffering and further denying them the closure of a final disposition of the cases that concern them. *See* 152 Cong. Rec. at 2441–47 (remarks of Sen. Kyl); 151 Cong. Rec. at E2639 (extension of remarks of Rep. Flake). There will also be harm to any persons under sentence of death in Arizona who would be granted relief on a final disposition of their federal habeas petitions, but whose cases now linger for years or decades because there is no requirement that the cases be accorded priority or concluded within any time frame. As noted above, the submissions elicited by Arizona's request for certification show instances in which the litigation of Arizona capital cases has continued for over 20 years. Staying the remediation Congress has adopted, to which Arizona is entitled, would be harmful to many and not in the public interest.

Consequently, I do not stay my certification of Arizona's postconviction capital counsel mechanism and the effective date of the certification is May 19, 1998, in conformity with 28 U.S.C. 2265(a)(2).

Dated: April 6, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–07617 Filed 4–13–20; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Student Data Form

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 14, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of

the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA Form 182 is used to collect student group and emergency contact information from OSHA Training Institute students. The collected information is used to contact a designated person in case of an emergency. Student group data is used for reports, and tuition receipts. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 27, 2019 (84 FR 71478).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Student Data Form.

OMB Control Number: 1218–0172.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 4,000.

Total Estimated Number of Responses: 4,000.

Total Estimated Annual Time Burden: 333 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 7, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07792 Filed 4–13–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Fidelity Bonding Issuance

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 14, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department's Federal Bonding Program (FBP) provides fidelity bonds that protect employers hiring at-risk job applicants from theft, forgery, or embezzlement by the employee. Although the bonds have primarily served offenders, any at-risk job applicant is eligible for bonding services, including: Recovering substance abusers (alcohol or drugs), welfare recipients and other persons having poor financial credit, economically disadvantaged youth and adults who lack a work history, individuals dishonorably discharged from the military, and others. Over the years, the FBP has remained a relatively small program, currently serving about 900 offenders a year. The Department is now expanding the use of fidelity bonds in placing offenders by providing funds to states to purchase such bonds. The Department seeks approval under the PRA for the reporting and record keeping requirements of this new demonstration project. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 5, 2019 (84 FR 46762).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Fidelity Bonding Issuance.

OMB Control Number: 1205–0NEW.

Affected Public: Individuals or households, Private Sector, business or other-profits State, Local and Tribal Government.

Total Estimated Number of Respondents: 24,000.

Total Estimated Number of Responses: 6,000.

Total Estimated Annual Time Burden: 1,800 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: April 7, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–07820 Filed 4–13–20; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0005]

Whistleblower Stakeholder Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; meeting changes.

SUMMARY: On March 13, 2020, OSHA published a notice announcing a stakeholder meeting on May 12, 2020. This document makes several changes to that notice. The meeting will now be held only via telephone. There will be no in-person participation option, and participants must pre-register for this meeting. If you wish to attend the public meeting, you must register using this link *https://www.eventbrite.com/e/whistleblower-stakeholder-meeting-tickets-92898902117* by close of business on May 5, 2020. A call-in number will be sent to you upon registration.

FOR FURTHER INFORMATION CONTACT: *For general information:* Mr. Anthony Rosa, Deputy Director, OSHA Directorate of Whistleblower Protection Programs, U.S. Department of Labor; telephone: (202) 693–2199; email: *osha.dwpp@dol.gov.*

Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Secretary's Order 01–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012).

Signed at Washington, DC, on April 9, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–07855 Filed 4–13–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Paid Leave Under the Families First Coronavirus Response Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, ''Paid Leave under the Families First Coronavirus Response Act.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 15, 2020.

ADDRESSES: You may submit comments identified by Control Number 1235–0031, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), which creates two new emergency paid leave requirements in response to the COVID–19 global pandemic. Division E of the FFCRA, ''The Emergency Paid Sick Leave Act'' (EPSLA), entitles certain employees to take up to two weeks of paid sick leave. Division C of the FFCRA, ''The Emergency Family and Medical Leave Expansion Act'' (EFMLEA), which amends Title I of the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.* (FMLA), permits certain employees to take up to twelve weeks of expanded family and medical leave, ten of which are paid, for specified reasons related to COVID–19. On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136 (CARES Act), which amends certain provisions of the EPSLA and the provisions of the FMLA added by the EFMLEA.

In general, the FFCRA requires covered employers to provide eligible employees up to two weeks of paid sick leave at full pay, up to a specified cap, when the employee is unable to work because the employee is subject to a federal, state, or local quarantine or isolation order related to COVID–19, has been advised by a health care provider to self-quarantine due to concerns related to COVID–19, or is experiencing COVID–19 symptoms and seeking a medical diagnosis. The FFCRA also provides up to two weeks of paid sick leave at partial pay, up to a specified cap, when an employee is unable to work because of a need to care for an individual subject to a federal, state, or local quarantine or isolation order related to COVID–19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID–19; because of a need to care for the employee's son or daughter whose

school or place of care is closed, or whose child care provider is unavailable, due to COVID–19 related reasons; or because the employee is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services. The FFCRA also requires covered employers to provide up to twelve weeks of expanded family and medical leave, up to ten weeks of which must be paid at partial pay, up to a specified cap, when an eligible employee is unable to work because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID–19 related reasons.

The FFCRA covers private employers with fewer than 500 employees and certain public employers. Small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care, or child care provider closings or unavailability, if the leave payments would jeopardize the viability of their business as a going concern.

Under the FFCRA, covered private employers qualify for reimbursement through refundable tax credits, as administered by the Department of the Treasury, for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA, up to per diem and aggregate caps, and for allocable costs related to the maintenance of health care coverage under any group health plan while the employee is on the leave provided under the FFCRA.

The CARES Act amended the FFCRA by providing certain technical corrections, as well as clarifying the caps for payment of leave; expanded family and medical leave to certain employees who were laid off or terminated after March 1, 2020, but are reemployed by the same employer prior to December 31, 2020; and provided authority to the Director of the Office of Management and Budget (OMB) to exclude certain federal employees from paid sick leave and expanded family and medical leave.

The FFCRA grants authority to the Secretary to issue regulations for certain purposes. In particular, sections 3102(b), as amended by section 3611(7) of the CARES Act, and 5111(3) of the FFCRA grant the Secretary authority to issue regulations ''as necessary, to carry out the purposes of this Act, including to ensure consistency'' between the EPSLA and the EFMLEA. The Department issued the temporary rule to carry out the purposes of the FFCRA. This rule published in the **Federal Register** on April 6, 2020 (85 FR 19326). The new paid sick leave and expanded family and medical leave requirements became operational on April 1, 2020, and expire on December 31, 2020. As part of OMB's consideration of the temporary rule, the Department submitted an emergency processing request for the PRA package associated with the rule. Where OMB approves the collection of information on an emergency basis, the approval is time-limited and the agency must publish notice and comment on the collection to give the public opportunity to respond. Pursuant to 5 CFR 1320.13, OMB assigned control number 1235–0031 to this collection and approved the request on April 2, 2020 with an expiration of October, 2020.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the Paid Leave provisions under the Families First Coronavirus Response Act (as amended by the CARES Act).

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Paid Leave under the Families First Coronavirus Response Act.

OMB Control Number: 1235–0031.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal, State, Local, or Tribal Government.

Total Respondents: 7,903,071.

Total Annual Responses: 7,903,071.

Estimated Total Burden Hours: 801,962.

Estimated Time per Response: Varies with type of request (1.25–20 minutes).

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $4,255,500.

Dated: April 8, 2020.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2020–07821 Filed 4–13–20; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities will hold one meeting of the Humanities Panel, a federal advisory committee, during May 2020. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting date. The meeting will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the date specified below.

ADDRESSES: The meeting will be via videoconference originating at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meeting:

1. DATE: May 1, 2020

This video meeting will discuss applications for the Institutes for Advanced Topics in the Digital Humanities, submitted to the Office of Digital Humanities.

Because this meeting will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meeting will be

closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: April 8, 2020.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2020–07764 Filed 4–13–20; 8:45 am]

BILLING CODE 7536–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Regular Board of Directors Meeting

TIME AND DATE: 2:00 p.m., Thursday, April 16, 2020.

PLACE: via Conference Call.

STATUS: Open (with the exception of Executive Session).

MATTERS TO BE CONSIDERED: The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. Call to Order
II. Executive Session
III. Action Item Approval of Minutes
IV. Action Item External Auditor Selection
V. Action Item Truist Proposal up to $10M
VI. Action Item LIFT 7.0 Board Decision Memo
VII. Discussion Item NeighborWorks Compass ™
VIII. Discussion Item Master Investment Agreement Renewal and Capital Corporations Funding
IX. Discussion Item Revising Fundraising Policy to Reflect December 2019 Board Resolution
X. Discussion Item Kansas City Office Lease Renewal
XI. Management Program Background and Updates
XII. Adjournment

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2020–07958 Filed 4–10–20; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0072]

Design Review Guide for Instrumentation and Controls for Non-Light-Water Reactor Reviews

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its draft Design Review Guide (DRG): Instrumentation and Controls for Non-Light-Water Reactor (non-LWR) Reviews. This DRG provides guidance for the NRC staff to use in reviewing the Instrumentation and Controls (I&C) portions of applications for advanced non-LWRs within the bounds of existing regulations. The guidance supports NRC's Non-LWR Vision and Strategy, Implementation Action Plan Strategy 3, which involves developing: (1) Guidance for flexible regulatory review processes for non-LWRs within the bounds of existing regulations; and (2) a new non-LWR regulatory framework that is risk-informed and performance-based, and that features NRC staff's review efforts commensurate with the demonstrated safety performance of non-LWR technologies.

DATES: Submit comments by June 29, 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.

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–2020–0072. 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: Jordan Hoellman, Office of Nuclear Reactor Regulation, telephone: 301–415–5481, email: *Jordan.Hoellman2@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0072 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–2020–0072.
- *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 Design Review Guide (DRG): Instrumentation and Controls for Non-Light-Water Reactor Reviews is available in ADAMS under Accession No. ML20045D302.

B. Submitting Comments

Please include Docket ID NRC–2020–0072 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

This DRG guidance leverages the Small Modular Reactor Design-Specific Review Standard Chapter 7 framework while factoring in the lessons learned from new reactor reviews. This guidance supports the NRC's Vision and Strategy document entitled ''Safely Achieving Effective and Efficient Non-Light Water Reactor Mission Readiness'' (ADAMS Accession No. ML16356A670), and the ''Non-LWR Vision and Strategy Near-Term Implementation Action Plans'' (ADAMS Accession No. ML17165A069). Specifically, the guidance discussed herein supports Implementation Action Plan Strategy 3, which involves developing: (1) Guidance for flexible regulatory review processes for non-LWRs within the bounds of existing regulations; and (2) a new non-LWR regulatory framework that is risk-informed and performance-based, and that features NRC staff's review efforts commensurate with the demonstrated safety performance of non-LWR technologies. This DRG also factors in the principles in Draft Regulatory Guide (DG)-1353, ''Guidance for Technology-Inclusive, Risk-Informed, and Performance-Based Approach to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors'' (ADAMS Accession No. ML18312A242). DG–1353 endorses the methodology in Nuclear Energy Institute 18–04, ''Risk-Informed Performance-Based Technology Inclusive Guidance for Non-Light Water Reactor Licensing Basis Development'' (ADAMS Accession No. ML19241A472), with clarifications and points of emphasis.

This DRG provides guidance for the NRC staff responsible for the review of the I&C portion of license applications to help determine whether: (1) The applicant has demonstrated that there is reasonable assurance that the plant is designed to adequately protect public health and safety and the environment; and (2) the design complies with the applicable regulatory requirements. Some advanced reactor reviews will use a core review team approach and the I&C topics will be addressed as part of the staff's collaborations on the overall plant design and associated programmatic controls. This DRG supports the I&C-related reviews as part of such a core review team approach or a more traditional matrix-type review of applications.

The NRC staff guidance discussed herein is a proactive way to further modernize the I&C safety review of advanced non-LWR applications by making it technology-inclusive, risk-informed, and performance-based.

Dated: April 8, 2020.

For the Nuclear Regulatory Commission.

John P. Segala,

Chief, Advanced Reactor Policy Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–07798 Filed 4–13–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 13, 20, 27, May 4, 11, 18, 2020.

PLACE: via Teleconference.

STATUS: Public.

Week of April 13, 2020

Monday, April 13, 2020

11:00 a.m. Affirmation Session (Public Meeting via Teleconference) (Tentative)

a. Crow Butte Resources, Inc. (Marsland Expansion Area), Petition for Review of LBP–19–2, LBP–18–3, and Memorandum and Order Granting Summary Disposition (Tentative).

b. United States Department of Energy (Export of 93.35% Enriched Uranium) (Petitions Seeking Leave to Intervene and Request for Hearing) (Tentative).

(Contact: Denise McGovern: 301–415–0681).

ADDITIONAL INFORMATION: By a vote of 4–0 on April 10, 2020, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on April 13, 2020 and will be held via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

Week of April 20, 2020—Tentative

There are no meetings scheduled for the week of April 20, 2020.

Week of April 27, 2020—Tentative

There are no meetings scheduled for the week of April 27, 2020.

Week of May 4, 2020—Tentative

There are no meetings scheduled for the week of May 4, 2020.

Week of May 11, 2020—Tentative

There are no meetings scheduled for the week of May 11, 2020.

Week of May 18, 2020—Tentative

There are no meetings scheduled for the week of May 18, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 10, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–07960 Filed 4–10–20; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Combined Federal Campaign Charity Applications, OPM Form 1654–B

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Combined Federal Campaign (CFC), Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the renewal of an information collection request, Combined Federal Campaign Retiree/

Annuitant Pledge Form OMB Control No. 3206–0271, which include OPM Form 1654–B. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection. The Office of Personnel Management is particularly interested in comments that:

1. Evaluate whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until June 15, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

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

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Combined Federal Campaign, 1900 E Street NW, Washington, DC 20415, Attention: Marcus Glasgow or sent via electronic mail to *cfc@opm.gov.*

SUPPLEMENTARY INFORMATION: The Combined Federal Campaign (CFC) is the world's largest and most successful annual workplace philanthropic giving campaign, with 36 CFC campaign zones throughout the country and overseas raising millions of dollars each year. The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all. With the signing of Executive Order 13743 on October 13, 2016, authorizing the solicitation of federal annuitants, the Combined Federal Campaign Retiree/Annuitant Pledge Form will be used to collect and process federal retirees' and annuitants' pledges through the Combined Federal Campaign.

Analysis

Agency: Combined Federal Campaign, Office of Personnel Management.

Title: OPM Form 1654–B.

OMB Number: OMB Control No. 3206–0271.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 250,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 125,000 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–07766 Filed 4–13–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0201; Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season Website

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection (ICR), Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season website, Open Season Online.

DATES: Comments are encouraged and will be accepted until June 15, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION:

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0201). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System, and the Open Season website, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management

when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online.

OMB Number: 3206–0201.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 350,100.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 58,350.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–07765 Filed 4–13–20; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88593; File No. SR–NYSENAT–2020–13]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 8, 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 March 27, 2020, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2020. The pilot program is currently due to expire on April 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 11.19 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 11.19 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 11.19.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rule 7.10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11] The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020.[12]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further six months to the close of business on October 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) as described in former Rule 11.19 will be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[13] In such an event, the remaining sections of Rule 7.10 would continue to apply to all transactions

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NSX–2010–07).

[5] *See* Securities Exchange Act Release No. 68803 (Feb. 1, 2013), 78 FR 9078 (Feb. 7, 2013) (SR–NSX–2013–06).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NSX–2014–08).

[7] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENAT–2018–02).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71797 (March 25, 2014), 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85522 (April 5, 2019), 84 FR 14704 (April 11, 2019) (SR–NYSENAT–2019–07).

[12] *See* Securities Exchange Act Release No. 87352 (October 18, 2019), 84 FR 57063 (October 24, 2019) (SR–NYSENAT–2019–24).

[13] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

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 proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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 [16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–13 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–2020–13. 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

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–13 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07772 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88602; File No. SR–NYSE–2020–27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Price List To Respond to the Current Volatile Market Environment That Has Resulted in Unprecedented Average Daily Volumes and the Temporary Closure of the Trading Floor

April 8, 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 April 1, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) clarify for purposes of certain rebates applicable to Designated Market Makers (''DMM'') that in a month where the average monthly NYSE consolidated average daily volume (''CADV'') equals or exceeds a certain threshold, the Exchange will use the most recent month where the average monthly NYSE CADV is less than that threshold to calculate ''Security CADV''; (2) revise the providing liquidity requirement for certain DMM rebates in a month where the average monthly NYSE CADV equals or exceeds a certain threshold; (3) cap the maximum average number of shares per day for the billing month for purposes of calculating NYSE CADV for the Supplemental Liquidity Provider (''SLP'') Tape A adding tiers; (4) introduce maximum average share caps applicable to SLPs for adding displayed and non-displayed liquidity in Tape B and C securities; and (5) waive equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for April 2020 in connection with the recent temporary closing of the Trading Floor. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) clarify for purposes of certain rebates applicable to DMMs that in a month where the average monthly NYSE CADV equals or exceeds a certain threshold, the Exchange will use the most recent month where the average monthly NYSE CADV is less than that threshold to calculate ''Security CADV''; (2) revise the providing liquidity requirement for certain DMM rebates in a month where the average monthly NYSE CADV equals or exceeds a certain threshold; (3) cap the maximum average number of shares per day for the billing month for purposes of calculating NYSE CADV for the SLP Tape A adding tiers; (4) introduce maximum average share caps applicable to SLPs for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities; and (5) waive equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for April 2020 in connection with the recent temporary closing of the Trading Floor.

The proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (''COVID–19''), by providing a degree of certainty to DMMs and SLPs adding liquidity to the Exchange by adjusting the threshold requirements for specified fees and credits to account for the unprecedented volume and to Trading Floor-based member organizations impacted by the temporary closing of the Trading Floor by waiving specified Floor-based fees for the month of April 2020.

Specifically, the Exchange proposes the following:

• For purposes of DMM rebates that are based on whether the DMM meets either the More Active Securities Quoting Requirement or the Less Active Securities Quoting Requirement, as those terms are defined in the Price List, which thresholds are based the average daily consolidated volume of securities (''Security ADV''), specify that in a month where NYSE CADV equals or is greater than 5.5 billion shares, the NYSE will use the most recent month where the average monthly NYSE CADV is less than 5.5 billion shares to calculate the Security CADV.

[21] 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.

• In order for DMMs to qualify for rebates when adding liquidity in More Active Securities, in a month where the average monthly NYSE CADV is equal to or greater than 5.5 billion shares, lower the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity.

• For purposes of calculating NYSE CADV for SLP Tiers 1, 1A, 2, 3, 4, SLP Step Up Tier and Incremental SLP Step Up Tier adding credits, establish a monthly maximum average cap of 5.5 billion shares per day for NYSE CADV.

• For purposes of calculating Tier 1 and Tier 2 SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities, establish a monthly maximum average cap of 2.75 billion shares per day for Tape B, 3.25 billion shares for Tape C, and 6.0 billion shares for Tape B and C combined.

• Waive booth telephone and related service charges and trading license fees for the billing month of April 2020 for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.

The Exchange proposes to implement the fee changes effective April 1, 2020.

Current Market and Competitive Environment

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID–19. Trading volumes on the Exchange have surged. For instance, between March 1 and March 30, 2020, NYSE CADV was 7.4 billion shares, 95% higher than the average NYSE CADV between 2018 and 2020.

Beginning on March 16, 2020, to slow the spread of COVID–19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.[4]

Moreover, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

The proposed rule change accordingly responds to these unprecedented events and the current competitive landscape where market participants can and do move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes.

Proposed Rule Change

DMM Rebates Based on Calculation of Security CADV

The section of the Exchange's Price List entitled ''Fees and Credits Applicable to DMMs'' sets out different monthly rebate amounts to DMMs depending on the CADV of the security and the DMM quoting percentage and size in any month in which the DMM meets the More Active Securities Quoting Requirement [10] and the Less Active Securities Quoting Requirement,[11] as well as DMM providing as a percent of the NYSE's total intraday adding liquidity, as those terms are defined in the Price List. Specifically, the monthly rebates offered by the Exchange for DMMs meeting the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement are determined based on securities with a Security CADV (*i.e.,* the average daily consolidated volume for the applicable security) equal to or greater than 1,000,000 shares per month, respectively, in the previous month. The Exchange also provides monthly rebates to DMMs depending on the Security CADV and the DMM quoting percentage. Finally, the Exchange allocates market data quote revenue (''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation to DMMs for securities with a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) based on the DMM meeting specified quoting percentage requirements at the NBBO.[12]

For each of these calculations based on Security CADV, the Exchange proposes to add a footnote following

[4] *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *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'').

[7] *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.*

[8] *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.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] The ''More Active Securities Quoting Requirement'' is met if the More Active Security has a stock price of $1.00 or more and the DMM quotes at the NBBO in the applicable security at least 10% of the time in the applicable month.

[11] The ''Less Active Securities Quoting Requirement'' is met when a security has a consolidated ADV of less than 1,000,000 shares per month in the previous month and a stock price of $1.00 or more, and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month.

[12] *See* NYSE Price List, at 8–13, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

each use of ''previous month'' in the DMM section of the Price List providing that in a month where NYSE CADV equals or is greater than 5.5 billion shares, the Exchange will use the most recent month where NYSE CADV is less than 5.5 billion shares to calculate the Security CADV.

For example, assume the relevant billing month is April 2020. Assume NYSE CADV in the preceding month of March 2020 was equal to or greater than 5.5 billion shares and that the most recent month where NYSE CADV was less than 5.5 billion shares was February 2020. In this example, the Exchange would use trading volumes from February 2020 to calculate Security CADV and, as long as NYSE CADV was under 5.5 billion shares, the Security CADV for each security would be based on that symbol's CADV in the month of February. In the event that NYSE CADV in February 2020 was also equal to or greater than 5.5 billion shares, the Exchange would use the next most recent month prior to February where NYSE CADV was under 5.5 billion shares.

DMM Adding Liquidity Credits in More Active Securities

Currently, DMMs earn a rebate of $0.0031 per share when adding liquidity, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets the More Active Securities Quoting Requirement [13] and the DMM (1) has a DMM Quoted Size [14] for an applicable month that is at least 10% of the NYSE Quoted Size, and (2) quotes at the National Best Bid or Offer (''NBBO'') in the applicable security at least 20% of the time in the applicable month, and (3) has providing liquidity that is more than 5% of the NYSE's total intraday adding liquidity in each such security for that month.

DMMs electing the optional monthly rebate per security (''Rebate per Security'') instead receive a lower monthly rebate per share (''Optional Credit'') of $0.0030 per share if the quoting and providing requirements are met. A DMM that meets (1) these requirements, and (2) the DMM Additional Quoting Requirement [15] would receive an incremental credit of $0.0003 per share in each eligible assigned More Active Security.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be 2.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

Similarly, DMMs currently earn a rebate of $0.0034 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets the More Active Securities Quoting Requirement and (1) has a DMM Quoted Size for an applicable month that is at least 15% of the NYSE Quoted Size, (2) for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) quotes at the NBBO in the applicable security at least 30% of the time in the applicable month. DMMs electing the optional Rebate per Security instead receive an Optional Credit of $0.0033 per share if the quoting and providing requirements are met. A DMM that meets (1) these current requirements, and (2) the DMM Additional Quoting Requirement receives an incremental credit of $0.0001 per share in each eligible assigned More Active Security.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be more than 7.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

Finally, DMMs currently earn a rebate of $0.0035 per share when adding liquidity with orders, other than MPL Orders, in More Active Securities if the More Active Security has a stock price of $1.00 or more and the DMM meets the More Active Securities Quoting Requirement and (1) has a DMM Quoted Size for an applicable month that is at least 25% of the NYSE Quoted Size, (2) for providing liquidity that is more than 15% of the NYSE's total intraday adding liquidity in each such security for that month, and (3) quotes at the NBBO in the applicable security at least 50% of the time in the applicable month. DMMs electing the optional Rebate per Security instead receive an Optional Credit of $0.0034 per share if the quoting and providing requirements are met.

The Exchange proposes that in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the DMM providing liquidity requirement would instead be more than 7.5% of the NYSE's total intraday adding liquidity in each such security for that month. The other current requirements and credits would otherwise remain unchanged.

NYSE CADV Cap for SLP Tape A Tiers

The Exchange currently offers tiered and non-tiered credits in Tape A securities to SLPs that meet certain quoting obligations in assigned securities based upon the total percent of NYSE CADV executed. For purposes of calculating NYSE CADV as currently used in SLP Tiers 1, 1A, 2, 3, 4, the SLP Step Up Tier and the Incremental SLP Step Up Tier, the Exchange proposes to establish a monthly maximum average cap of 5.5 billion shares per day for NYSE CADV in the billing month. To effectuate this change, the Exchange would add a footnote ** after ''NYSE CADV'' where the term appears in each tier specifying that, in a month where NYSE CADV equals or exceeds 5.5 billion shares per day for the billing month, NYSE CADV for that month will be subject to a cap of 5.5 billion shares per day for the billing month. Because SLP Tiers 1, 1A, 2, 4, and the SLP Step Up Tier contain cross-tier incentives based on adding liquidity as a percentage of Tape B and C CADV combined, the proposed footnote would also reference the proposed cap for Tape B and C securities combined discussed below applicable to CADV calculations for SLP Tiers 1 and 2 in Tape B and C securities. The Exchange would also add proposed footnote ** after ''Tape B and Tape C CADV'' in the SLP Tape A tiers referenced above.

For example, assume in the billing month that an SLP has an average daily adding volume of 5.5 million shares. Further assume that NYSE CADV was 7.5 billion shares during that month. To calculate the SLP adding ADV as a percent of NYSE CADV, the Exchange would use the NYSE CADV cap of 5.5 billion shares, yielding an adding percent of NYSE CADV of 0.10% rather than 0.07% if the Exchange had used 7.5 billion shares.

SLP CADV Caps for SLP Tiers in Tape B and C Securities

For Tape B and C securities, the Exchange currently offers several levels

[13] *See* note 10, *supra*.

[14] The ''NYSE Quoted Size'' is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The ''DMM Quoted Size'' is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO. *See* NYSE Price List, n. 7.

[15] The ''DMM Additional Quoting Requirement'' is defined as the DMM increasing their quoting at the NBBO by at least 5% over their quoting at the NBBO in September 2019, in at least 300 assigned securities.

of credits for SLP orders that provide displayed and non-displayed liquidity to the Exchange in Tape B and C securities priced at or above $1.00 based on the volume of orders as a percentage of CADV that member organizations send to the Exchange. The SLP Provide Tier credits (Non Tier, Tier 2, Tier 1 and Tape A Tier) range from $0.00005 to $0.0033. As described below, the Exchange proposes to cap the SLP provide percentage CADV for Tape B, Tape C and for Tape B and C combined.

Under current SLP Tier 1, in order for SLPs to qualify for the current $0.0031 per share credit per tape and the current $0.0033 per share credit per tape in an assigned Tape B or C security, an SLP must, among other things, add liquidity for all assigned Tape B securities of a CADV of at least 0.10% for Tape B and a CADV of at least 0.075% for Tape C. The requirements for the $0.0033 per share credit also provide that an SLP add liquidity for all assigned securities of at least 0.25% of Tape B and Tape C CADV combined. Under current SLP Provide Tier 2, SLPs are eligible for a $0.0029 per share credit per tape in an assigned Tape B or C security when adding displayed liquidity to the Exchange if the SLP, among other things, adds liquidity for all assigned Tape B and C securities in the aggregate of a CADV of at least 0.03% per tape.

The Exchange proposes to add footnote # specifying that the calculation of the relevant SLP provide percentage tape CADV would be subject to a maximum average for the billing month of 2.75 billion shares per day for Tape B, 3.25 billion shares for Tape C, and 6.0 billion shares for Tape B and C combined. The proposed caps would apply to all CADV calculations for SLP Tiers 1 and 2.

Fee Waivers for Trading Floor-Based Member Organizations

The Exchange charges certain equipment fees for the booth telephone system on the Trading Floor and associated service charges. Specifically, the Exchange charges an Annual Telephone Line Charge of $400 per phone number and $129 for a single line phone, jack, and data jack. The Exchange also assesses related service charges, as follows: $161.25 to install single jack (voice or data); $107.50 to relocate a jack; $53.75 to remove a jack; $107.50 to install voice or data line; $53.75 to disconnect data line; $53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at $106 per hour in 15 minute increments.[16]

Because, as described above, the Trading Floor at 11 Wall Street is temporarily closed, the Exchange proposes to waive these Trading Floor-based fees for April 2020 for member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The Exchange also proposes to waive these fees for April 2020 for member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

To effectuate this change, the Exchange proposes a new footnote 11 following ''Equipment Fee.'' [17]

The proposed change is designed to reduce monthly costs for member organizations with a Trading Floor presence that are unable to use the services associated with the fees while the Trading Floor is temporarily closed. The Exchange believes that this fee waiver would ease the financial burden associated with the temporary Trading Floor closure.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also proposes to waive trading license fees for April 2020. The Exchange currently offers tiered trading license fees, as follows.

For all member organizations, including Floor brokers with more than ten trading licenses but excluding Regulated Only Members as defined in Rule 2(b)(ii), the trading license fee is $50,000 for the first license held by the member organization unless one of the other rates is deemed applicable. For member organizations with 3–9 trading licenses, the Exchange charges $35,000 for the first license held by a member organization that has Floor broker executions accounting for 40% or more of the member organization's combined adding and taking volumes during the billing month. For Floor brokers with 1–2 trading licenses, the Exchange charges $25,000 for the first license held by a member organization that has Floor broker executions accounting for 40% or more of the member organization's combined adding and taking volumes during the billing month. Regulated Only Members are charged an annual administrative fee of $25,000.

The Exchange proposes to waive the April 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The indicated annual trading license fees will also be waived for April 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.

To effectuate this change, the Exchange proposes to add text describing the waiver to current footnote 15.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[19] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID–19 that has also resulted in the temporary closure of the NYSE Trading Floor. As a result of this volatility, the equity markets have experienced unprecedented trading volumes. Moreover, as also discussed above, the Exchange operates in a highly fragmented and competitive market. In view of these unprecedented events, and the current competitive landscape where market participants can and do move order flow, or discontinue or reduce use of certain categories of

[16] The Service Charges also include an Internet Equipment Monthly Hosting Fee that the Exchange does not propose to waive for April 2020.

[17] The Exchange proposes to delete current footnote 11, which provides that the Annual Telephone Line Charge will be waived on a prorated basis for Floor brokers for January, February and March 2013, as obsolete. There is no footnote 12 so the Exchange proposes to renumber current footnotes 13 and 14.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4) & (5).

products, in response to fee changes, the Exchange believes that the proposed rule change is reasonable.

Specifically, the Exchange believes that using the most recent month where NYSE CADV is less than 5.5 billion shares to calculate the Security CADV for DMM monthly rebates for the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement, is reasonable because significantly fewer symbols would qualify as Less Active Securities when NYSE CADV is equal to or exceeds 5.5 billion shares.

Similarly, lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares in order for DMMs to qualify for rebates when adding liquidity in More Active Securities is reasonable because such extraordinarily high market volumes would make is significantly harder for DMMs to meet the DMM providing requirements.

Further, capping the Tape A monthly CADV at a maximum of 5.5 billion shares when calculating all Tape A SLP tiers and the Tape B CADV, Tape C CADV and Tape B and C combined CADV when calculating all Tape B and C SLP tiers is reasonable because such extraordinarily high market volumes would make it significantly harder for SLPs, whose adding volume is limited to proprietary adding liquidity, to meet the adding requirements for the aforementioned SLP tiers.

Finally, the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the temporary closure of the NYSE Trading Floor. The proposed change is designed to reduce costs for Floor participants for the month of April 2020 that are unable to conduct Floor operations while the Trading Floor remains temporarily closed. The Exchange believes that this fee waiver would ease the financial burden faced by member organizations that conduct business on the Trading Floor and benefit all such member organizations.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that the proposed use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares is an equitable allocation of fees because the proposed changes would apply to all similarly situated member organizations that are DMMs on the Exchange, and that all such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

For the same reasons, the proposed caps for calculating all Tape A SLP tiers and CADV for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities also constitute an equitable allocation of fees. The proposed caps for calculating SLP CADV across all tapes would apply equally to all similarly situated member organizations that are SLPs, all of whom would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

Finally, the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 are also an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor is temporarily closed. The proposed change is equitable as it is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to conduct Floor operations.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The proposed use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are DMMs, who would benefit from use of the lower volume threshold to calculate Security CADV on an equal basis.

The proposed caps for calculating all Tape A SLP tiers and CADV for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities also does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are SLPs, who would all benefit from use of the lower volume threshold to calculate SLP adding tier CADV across tapes on an equal basis.

The proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed indefinitely, but rather during the period that the Trading Floor is temporarily closed. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot conduct Floor operations while the Trading Floor remains closed.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] 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 continued participation of member organizations on the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID–19. 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

[20] 15 U.S.C. 78f(b)(8).

individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The Exchange believes that the use of a lower threshold to calculate Security CADV for DMM rebates and lowering the DMM providing requirements as a percent of the NYSE's total intraday adding liquidity in a month where NYSE CADV is equal to or greater than 5.5 billion shares, the proposed caps for calculating all Tape A SLP tiers and CADV for SLP credits for adding displayed and non-displayed liquidity to the Exchange in Tape B and C securities, and the proposed waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during April 2020 are designed to provide a degree of certainty to DMMs and SLPs adding liquidity to the Exchange during high volatility and to ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, 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 previously noted, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%. 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 rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is inoperative, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] 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) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–27 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

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[21] Regulation NMS, 70 FR at 37498–99.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88605; File No. SR–NYSEAMER–2020–28]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37E To Specify the Exchange's Source of Data Feeds From the Long-Term Stock Exchange, Inc.

April 8, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that on April 6, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37E to specify the Exchange's source of data feeds from the Long-Term Stock Exchange, Inc. (''LTSE'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37E, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37E(d) to specify that, for the LTSE, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from LTSE.

The Exchange proposes that this proposed rule change would be operative on the day that LTSE launches operations as an equities exchange, which is currently scheduled for May 15, 2020.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37E(d) to include the data feed source for the LTSE will ensure that Rule 7.37E correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b-4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

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)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[4] On March 25, 2020, LTSE announced that it would begin phasing in securities on its production system on May 15, 2020. *See* LTSE Market Announcement: MA–202–008, available here: *https://longtermstockexchange.com/static/MA-2020-008-dfec5067f88285a0f563a894451b1f22.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.* 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.

[10] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–28 on the subject line.

Paper Comments

• Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–28 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07781 Filed 4–13–20; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88595; File No. SR–NYSEAMER–2020–25]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE American Options Fee Schedule

April 8, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') to waive certain Floor-based fixed fees for the month of April 2020. The Exchange proposes to implement the fee change effective April 1, 2020. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to waive certain Floor-based fixed fees for the month of April 2020. The Exchange proposes to implement the fee change effective April 1, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Because the Trading Floor is temporarily unavailable, the Exchange proposes to waive for April 2020 certain Floor-based fixed fees. Specifically, for the month of April 2020, the Exchange proposes to waive fees associated with:

- Floor Access Fee;
- Floor Broker Handheld;
- Transport Charges;
- Floor Market Maker Podia;
- Booth Premises; and
- Wire Services.[4]

The Exchange notes that these fixed fees, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor. These fees are unrelated to trading volume and are charged for use of services made available to Floor participants on the Trading Floor. This proposed change is designed to reduce monthly costs for Floor participants while the Trading Floor is temporarily closed and Floor participants are unable to use the services associated with these fixed fees. The Exchange believes that this fee waiver would ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.[5]

[4] *See* proposed Fee Schedule, Section III.B, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees. The Exchange will re-evaluate the time limitations on this change (*i.e.,* whether it will need to apply to May) depending upon how long the Trading Floor remains temporarily closed and would file a separate proposed rule change if an extension is warranted.

[5] The Exchange will refund participants of the Floor Broker Prepayment Program for any prepaid April 2020 fees that are waived. *See* proposed Fee Schedule, Section III.E (providing that ''the Exchange will refund certain of the prepaid Eligible Fixed costs that were waived for April 2020, per Sections III.B and IV'').

The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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 Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[10]

This proposed change is designed to reduce monthly costs for Floor participants that are unable to conduct Floor operations, including any open outcry trading, while the Trading Floor is temporarily closed. The Exchange believes that this fee waiver would ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal waives certain Floor-based fixed fees for the month of April 2020, during the period that the Trading Floor is temporarily closed. The fees being waived are charged only to Floor participants and do not apply to participants that conduct business off-Floor. These fees are unrelated to trading volume and are charged for use of services made available to Floor participants on the Trading Floor. This proposed change is equitable as it is designed to reduce monthly costs for Floor participants that are unable to conduct Floor operations. The Exchange believes that this fee waiver would allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed fees indefinitely, but rather only during the period that the Trading Floor is temporarily closed. The proposed fee change is designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of affected ATP Holders, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. 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.'' [11]

Intramarket Competition. The proposed fee change is designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange. The Exchange believes that the proposed waiver of fees would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[10] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

[11] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[12] *See supra* note 9.

share of executed volume of multiply-listed equity & ETF options trades.[13]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange, which would make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] 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)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–25 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07774 Filed 4–13–20; 8:45 am]

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[13] Based on OCC data, *supra* note 10, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January, 2020.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33837]

Order Under Sections 6(c), 17(d), 38(a), and 57(i) of the Investment Company Act of 1940 and Rule 17d–1 Thereunder Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder

April 8, 2020.

The outbreak of coronavirus disease 2019 (COVID–19) has had far-reaching and unanticipated effects, including in our financial markets, and, in particular, our credit markets. In light of the current situation, we are issuing this Order providing exemptions from certain requirements of the Investment Company Act. The exemptions provide additional temporary flexibility for closed-end investment companies that have elected to be regulated as business development companies (''BDCs'') to issue and sell senior securities and participate in certain joint enterprises or other joint arrangements that would otherwise be prohibited by section 57(a)(4) of the Investment Company Act and Rule 17d–1 thereunder. BDCs were created to provide capital to smaller domestic operating companies that otherwise may not be able to readily access the capital markets (we refer to such companies as ''portfolio companies''). The Commission recognizes that, in the current environment, many BDCs may face challenges absent these exemptions in providing capital to their affected portfolio companies, and therefore, in fulfilling their statutory mandate. A BDC may face such challenges if (i) it is unable to satisfy the asset coverage requirements under the Investment Company Act due to temporary mark-downs in the value of the loans to such portfolio companies, or (ii) certain of its affiliates are prohibited from participating in additional investments in the BDC's portfolio companies due to restrictions in its current exemptive order permitting co-investments. In recognition of the current facts and circumstances, and for the reasons identified above, the Commission has determined that certain BDCs may be unable to meet their statutory mandate. Therefore, the temporary exemptions herein are necessary and appropriate in order for BDCs to continue providing credit support to portfolio companies impacted by COVID–19.

In light of the current and potential effects of COVID–19, the Commission

finds that the exemptions set forth below, as applicable:

Are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act;

Permit transactions under the terms of which the participation of each registered investment company is consistent with the provisions, policies, and purposes of the Investment Company Act, and not on a basis different from or less advantageous than that of other participants; and

Are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act.

The necessity for prompt action of the Commission does not permit prior notice of the Commission's action.

I. Time Period for the Exemptive Relief

The relief provided in each of the following Sections of this Order is limited to the period from (and including) the date of this Order to the earlier of (i) December 31, 2020 (including such date), or (ii) the date by which the BDC ceases to rely on this Order (the ''Exemption Period'').

The Commission intends to continue to monitor the situation as it develops. The time period for any or all of the relief may, if necessary, be extended with any additional conditions that are deemed appropriate, and the Commission may issue other relief as necessary or appropriate.

II. Issuance and Sale of Senior Securities by BDCs

It is Ordered, pursuant to sections 6(c) and 38(a) of the Investment Company Act that:

During the Exemption Period, notwithstanding the asset coverage requirements of sections 18(a)(1)(A) and 18(a)(2)(A) of the Investment Company Act, as modified for BDCs by sections 61(a)(1) and 61(a)(2), and the requirement of section 18(b) of the Investment Company Act to determine asset coverage on the basis of values calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination, a BDC may issue or sell a senior security that represents an indebtedness or that is a stock (together, the ''covered senior securities''), provided that:

(a) *Adjusted Portfolio Value.* At the time of any issuance or sale of a covered senior security, the BDC shall calculate asset coverage ratios in accordance with section 18(b) of the Investment Company Act, except that, in reliance on this Order, with respect to portfolio company holdings (i) that the BDC held at December 31, 2019; (ii) that the BDC continues to hold at the time of such issuance or sale; and (iii) for which the BDC is not recognizing a realized loss,[1] the BDC may use values calculated as of December 31, 2019, to calculate portfolio value (the ''Adjusted Portfolio Value'') to meet an Adjusted Asset Coverage Ratio.[2] To calculate the Adjusted Asset Coverage Ratio, a BDC must reduce its asset coverage ratio using the Adjusted Portfolio Value by an amount equal to 25% of the difference between the asset coverage ratio calculated using the Adjusted Portfolio Value and the asset coverage ratio calculated in accordance with section 18(b) of the Investment Company Act.[3] For example a BDC has a 220% asset coverage ratio on December 31, 2019.[4] Its asset coverage ratio declines to 160% on March 31, 2020, not using the Adjusted Portfolio Value, and 200% if it calculated the ratio (without the 25% decrease) using the Adjusted Portfolio Value. This BDC would have an Adjusted Asset Coverage Ratio of 190% (200% minus 10% (25% of the difference between 200% and 160%)).

(b) *Election.* Prior to relying on section II of this Order, a BDC must make an election by filing on Form 8–K. Similarly, a BDC may withdraw its election through filing on Form 8–K.

(c) *Limitation on New Investments.* A BDC that has elected to rely on section II of this Order shall not, for 90 days from the date of such election, make an initial investment in any portfolio company in which the BDC was not already invested as of the date of this Order, provided that a BDC may make an initial investment in such a portfolio company if at the time of investment its asset coverage ratio complies with the asset coverage ratio applicable to it under section 18 of the Investment Company Act, as modified by section 61.

(d) *Board Approval of Reliance on this Order.* Prior to the BDC's election to rely on section II of this Order, the BDC's board of directors or trustees (''Board''), including a required majority of the Board, as defined in section 57(o) of the Investment Company Act (a ''Required Majority''), shall have determined that the issuance or sale of covered senior securities is permitted by this Order and is in the best interests of the BDC and its shareholders.

(e) *Board Approval of Each Issuance of Senior Securities.* Prior to a BDC issuing or selling covered senior securities, the Board, including a Required Majority, shall determine that each such issuance is in the best interests of the BDC and its shareholders. Prior to making such determination, the Board must obtain and consider (i) a certification from the BDC's investment adviser that the issuance of covered senior securities is in the best interests of the BDC and its shareholders; such certification shall include not only the investment adviser's recommendation, but also the reasons therefore, including whether the adviser has considered other reasonable alternatives that would not result in the issuance or sale of a covered senior security; and (ii) advice from an Independent Evaluator[5] regarding whether the terms and conditions of the proposed issuance or sale of a covered senior security are fair and reasonable compared to similar issuances, if any, by unaffiliated third parties in light of current market conditions.

(f) *No Sunset Period.* The Board of any BDC that has elected to rely on section II of this Order shall receive and review, no less frequently than monthly, reports prepared by the BDC's investment adviser regarding and assessing the efforts that the investment adviser has undertaken, and progress

[1] BDCs may not include a December 31, 2019, fair value measurement in their Adjusted Asset Coverage Ratio if the portfolio company holding is permanently impaired. For purposes of this Order, a permanently impaired holding is a holding where a BDC recognized a realized loss subsequent to December 31, 2019, and the loss is not recoverable. For example, a BDC's portfolio company may have been impacted by events occurring in 2020, such as a natural disaster, the permanent loss of an operating license, or an enacted temporary shelter-in-place policy, and such BDC may have determined that a permanent valuation write down or a portion thereof was necessary as the loss will not be recoverable.

[2] As described, the adjustment permitted by this Order applies only to portfolio company holdings that are not permanently impaired, and that are held both at December 31, 2019, and at the date of issuance of the covered senior security subject to this Order. The adjustment does not apply to portfolio company holdings acquired after December 31, 2019. For purposes of this Order, all assets acquired and all senior securities issued after December 31, 2019, that are held or outstanding at the date of the calculation of the Adjusted Asset Coverage Ratio shall be included in the calculation without adjustment.

[3] Further, the Adjusted Portfolio Value is solely for purposes of calculating the BDC's asset coverage ratio. BDCs must adhere to generally accepted accounting principles in the United States for purposes of financial reporting, which requires application of fair value measurement for portfolio holdings under the Financial Accounting Standards Board Accounting Standards Codification Topic 820: *Fair Value Measurements.*

[4] For BDCs, sections 61(a)(1) and 61(a)(2) of the Investment Company Act modify the asset coverage requirements of section 18(a) to be either 200 percent or 150 percent (provided certain conditions have been met).

[5] The term ''Independent Evaluator'' shall mean a person who has expertise in the valuation of securities and other financial assets and who is not an interested person, as defined in section 2(a)(19) of the Investment Company Act, of the BDC, or any affiliate thereof.

that the BDC has made, towards achieving compliance with the asset coverage requirements under section 18 of the Investment Company Act, as modified by section 61, by the expiration of the Exemption Period. Upon expiration of the Exemption Period, any BDC not in compliance with the asset coverage requirements applicable to such BDC at that time as described in sections 18(a)(1)(A) and 18(a)(2)(A), as modified by sections 61(a)(1) and 61(a)(2), shall immediately make a filing on Form 8–K that includes the following information: (i) The BDC's current asset coverage ratio; (ii) the reasons why the BDC was unable to comply with the asset coverage requirements; (iii) the time frame within which the BDC expects to come into compliance with the asset coverage requirements; and (iv) the specific steps that the BDC will be undertaking to bring itself into compliance with the asset coverage requirements.[6]

(g) *Recordkeeping.* Each BDC shall make and preserve, for a period of not less than six years, the first two years in an easily accessible place, minutes describing (i) the Board's deliberations in connection with paragraph (e) above, including the factors considered by the board in connection with such determinations, as well as all information, documents and reports provided to the Board in connection therewith; and (ii) the reports made to the Board pursuant to paragraph (f) above, including copies of all other information provided to or relied upon by the Board.

(h) *No Compensation or Remuneration of Any Kind.* Except (i) to the extent permitted by section 57(k) of the Investment Company Act; or (ii) for payments or distributions made by an issuer to all holders of a security in accordance with the security's terms, no affiliated person of the BDC nor any affiliated person of such a person, shall receive any transaction fees (including break-up, structuring, monitoring or commitment fees) or other remuneration from an issuer in which the BDC invests during the Exemption Period. For the avoidance of doubt, this condition does not apply to the receipt of investment advisory fees by an investment adviser to the BDC under an investment management agreement entered into in accordance with section 15 of the Investment Company Act.

(i) This Order provides relief only to issue or sell senior securities representing an indebtedness or that is a stock. This Order does not provide relief in connection with the declaration or payment of any dividend or any other distribution.

III. Expansion of Relief for BDCs With Existing Co-Investment Orders

It is Ordered, pursuant to sections 17(d) and 57(i) of the Investment Company Act and rule 17d–1 thereunder that:

During the Exemption Period, notwithstanding sections 17(d) and 57(a)(4) of the Investment Company Act and rule 17d–1 thereunder, any BDC to which a Commission order permitting co-investment transactions in portfolio companies with certain affiliated persons is currently applicable (''existing co-investment order'') may:

Participate in a Follow-On Investment (which may include a Non-Negotiated Follow-On Investment) with one or more Regulated Funds and/or Affiliated Funds, provided that (i) if such participant is a Regulated Fund, it has previously participated in a Co-Investment Transaction with the BDC with respect to the issuer, and (ii) if such participant is an Affiliated Fund, it either (X) has previously participated in a Co-Investment Transaction with the BDC with respect to the issuer, or (Y) is not invested in the issuer;[7] *provided that:*

(a) Any such transaction is otherwise effected in accordance with the terms and conditions of the existing co-investment order; and

(b) *Board Oversight.*

(1) *Non-Negotiated Follow-On Investments.* Non-Negotiated Follow-On Investments do not require prior approval by the Board; however they are subject to the periodic reporting requirements set forth in the BDC's existing co-investment order.

(2) *Follow-On Investments other than Non-Negotiated Follow-On Investments.* In connection with making the findings required by the BDC's existing co-investment order with respect to Follow-On Investments that are not Non-Negotiated Follow-On Investments, the Board, and a Required Majority, shall review the proposed Follow-On Investment both on a stand-alone basis and in relation to the total economic exposure of the BDC to the issuer.[8]

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07788 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

[6] Sections 18 and 61 of the Investment Company Act generally prohibit a BDC that is not in compliance with its asset coverage requirements from paying a cash dividend or issuing additional senior securities.

[7] The terms Follow-On Investment, Regulated Fund, Affiliated Fund and Co-Investment Transaction shall have the same meanings ascribed to them in the BDC's existing co-investment order, or, if the BDC's existing co-investment order uses a substantially similar term, the substantially similar term. For purposes of this Order, the term Affiliated Fund does not include any open or closed-end investment company registered under the Investment Company Act or a BDC.

The term ''Non-Negotiated Follow-On Investment'' shall be given the meaning ascribed to it in existing co-investment orders. For purposes of this Order, a BDC may participate in a Non-Negotiated Follow-On Investment in reliance on this Order whether or not such term is used in its existing co-investment order.

[8] For purposes of complying with this condition of this Order, the Board, and a Required Majority, need not make the findings required with respect to Enhanced Review Follow-On Investments, as such term is defined in existing co-investment orders.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88604; File No. SR–NYSECHX–2020–12]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7.37 To Update the Exchange's Source of Data Feeds From the Long-Term Stock Exchange, Inc.

April 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2020, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to update the Exchange's source of data feeds from the Long-Term Stock Exchange, Inc. (''LTSE'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(d) to specify that, with respect to the LTSE, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from LTSE.

The Exchange proposes that this proposed rule change would be operative on the day that LTSE launches operations as an equities exchange, which is currently scheduled for May 15, 2020.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37(d) to update the data feed source for the LTSE will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

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)[10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–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–NYSECHX–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

[5] On March 25, 2020, LTSE announced that it would begin phasing in securities on its production system on May 15, 2020. *See* LTSE Market Announcement: MA–202–008, available here: *https://longtermstockexchange.com/static/MA-2020-008-dfec5067f88285a0f563a894451b1f22.pdf.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(2)(B).

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–12, and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07780 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88608]

Order Granting Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 608(e) of Regulation NMS Under the Exchange Act to Rule 608(e) of Regulation NMS Under the Exchange Act, Relating to Granularity of Timestamps Specified in Section 6.8(b) and Appendix D, Section 3 of the National Market System Plan Governing the Consolidated Audit Trail

April 8, 2020.

I. Introduction

By letter dated February 3, 2020, BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors Exchange LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, NASDAQ BX, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., and Long Term Stock Exchange, Inc. (collectively, the ''Participants'') to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[1] requested that the Securities and Exchange Commission (''Commission'' or ''SEC'') grant limited exemptive relief to the Participants, pursuant to its authority under Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 608(e) of Regulation NMS under the Exchange Act, from the timestamp granularity requirements of Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan.[3]

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''[4] Under Rule 608(e) of Regulation NMS, the Commission may ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.''[5]

For the reasons set forth below, this Order grants the Participants' request for an exemption from Section 6.8(b) and Appendix D, Section 3 of the CAT NMS Plan as set forth in the February 3, 2020 Exemption Request, subject to certain conditions.[6]

II. Description

The CAT NMS Plan sets forth certain requirements regarding the granularity of timestamps accepted by the CAT system. Specifically, Section 6.8(b) of the CAT NMS Plan states ''[e]ach Participant shall, and through its Compliance Rule shall require its Industry Members to, report information required by SEC Rule 613 and this Agreement to the Central Repository in milliseconds,'' but that ''[t]o the extent that any Participant's order handling or execution systems utilize timestamps in increments finer than the minimum required in this Agreement, such Participant shall utilize such finer increment when reporting CAT Data to the Central Repository so that all Reportable Events reported to the Central Repository can be adequately sequenced.''[7] Section 6.8(b) further states that ''each Participant shall, through its Compliance Rule: (i) Require that, to the extent that its Industry Members utilize timestamps in increments finer than the minimum required in this Agreement in their order handling or execution systems, such Industry Members shall utilize such finer increment when reporting CAT Data to the Central Repository.''[8] In addition, Section 3 of Appendix D of the CAT NMS Plan states that the Central Repository must be able to ''[a]ccept time stamps on order events handled electronically to the finest level of granularity captured by CAT Reporters.''

Section 6.8(c) of the CAT NMS Plan imposes further requirements on Participants regarding analysis of timestamp granularity. Specifically, Section 6.8(c) of the CAT NMS Plan requires the Chief Compliance Officer to, ''[i]n conjunction with Participants' and other appropriate Industry Member advisory groups,'' ''annually evaluate and make a recommendation to the Operating Committee as to whether industry standards have evolved such that: . . . (ii) the required time stamp in Section 6.8(b) should be in finer increments.''

III. Request for Relief

In the February 3, 2020 Exemption Request, the Participants request that the Commission exempt the Participants from the requirement in Section 6.8(b) of the CAT NMS Plan that Participants reporting CAT Data to the Central

[11] 17 CFR 200.30–3(a)(12).

[1] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').

[2] 15 U.S.C. 78mm(a)(1).

[3] *See* letter from the Participants to Vanessa Countryman, Secretary, Commission, dated February 3, 2020 (the ''February 3, 2020 Exemption Request''). Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

[4] 15 U.S.C. 78mm(a)(1).

[5] 17 CFR 242.608(e).

[6] The February 3, 2020 Exemption Request also includes a separate request for exemptive relief from Section 6.4(d)(ii)(C) of the CAT NMS Plan. Specifically, in circumstances in which an Industry Member uses an established trading relationship for an individual Customer (rather than an account) on the order reported to the CAT, the Participants request an exemption from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan for each Participant to require, through its Compliance Rules, its Industry Members to record and report to the Central Repository the account number, the date account opened and account type for the relevant individual customer, subject to certain conditions. The Commission is not addressing that request at this time.

[7] Notwithstanding other requirements of Section 6.8(b), the CAT NMS Plan provides that Participants and Industry Members are permitted to record and report Manual Order Events and the time of allocation on Allocation Reports in increments up to and including one second. *See* CAT NMS Plan Section 6.8(b).

[8] The CAT NMS Plan defines ''Compliance Rule'' to mean, ''with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11.'' *See* CAT NMS Plan Section 1.1.

Repository utilize timestamps finer than nanoseconds to the extent that the Participant's order handling or execution systems utilize timestamps in increments finer than nanoseconds. As a condition to this exemption, if a Participant captures timestamps in increments more granular than nanoseconds, such Participant would truncate the timestamp after the nanosecond level for submission to CAT, not round up or down in such circumstances. In addition, the Participants request that the Commission exempt the Participants from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository. As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances.[9] Lastly, the Participants request that the Commission exempt the Participants from the requirement in Section 3 of Appendix D of the CAT NMS Plan for the Central Repository to be able to accept timestamps on order events handled electronically to the finest level of granularity captured by CAT Reporters.

As a condition to this exemption, the Participants state that the Central Repository will be required to accept timestamps on order events handled electronically to a nanosecond granularity. In addition, the Participants request that the above timestamp granularity exemptive relief remain in effect for five years from the date that the Commission grants the exemptive relief. After five years, the timestamp granularity exemptive relief would no longer be in effect.

The Participants state that they, in concert with the Plan Processor, have determined that the cost of providing the ability to utilize timestamps in the CAT in a finer granularity than nanoseconds outweighs the benefits. The Participants further state that, based on discussions with the Plan Processor, that Participants understand that expanding the capture of timestamp granularity to picoseconds by the Plan Processor would take at least six months at an estimated cost of approximately $700,000, and that this effort would include technical specification and database modifications, modifying query tools to support querying and sequencing at a picosecond granularity. The Participants also state that they understand that exchanges currently utilize timestamps only to the nanosecond and do not utilize timestamps to picoseconds or to finer increments.

IV. Discussion

The Commission has carefully considered the information provided by the Participants in support of the Participants' exemption request from Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan with respect to timestamp granularity. Based on the information provided by the Participants in the February 3, 2020 Exemption Request, the Commission believes that the exemptive relief would provide cost savings and reduce build time for the Plan Processor while not negatively impacting the ability of regulators to use CAT. As noted above, the Participants state that it would take at least six months and approximately $700,000 to modify the Plan Processor to accept picosecond timestamps. The Participants state that, as described above, Section 6.8(c) of the CAT NMS Plan will require annual review of timestamp granularity,[10] and the Participants have requested that such exemptive relief expire in five years.

The Commission has previously stated that regulators need sufficiently granular timestamps to sequence events across orders and within order lifecycles, and that a lack of uniform and granular timestamps can limit the ability of regulators to sequence events accurately and link data with information from other data sources.[11] Many public data sources report time in seconds or milliseconds, and some, including direct data feeds, report time in microseconds or nanoseconds.[12] The Participants state that the exchanges currently utilize timestamps only to the nanosecond and do not utilize timestamps to picoseconds or to finer increments.[13] Nanoseconds are smaller than milliseconds or microseconds and so the Participants' proposal would result in the collection of information that is at least as granular as existing data sources, and more granular than FINRA's Order Audit Trail System which requires timestamps in milliseconds for firms that capture time in milliseconds but does not require members to capture time in milliseconds.[14] The Participants also believe that CAT Reportable Events can be adequately sequenced in the CAT without requiring timestamps in a finer granularity than nanoseconds, and the Participants believe that the requested relief would serve to maintain and enhance the reliability and accuracy of the data reported to the Central Repository.[15]

The proposed approach described in the February 3, 2020 Exemption Request would require both Participants and Industry Members to truncate timestamps in increments more granular than nanoseconds to nanoseconds for submission to the CAT, and the Central Repository will be required to accept timestamps on order events handled electronically to a nanosecond granularity. Based on the foregoing, the Commission believes that, pursuant to Section 36 of the Exchange Act, this exemption is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of a national market system to exempt the SROs from Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan with respect to

[9] Participants would require that electronic timestamps submitted by Participants and Industry Members be truncated by Participants and Industry Members if they capture timestamps in increments more granular than nanoseconds, believing that rounding a timestamp would suggest an event occurred later or earlier than it actually occurred, while truncation treats all timestamps as if they were provided with the same level of granularity.

[10] In the February 3, 2020 Exemption Request, the Participants state that an analysis of the timestamp granularity would be required as part of the annual evaluation required to be performed by the Chief Compliance Officer pursuant to Section 6.8(c) of the CAT NMS Plan. If the Operating Committee determines that this analysis concludes that the benefit of the CAT Reporters reporting, and the Central Repository providing the ability to accept, timestamps in finer granularity than nanoseconds outweighs the burdens, then the timestamp exemption could be terminated or be revised to reflect more granular timestamps than nanoseconds in accordance with the analysis. *See* February 3, 2020 Exemption Request, *supra* note 2, at 4.

[11] *See* CAT NMS Plan Approval Order, *supra* note 1.

[12] *Id.* at 84813. For example, Options Price Reporting Authority allows for timestamps in nanoseconds, while other registered Securities Information Processors require timestamps in microseconds for equity trades and quotes. *Id.* at 84813–14.

[13] *See* February 3, 2020 Exemption Request, *supra* note 2, at 3.

[14] *See* CAT NMS Plan Approval Order, *supra* note 1, at 84813–14.

[15] *See* February 3, 2020 Exemption Request, *supra* note 2, at 2 and 3.

timestamp granularity for a period of five years.

Accordingly, *it is hereby ordered,* pursuant to Section 36(a)(1) of the Exchange Act,[16] and Rule 608(e) of the Exchange Act [17] and with respect to the proposed approaches specifically described above, that the Participants are granted a five-year exemption from the timestamp granularity requirement set forth in Section 6.8(b) and Section 3 of Appendix D of the CAT NMS Plan of the CAT NMS Plan, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–07789 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88600; File No. SR–FINRA–2020–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Address Brokers With a Significant History of Misconduct

April 8, 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 April 3, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to (1) amend the FINRA Rule 9200 Series (Disciplinary Proceedings) and the 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review) to allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent member firm or respondent broker, and require a respondent broker's member firm to adopt heightened supervisory procedures for such broker, when a disciplinary matter is appealed to the National Adjudicatory Council (''NAC'') or called for NAC review; (2) amend the FINRA Rule 9520 Series (Eligibility Proceedings) to require member firms to adopt heightened supervisory procedures for statutorily disqualified brokers during the period a statutory disqualification eligibility request is under review by FINRA; (3) amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to allow the disclosure through FINRA BrokerCheck of the status of a member firm as a ''taping firm'' under FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); and (4) amend the FINRA Rule 1000 Series (Member Application and Associated Person Registration) to require a member firm to submit a written request to FINRA's Department of Member Regulation (''Member Regulation''), through the Membership Application Group (''MAP Group''), seeking a materiality consultation and approval of a continuing membership application, if required, when a natural person that has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' [3] seeks to become an owner, control person, principal or registered person of the member firm.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

Overview

FINRA uses a combination of tools to reduce the risk of harm to investors from member firms and the brokers they hire that have a history of misconduct. These tools include assessments of applications filed by member firms to retain or employ an individual subject to a statutory disqualification, reviews of membership and continuing membership applications (''CMAs''), disclosure of brokers' regulatory backgrounds, supervision requirements, focused examinations, risk monitoring and disciplinary actions. These tools, among others, have been useful in identifying and addressing a range of misconduct and serve to further the Exchange Act goals, reflected in FINRA's mission, of investor protection and market integrity.

In addition, FINRA Rule 3110 (Supervision) requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and FINRA rules. The rule also requires member firms to establish, maintain and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and FINRA rules.[4]

Despite these requirements and FINRA's ongoing efforts to strengthen protections for investors and the markets through its oversight of member firms and the brokers they employ, persistent compliance issues continue to arise in some member firms. Recent studies, for example, find that some firms persistently employ brokers who engage in misconduct, which results in higher levels of misconduct by these firms. These studies also provide evidence that past disciplinary and other regulatory events associated with a member firm or individual can be predictive of similar future events, such as repeated disciplinary actions, arbitrations and complaints.[5] This risk

[16] 15 U.S.C. 78mm(a)(1).

[17] 17 CFR 242.608(e).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As explained more below, the proposed definitions of ''final criminal matter'' and ''specified risk event'' generally include final, adjudicated disclosure events disclosed on a person's or firm's Uniform Registration Forms. For purposes of the proposed rule change, Uniform Registration Forms for firms and brokers refer to, and would be defined as, the Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5) and the Uniform Disciplinary Action Reporting Form (Form U6), as such may be amended or any successor(s) thereto.

[4] *See* Rule 3110(a) and (b).

[5] For example, in 2015 FINRA's Office of the Chief Economist (OCE) published a study that examined the predictability of disciplinary and other disclosure events associated with investor harm based on past similar events. The OCE study showed that past disclosure events, including regulatory actions, customer arbitrations and

Continued

cannot always be adequately addressed by FINRA's existing rules and programs.

Brokers and member firms with a history of misconduct can pose a particular challenge for FINRA's existing examination and enforcement programs. For example, FINRA examinations of member firms can identify compliance failures—or imminent failures—and prescribe remedies to be taken, but examiners are not empowered to require a firm to change or limit its business operations in a particular manner. While these constraints on the examination process protect firms from potentially arbitrary or overly onerous examination findings, a firm or individual with a history of misconduct can take advantage of these limits to continue ongoing activities that harm or pose risk of harm to investors until they result in an enforcement action.

FINRA disciplinary actions, in turn, can be brought only after a violation—and any resulting customer harm—may have already occurred. In addition, disciplinary proceedings can take significant time to develop, prosecute and conclude, during which time the respondent in a disciplinary proceeding is able to continue misconduct, perpetuating significant risks of additional harm to customers and investors. Litigated enforcement actions brought by FINRA involve a hearing and often multiple rounds of appeals, thereby effectively forestalling the imposition of disciplinary sanctions—and their potential deterrent effect—for an extended period. For example, a FINRA enforcement proceeding could involve a hearing before a Hearing Panel, numerous motions, an appeal to the NAC, and further appeals to the SEC and federal courts of appeals. Moreover, even when a FINRA Hearing Panel or Hearing Officer imposes a significant sanction, the sanction is stayed during appeal to the NAC, many sanctions are automatically stayed on appeal to the SEC, and they potentially can be stayed during appeal to the courts. When all appeals are exhausted, the respondent's FINRA registration may have terminated, limiting FINRA's jurisdiction and eliminating the leverage that FINRA has to incent the respondent to comply with the sanction, including making restitution to customers.

Similarly, FINRA's eligibility proceedings are sometimes not available or sufficient to address the risks posed by brokers with a significant history of past misconduct. Federal law and regulations define the types of misconduct that presumptively disqualify a broker from associating with a member firm and also govern the standards and procedures FINRA must follow when a firm seeks to associate or continue associating with a broker subject to a statutory disqualification. These laws and regulations limit who FINRA may subject to an eligibility proceeding and affect how FINRA may exercise its authority in those proceedings.

FINRA's membership proceedings also do not always protect against the risks posed when a firm hires brokers with a significant history of misconduct. For firms eligible for the safe harbor for business expansions in IM–1011–1 (Safe Harbor for Business Expansions), there are a defined set of expansions (including, among other things, increases in the number of associated persons involved in sales) that are presumed not to be a material change in business operations and therefore do not require the firm to file a CMA.

Thus, notwithstanding the existing protections afforded by the federal securities laws and FINRA rules, the risk of potential customer harm may persist where a firm or broker has a significant history of past misconduct.

FINRA is taking steps to strengthen its tools to respond to brokers with a significant history of misconduct and the firms that employ them, several of which are described below. In addition, the proposed rule change, as explained further below, would create several additional protections to address this risk.

Additional Steps Undertaken by FINRA

As part of this initiative, FINRA has undertaken the following:

➢ Published *Regulatory Notice* 18–15 (Heightened Supervision), which reiterates the existing obligation of member firms to implement for such individuals tailored heightened supervisory procedures under Rule 3110;

➢ Published *Regulatory Notice* 18–17 (FINRA Revises the Sanction Guidelines), which announced revisions to the FINRA Sanction Guidelines;

➢ Raised fees for statutory disqualification applications;[6] and

➢ Revised the qualification examination waiver guidelines to permit FINRA to more broadly consider past misconduct when considering examination waiver requests.

In addition, to further address issues created by member firms that have a significant history of misconduct, FINRA has issued a *Regulatory Notice* seeking comment on proposed new Rule 4111 (Restricted Firm Obligations).[7]

Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series To Enhance Investor Protection During the Pendency of an Appeal or Call-for-Review Proceeding

FINRA is proposing amendments to the Rule 9200 Series (Disciplinary Proceedings) and Rule 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review) to bolster investor protection during the pendency of an appeal from, or a NAC review of, a Hearing Panel or Hearing Officer disciplinary decision, by empowering Hearing Officers to impose conditions or restrictions on disciplined respondents and requiring firms to adopt heightened supervision plans concerning disciplined individual respondents. The proposed rule also would establish a process for an expedited review by the Review Subcommittee of the NAC of any conditions or restrictions imposed.

Currently, the Rule 9200 and Rule 9300 Series permit FINRA to bring disciplinary actions against member firms, associated persons of member firms or persons within FINRA's jurisdiction for alleged violations of FINRA rules, SEC regulations or federal securities laws. Following the filing of a complaint, FINRA's Chief Hearing Officer will assign a Hearing Officer to preside over the disciplinary proceeding and appoint a Hearing Panel, or an Extended Hearing Panel if applicable,[8] to conduct a hearing and issue a written decision. For each case, the Hearing Panel or, in the case of default

litigations of brokers, have significant power to predict future investor harm. *See* Hammad Qureshi & Jonathan Sokobin, *Do Investors Have Valuable Information About Brokers?* (FINRA Office of the Chief Economist Working Paper, Aug. 2015). A subsequent academic research paper presented evidence that suggests a higher rate of new disciplinary and other disclosure events is highly correlated with past disciplinary and other disclosure events, as far back as nine years prior. *See* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* J. Pol. Econ. 127, no. 1 (Feb. 2019): 233–295.

[6] *See* Securities Exchange Act Release No. 83181 (May 7, 2018), 83 FR 22107 (May 11, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2018–018).

[7] *See Regulatory Notice* 19–17 (May 2019).

[8] References to ''Hearing Panel'' will refer to both a Hearing Panel and an Extended Hearing Panel collectively, unless otherwise noted. A Hearing Panel consists of a FINRA Hearing Officer and two panelists, drawn primarily from a pool of current and former securities industry members of FINRA's District and Regional Committees, as well as its Market Regulation Committee, former members of FINRA's NAC and former FINRA Directors or Governors.

decisions, the Hearing Officer will issue a written decision that makes findings and, if violations occurred, imposes sanctions. Sanctions can include, among other things, fines, suspensions, bars and orders to pay restitution.

Under FINRA's disciplinary procedures, any party can appeal a Hearing Panel or Hearing Officer decision to the NAC. In addition, any member of the NAC or the NAC's Review Subcommittee, or the General Counsel in the case of default decisions, may on their own initiate a review of a decision. On appeal or review, the NAC will determine if a Hearing Panel's or a Hearing Officer's findings were factually supported and legally correct. The NAC also reviews any sanctions imposed and considers the FINRA *Sanction Guidelines* when doing so. The NAC prepares a proposed written decision. If the FINRA Board of Governors does not call the case for review, the NAC's decision becomes final and constitutes the final disciplinary action of FINRA, unless the NAC remands the proceeding to the Hearing Officer or Hearing Panel. If the FINRA Board of Governors calls the case for review, the FINRA Board of Governors' decision constitutes the final disciplinary action of FINRA, unless the Board of Governors remands the proceeding to the NAC. A respondent in a FINRA disciplinary proceeding may appeal a final FINRA disciplinary action to the SEC, and further to a United States federal court of appeals.

When a Hearing Panel or Hearing Officer decision is on appeal or review before the NAC, any sanctions imposed by the Hearing Panel or Hearing Officer decision, including bars and expulsions, are automatically stayed and not enforced against the respondent during the pendency of the appeal or review proceeding.[9] In turn, the filing of an application for SEC review stays the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting a final FINRA disciplinary action.[10]

Proposed FINRA Rule 9285 (Interim Orders and Mandatory Heightened Supervision While on Appeal or Discretionary Review) would establish additional investor protections when a Hearing Panel or Hearing Officer decision that makes findings that a respondent violated a statute or rule provision is appealed to the NAC or called for NAC review.

Proposed Rule 9285(a) would provide that the Hearing Officer that participated in the underlying disciplinary proceeding may impose any conditions or restrictions on the activities of a respondent during the appeal as the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm. In light of comments received in response to *Regulatory Notice* 18–16, FINRA has modified the proposal to make the imposition of possible conditions and restrictions a separate, second step after a finding of a violation by a Hearing Panel or Hearing Officer, and to provide greater clarity on how the process would operate.

Unless otherwise ordered by a Hearing Officer, proposed Rule 9285(a)(1) would allow FINRA's Department of Enforcement (''Enforcement''), within ten days after service of a notice of appeal from, or the notice of a call for NAC review of, a disciplinary decision of a Hearing Officer or Hearing Panel, to file a motion for the imposition of conditions or restrictions on the activities of a respondent that are reasonably necessary for the purpose of preventing customer harm.[11] Proposed Rule 9285(a)(1) also would provide expressly that the Hearing Officer that participated in the underlying disciplinary proceeding would have jurisdiction to rule on a motion seeking conditions or restrictions, notwithstanding the appeal or call for NAC review. FINRA believes that the Hearing Officer's knowledge about the factual background and the violations, gained through presiding over the disciplinary proceeding, would make the Hearing Officer well qualified to evaluate the potential for customer harm and craft, in the first instance and in an expeditious manner, tailored conditions and restrictions to minimize that potential harm. In a change from the proposal in *Regulatory Notice* 18–16, the proposed rule would give the Hearing Officer who participated in the underlying proceeding (instead of the Hearing Panel) the authority to impose conditions or restrictions that are reasonably necessary for the purpose of preventing customer harm, a change that FINRA believes will enable orders imposing conditions or restrictions to be imposed more expeditiously.

Proposed Rule 9285(a)(2) through (a)(5), along with proposed Rule 9285(c), would establish the briefing, timing and other procedural requirements relating to the imposition of conditions or restrictions. The proposed rule would permit Enforcement to file a motion seeking the imposition of conditions or restrictions that are reasonably necessary for the purpose of preventing customer harm, and the motion must specify the conditions and restrictions that are sought to be imposed and explain why they are necessary. A respondent would have the right to file an opposition or other response to the motion within ten days after service of the motion, unless otherwise ordered by the Hearing Officer, and must explain why no conditions or restrictions should be imposed or specify alternative conditions and restrictions that are sought to be imposed and explain why they are reasonably necessary for the purpose of preventing customer harm. Enforcement would have no automatic right to file a reply. The Hearing Officer would decide the motion on the papers and without oral argument, unless an oral argument is specifically ordered. In addition, the Hearing Officer would be required to issue a written order ruling upon the motion in an expeditious manner and no later than 20 days after any opposition or permitted reply is filed. In an enhancement from the proposal in *Regulatory Notice* 18–16, proposed Rule 9285(a)(5) also would require that the Office of Hearing Officers provide a copy of the order to each FINRA member with which the respondent is associated.

If the Hearing Officer grants a motion for conditions or restrictions, its order should describe the activities that the respondent shall refrain from taking and any conditions imposed. The Hearing Officer would be guided by the limiting principle—set forth in proposed Rule 9285(a)(5)—that the Hearing Officer shall have the authority to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm. As FINRA explained in *Regulatory Notice* 18–16, the conditions and restrictions imposed should target the misconduct demonstrated in the disciplinary proceeding and be tailored to the specific risks posed by the member firm or broker. Conditions or restrictions could include, for example, prohibiting a member firm or broker from offering private placements in cases of misrepresentations and omissions made to customers, or

[9] *See* FINRA Rules 9311(b), 9312(b). In contrast, an appeal to the NAC or a call for NAC review does not stay a decision, or that part of a decision, that imposes a permanent cease and desist order. *See* FINRA Rules 9311(b), 9312(b).

[10] *See* FINRA Rule 9370(a).

[11] *See* Rule 9311(a) (generally allowing a party to file a notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269) and Rule 9312 (generally allowing a call for review within 45 days after the date of service of a decision issued pursuant to Rule 9268 and within 25 days after the date of service of a default decision issued pursuant to Rule 9269).

prohibiting penny stock liquidations in cases involving violations of the penny stock rules. A condition could also include posting a bond to cover harm to customers before the sanction imposed becomes final or precluding a broker from acting in a specified capacity. FINRA believes authorizing Hearing Officers to impose conditions or restrictions during the period an appeal or review proceeding is pending would allow FINRA to target the demonstrated bad conduct of a respondent during the pendency of the appeal or review and add an interim layer of investor protection while the disciplinary proceeding remains pending.[12]

Proposed Rule 9285(b), along with proposed Rule 9285(c), would establish an expedited process for the review of a Hearing Officer's order imposing conditions or restrictions. Specifically, proposed Rule 9285(b)(1) would permit a respondent that is subject to a Hearing Officer order imposing conditions or restrictions to file, within ten days after service of that order, a motion with the Review Subcommittee to modify or remove any or all of the conditions or restrictions. Proposed Rule 9285(b)(2) would provide, among other things, that the respondent has the burden to show that the conditions or restrictions are not reasonably necessary for the purpose of preventing customer harm.[13]

Proposed Rule 9285(b)(3) would give Enforcement five days from service of the respondent's motion to file an opposition or other response, unless otherwise ordered by the Review Subcommittee. Proposed Rule 9285(b)(4) would provide that the respondent may not file a reply. Proposed Rule 9285(b)(5) would provide that the NAC's Review Subcommittee would decide the motion based on the papers and without oral argument, unless an oral argument is specifically ordered by the Review Subcommittee, and make that decision in an expeditious manner and no later than 30 days after the filing of the opposition. The rule would provide that the Review Subcommittee could approve, modify or remove any and all of the conditions or restrictions. It also would require that FINRA's Office of General Counsel provide a copy of the Review Subcommittee's order to each FINRA member with which the respondent is associated. Proposed Rule 9285(b)(6) would provide that the filing of a motion pursuant to Rule 9285(b) would stay the effectiveness of the conditions and restrictions ordered by the Hearing Officer until the Review Subcommittee rules on the motion.

Proposed Rule 9285(d) would provide that conditions or restrictions imposed by a Hearing Officer that are not subject to a stay or imposed by the Review Subcommittee shall remain in effect until FINRA's final decision takes effect. Thus, the conditions or restrictions would remain in effect until there is a final FINRA disciplinary action and all appeals are exhausted.

The remainder of proposed Rule 9285 sets requirements for member firms, during an appeal or NAC review proceeding, to establish mandatory heightened supervision plans for disciplined respondents. Specifically, when a Hearing Panel or Hearing Officer disciplinary decision finding that a respondent violated a statute or rule provision is appealed or called for NAC review, proposed Rule 9285(e) would require any member with which the respondent is associated to adopt a written plan of heightened supervision of the respondent. The plan of heightened supervision would be required to comply with FINRA Rule 3110,[14] be reasonably designed and tailored to include specific supervisory policies and procedures that address the violations found by the Hearing Panel or Hearing Officer, and be reasonably designed to prevent or detect a reoccurrence of those violations. The plan of heightened supervision would be required to, at a minimum, designate an appropriately registered principal responsible for carrying out the plan of heightened supervision. Proposed Rule 9285(d) also would require that the plan of heightened supervision be signed by the designated principal and include an acknowledgement that the principal is responsible for implementing and maintaining the plan. The plan of heightened supervision would be required to remain in place until FINRA's final decision takes effect. Thus, the plan of heightened supervision would be required to remain in place until there is a final FINRA disciplinary action and all appeals are exhausted.[15]

Proposed Rule 9285(d) would require the member to file the written plan of heightened supervision with FINRA's Office of General Counsel and serve a copy on Enforcement and the respondent, within ten days of any party filing an appeal from the Hearing Panel's or Hearing Officer's decision or of the case being called for NAC review. Similarly, if the respondent becomes associated with another member firm while the Hearing Panel's or Hearing Officer's decision is on appeal to, or review before, the NAC, that firm would be required, within ten days of the respondent becoming associated with it, to file a copy of a plan of heightened supervision with FINRA's Office of General Counsel and serve a copy on Enforcement and the respondent.

In a change from *Regulatory Notice* 18–16, FINRA has modified the heightened supervision plan requirements to account for the possibility that a firm could be required pursuant to proposed Rule 9285(e) to adopt a mandatory heightened supervision plan before any conditions or restrictions imposed pursuant to proposed Rule 9285 take effect. Proposed Rule 9285(e)(1) would require that a member that has adopted a written plan of heightened supervision for a respondent would be required to file and serve an amended plan that takes into account any conditions or restrictions imposed pursuant to proposed Rule 9285, within ten days of the conditions or restrictions becoming effective.

Proposed Rule 9285 would apply to disciplinary proceedings initiated on or

[12] The examples of conditions and restrictions set forth above are intended to provide guidance concerning the kinds of conditions and restrictions that could be imposed. FINRA expects that requiring Enforcement to file a motion specifying the conditions or restrictions sought also will help focus adjudicators on options that are available, and allow for the flexibility needed to address the risk posed by different factual scenarios. If helpful to adjudicators and parties, FINRA also would publish additional guidance on the kinds of restrictions or conditions that could be imposed.

[13] In *Regulatory Notice* 18–16, FINRA originally proposed that the respondent would also be required to demonstrate that Hearing Officer ''committed an error by ordering the conditions or restrictions imposed.'' FINRA believes that it is more appropriate for the burden in proposed Rule 9285(b)(2) to mirror what Enforcement must show when seeking conditions or restrictions and the Hearing Officer's authority to impose conditions and restrictions.

Notwithstanding that FINRA no longer proposes including the ''committed an error'' standard in the proposed rule, FINRA intends that the Review Subcommittee would essentially conduct a de novo review when considering a respondent's motion to modify or remove conditions or restrictions. An exception would be for a Hearing Officer's credibility determinations, which are entitled to considerable weight and deference, and can be overturned only where the record contains substantial evidence for doing so.

[14] Rule 3110 requires member firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and FINRA rules. *See also Regulatory Notice* 18–15 (Guidance on Implementing Effective Heightened Supervisory Procedures for Associated Persons with a History of Misconduct), at p.2 & n.2 (April 2018).

[15] Although proposed Rule 9285(d) would not require heightened supervision plans after FINRA's final decision takes effect, the supervisory obligations of member firms regarding associated persons with a history of past misconduct would continue to apply. *See Regulatory Notice* 18–15 (April 2018).

after the effective date of the proposed rule.

Along with proposed Rule 9285, FINRA is proposing corresponding amendments to five existing rules: FINRA Rules 9235 (Hearing Officer Authority), 9311 (Appeal by Any Party; Cross-Appeal), 9312 (Review Proceeding Initiated by Adjudicatory Council), 9321 (Transmission of Record), and 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders).

The proposed amendments to Rule 9235 would provide that the Hearing Officer has the authority to rule on a motion pursuant to Rule 9285 for conditions or restrictions.

The proposed amendments to Rules 9311 and 9312 would ensure that the stay provisions in those rules do not affect a motion for conditions or restrictions.[16] Currently, Rule 9311(b) provides, in pertinent part, that an appeal to the NAC from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the NAC issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the FINRA Board, until a decision is issued pursuant to Rule 9351. Rule 9312(b) contains similar stay provisions for decisions that are called for review. Rules 9311(b) and 9312(b) would be amended to expressly state that, notwithstanding the stay of sanctions under Rules 9311 and 9312, the Hearing Officer may impose such conditions and restrictions on the activities of a respondent as the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm, in accordance in proposed Rule 9285(a), and that the Review Subcommittee shall consider any motion filed pursuant to Rule 9285(b) to modify or remove any or all of the conditions or restrictions.

Other proposed amendments to Rule 9311 and 9312 would ensure that a member firm is notified of events that would require it to adopt a written plan of heightened supervision pursuant to proposed Rule 9285.[17] Proposed Rule 9311(g) would require the Office of Hearing Officers, when an appeal is filed from a decision finding that a Respondent violated a statute or rule provision, to promptly notify each FINRA member with which the Respondent is associated that an appeal has been filed. Similarly, proposed Rule 9312(c)(3) would require the Office of General Counsel, when a decision finding that a Respondent violated a statute or rule provision is called for review, to promptly notify each FINRA member with which the Respondent is associated of the call for review.

The proposed amendments to Rule 9321 would govern the record related to a motion for conditions or restrictions.[18] Rule 9321 currently governs the process for the Office of Hearing Officers to transmit the record of a disciplinary proceeding to the NAC. The proposed amendments to Rule 9321 would set forth provisions for how the Office of Hearing Officers would transmit to the NAC the supplemental record of a proceeding concerning a motion to impose conditions or restrictions.

Rule 9556 currently governs expedited proceedings for failures to comply with temporary and permanent cease and desist orders. The proposed amendments to Rule 9556 would grant FINRA staff the authority to bring an expedited proceeding against a respondent that fails to comply with conditions and restrictions imposed pursuant to proposed Rule 9285 and create the process for the expedited proceeding. Specifically, proposed Rule 9556(a)(2) would permit FINRA staff to issue a notice to a respondent stating that the failure to comply with the conditions or restrictions imposed under Rule 9285 within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member. Proposed Rule 9556(c)(2) would govern the contents of the notice. It would require that the notice explicitly identify the conditions or restrictions that are alleged to have been violated and contain a statement of facts specifying the alleged violation. It also would require that the notice state or explain—just as the rule currently requires for a notice of a failure to comply with temporary and permanent cease and desist orders—when the FINRA action will take effect, what the respondent must do to avoid such action, that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559, the deadline for requesting a hearing and the Hearing Officer's or Hearing Panel's authority.

Proposed Amendments to the FINRA Rule 9520 Series To Require Interim Plans of Heightened Supervision of a Disqualified Person During the Period When FINRA is Reviewing an Eligibility Application

FINRA is proposing to amend FINRA Rule 9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) in the FINRA Rule 9520 Series (Eligibility Proceedings) to require a member firm that files an application to continue associating with a disqualified person under Rule 9522(a)(3) or 9522(b)(1)(B) to also include an interim plan of heightened supervision that would be in effect throughout the entirety of the application review process.[19] The proposed amendments would delineate the circumstances under which a statutorily disqualified individual may remain associated with a FINRA member while FINRA is reviewing the application.

As background, brokers who have engaged in the types of misconduct specified in the Exchange Act's statutory disqualification provisions must undergo special review by FINRA before they are permitted to re-enter or continue working in the securities industry. In conducting its review, FINRA seeks to exclude brokers who pose a risk of recidivism from re-entering or continuing in the securities business, subject to the limits developed in SEC case law.

As a general framework, the Exchange Act sets out the types of misconduct that presumptively exclude brokers from engaging in the securities business, identified as statutory disqualifications.[20] These statutory disqualifications are the result of actions against a broker taken by a regulator or court based on a finding of serious misconduct that calls into question the integrity of the broker, and include, among other things, any felony and certain misdemeanors for a period of ten years from the date of conviction; expulsions or bars (and current suspensions) from membership or participation in a self-regulatory organization; bars (and current suspensions) ordered by the SEC, Commodity Futures Trading Commission or other appropriate regulatory agency or authority; willful violations of the federal securities and

[16] The proposed amendments to Rule 9312 discussed in this paragraph reflect an enhancement to the proposal in *Regulatory Notice* 18–16 (April 2018).

[17] The proposed amendments to Rules 9311 and 9312 discussed in this paragraph are an enhancement from the proposal in *Regulatory Notice* 18–16 (April 2018).

[18] The proposed amendments to Rule 9321 reflect an enhancement to the proposal in *Regulatory Notice* 18–16 (April 2018).

[19] In *Regulatory Notice* 18–16 (April 2018), FINRA originally proposed the amendments discussed in this section as amendments to FINRA Rule 9523.

[20] Section 3(a)(39) of the Exchange Act defines the circumstances when a person is subject to a ''statutory disqualification.''

commodities laws or MSRB rules; permanent or temporary injunctions from acting in certain capacities; and certain final orders of a state securities commission.

The Exchange Act and SEC rules thereunder establish a framework within which FINRA evaluates whether to allow an individual who is subject to a statutory disqualification to associate with a member firm.[21] A member firm that seeks to employ or continue the employment of a disqualified individual must file an application seeking approval from FINRA (''SD Application'').[22] The Rule 9520 Series sets forth rules governing eligibility proceedings, in which FINRA evaluates whether to allow a member, person associated with a member, potential member or potential associated person subject to a statutory disqualification to enter or remain in the securities industry. A member firm's SD Application to associate with, or continue associating with, a disqualified person is subject to careful scrutiny by FINRA to review whether the individual's association with the member firm is in the public interest and does not create an unreasonable risk or harm to the market or investors. To determine whether the SD Application will be approved or denied, FINRA takes into account factors that include the nature and gravity of the disqualifying event; the length of time that has elapsed since the disqualifying event and any intervening misconduct occurring since; the regulatory history of the disqualified individual, the firm and individuals who will act as supervisors; the potential for future regulatory problems; the precise nature of the securities-related activities proposed in the SD Application; and any proposed plan of heightened supervision.[23]

If FINRA recommends approval of the SD Application, the recommendation is submitted either directly to the SEC for its review or to the NAC and ultimately to the SEC for their reviews and approvals, as applicable. If FINRA recommends denial of the SD Application, the member firm has the right to a hearing before a panel of the Statutory Disqualification Committee and the opportunity to demonstrate why the SD Application should be approved.[24] If the NAC denies the SD Application, the member firm can appeal the decision to the SEC and, thereafter, a federal court of appeals.[25]

Currently, as part of an SD Application, a member firm will propose a written plan of heightened supervision of the statutorily disqualified person that would become effective upon approval by FINRA of the SD Application to associate with the statutorily disqualified person.[26] A heightened supervisory plan must be acceptable to FINRA, and FINRA will reject any plan that is not specifically tailored to address the individual's prior misconduct and mitigate the risk of future misconduct. In this regard, FINRA's primary consideration is a heightened supervisory plan carefully constructed to best ensure investor protection.

Despite the fact that FINRA will generally not approve an SD Application that lacks an acceptable plan of heightened supervision, there is currently no requirement under FINRA rules that firms place statutorily disqualified individuals whom they employ on interim heightened supervision while an SD Application is pending. However, the proposed amendments to Rule 9522 would establish this requirement, consistent with existing FINRA guidance.[27]

Specifically, proposed Rule 9522(f) would require that an application to continue associating with a statutorily disqualified person must include an interim plan of heightened supervision and a written representation from the member firm that the statutorily disqualified person is currently subject to that plan. The proposed rule would require that the interim plan of heightened supervision comply with Rule 3110 and be reasonably designed and tailored to include specific supervisory policies and procedures that address any regulatory concerns related to the nature of the disqualification, the nature of the firm's business, and the disqualified person's current and proposed activities during the review process. The proposed rule also would require that the SD Application identify an appropriately registered principal responsible for carrying out the interim plan of heightened supervision, and that the responsible principal sign the plan and acknowledge his or her responsibility for implementing and maintaining it. The interim plan of heightened supervision would be in effect throughout the entirety of the SD Application review process, which would conclude only upon the final resolution of the eligibility proceeding.

Proposed Rule 9522(g) would authorize Member Regulation to reject an SD Application filed pursuant to

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[21] *See* 15 U.S.C. 78*o*-3(g)(2) (''A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification.''); *see also* 17 CFR 240.19h–1.

[22] *See* General Information on FINRA's Eligibility Requirements, *http://www.finra.org/industry/general-information-finras-eligibility-requirements.*

[23] FINRA's review of many SD Applications also is governed by the standards set forth in *Paul Edward Van Dusen,* 47 S.E.C. 668 (1981), and *Arthur H. Ross,* 50 S.E.C. 1082 (1992). These standards provide that in situations where an individual's misconduct has already been addressed by the SEC or FINRA, and certain sanctions have been imposed for such misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates an SD Application. In *Van Dusen,* the SEC stated that when the period of time specified in the sanction has passed, in the absence of ''new information reflecting adversely on [the applicant's] ability to function in his proposed employment in a manner consonant with the public interest,'' it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. 47 S.E.C. at 671. The SEC also noted in *Van Dusen,* however, that an applicant's re-entry is not ''to be granted automatically'' after the expiration of a given time period. *Id.* Instead, the SEC instructed FINRA to consider other factors, such as: (1) ''other misconduct in which the applicant may have engaged''; (2) ''the nature and disciplinary history of a prospective employer''; and (3) ''the supervision to be accorded the applicant.'' *Id.* Further, in *Ross,* the SEC established a narrow exception to the rule that FINRA confine its analysis to ''new information.'' 50 S.E.C. at 1085. The S.E.C. stated that FINRA could consider the conduct underlying a disqualifying order if an applicant's later misconduct was so similar that it formed a ''significant pattern.'' *Id.* at 1085 n.10.

[24] The hearing panel considers evidence and other matters in the record and makes a written recommendation on the SD Application to the Statutory Disqualification Committee. *See* Rule 9524(a)(10). The Statutory Disqualification Committee, in turn, recommends a decision to the NAC, which issues a written decision to the member firm that filed the SD Application. *See* Rules 9524(a)(10), 9524(b).

[25] Approximately 73.5 percent of the SD Applications filed during 2013–2018 were either denied by FINRA, withdrawn because the applicant expected FINRA would recommend denial of its application, or closed because the SD Application was not required by operation of law. Approximately 12.5 percent were approved. FINRA approval sometimes resulted from legal principles, including those embodied in the Exchange Act and in case law, as noted above, which limits FINRA's discretion to deny an application. The remaining 14 percent of the SD Applications are pending.

[26] *See* General Information on FINRA's Eligibility Requirements, *http://www.finra.org/industry/general-information-finras-eligibility-requirements* (explaining that ''in virtually every application that the NAC approves, it will do so subject to the applicant member's agreement to implement a special supervisory plan'').

[27] FINRA has reminded member firms of their obligation to tailor the firm's supervisory systems to account for brokers with a history of industry or regulatory-related incidents, including disciplinary actions. And specifically as to disqualified persons, FINRA has stated that a firm's continuing to associate with a person who becomes disqualified while associated with the firm raises significant investor protection concerns, and that such a firm should evaluate the facts and circumstances to make a determination of whether adopting and implementing an interim plan of heightened supervision during the pendency of an SD Application would be appropriate. *See Regulatory Notice* 18–15 (April 2018).

Rule 9522(a)(3) or Rule 9522(b)(1)(B) that seeks the continued association of a disqualified person if it determines that the application is substantially incomplete—either because it does not include a reasonably designed interim plan of heightened supervision or because it does not include a written representation that the disqualified person is currently subject to that plan. The sponsoring firm would have ten days after service of the notice of delinquency, or such other time as prescribed by Member Regulation, to remedy the SD Application.

Under proposed Rule 9522(h), if an applicant firm fails to remedy an SD Application that is substantially incomplete, Member Regulation would provide written notice of its determination to reject the SD Application and its reasons for so doing, and FINRA would refund the application fee, less $1,000, which FINRA would retain as a processing fee. Upon such rejection of the SD Application, the applicant firm would be required to promptly terminate association with the disqualified person.[28]

The proposed amendments to Rule 9522 would apply to SD Applications that are filed on or after the effective date of the proposed rule amendments.

Proposed Amendments to FINRA Rule 8312

Rule 8312 (FINRA BrokerCheck Disclosure) governs the information FINRA releases to the public through its BrokerCheck system.[29] BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing extensive registration and disciplinary history to investors at no charge. FINRA requires member firms to inform their customers of the availability of BrokerCheck.[30]

Rule 8312(b) currently requires that FINRA release information about, among other things, whether a particular member firm is subject to the provisions of FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (the ''Taping Rule''), but only in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. The Taping Rule is designed to ensure that a member firm with a significant number of registered persons that previously were employed by ''disciplined firms'' [31] has specific supervisory procedures in place to prevent fraudulent and improper sales practices or other customer harm.[32] Under the Taping Rule, a member with a specified percentage of registered persons who have been associated with disciplined firms in a registered capacity in the last three years is designated as a ''taping firm.'' [33]

A member firm that either is notified by FINRA or otherwise has actual knowledge that it is a taping firm must establish, maintain and enforce special written procedures for supervising the telemarketing activities of all its registered persons. Those procedures must include procedures for recording all telephone conversations between the taping firm's registered persons and both existing and potential customers, and for reviewing the recordings to ensure compliance with applicable securities laws and regulations and applicable FINRA rules. The Taping Rule also requires taping firms to retain all the recordings for a period of not less than three years and file quarterly reports with FINRA.[34]

To provide enhanced disclosure to the public of information as to whether a member firm is subject to the Taping Rule, FINRA is proposing to delete the requirement in Rule 8312(b) that FINRA provide that information only in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. As a result, proposed Rule 8312(b) would permit FINRA to release through BrokerCheck information as to whether a particular member firm is subject to the Taping Rule.[35] FINRA believes that broadening the disclosure through BrokerCheck of the status of a member firm as a taping firm will help inform more investors of the heightened procedures required of the firm, which may incent the investors to research more carefully the background of a broker associated with the taping firm.

Proposed Amendments to the FINRA Rule 1000 Series to Impose Additional Obligations on Member Firms That Associate With Persons With a Significant History of Past Misconduct [36]

Current MAP Process

FINRA is proposing amendments to the FINRA Rule 1000 Series (Member Application and Associated Person Registration)—specifically the rules that govern membership proceedings (''MAP Rules'')—to impose additional obligations on member firms when a natural person that has, in the prior five years, either one or more ''final criminal matters'' or two or more ''specified risk events'' seeks to become an owner,

[28] As part of its examination program, FINRA would generally examine for compliance with interim plans of heightened supervision established pursuant to proposed Rule 9522(f).

[29] The BrokerCheck website address is *brokercheck.finra.org.*

[30] *See* FINRA Rule 2210(d)(8) (requiring that each of a member's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial web page that the member intends to be viewed by retail investors and any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors); FINRA Rule 2267 (requiring members to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck).

[31] Rule 3170(a)(2) defines a ''disciplined firm'' to mean:

(A) A member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer;

(B) a futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or

(C) a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the SEC revoking its registration as a broker or dealer.

[32] To assist member firms in complying with Rule 3170, FINRA publishes on its website a list of Disciplined Firms Under FINRA Taping Rule, which identifies firms that meet the definition of ''disciplined firm'' and that were disciplined within the last three years. As of March 31, 2020, that list identified seven firms as ''disciplined firms.'' *See https://www.finra.org/rules-guidance/oversight-enforcement/disciplinary-actions/disciplined-firms-under-taping-rule.*

[33] Rule 3170(a)(5)(A) defines a ''taping firm'' to mean:

(i) A member with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(ii) A member with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(iii) A member with at least twenty registered persons where 20% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years.

As of March 31, 2020, there is one firm that is designated as a taping firm.

[34] Rule 3170 provides member firms that trigger application of the taping requirement a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Taping Rule. *See* Rule 3170(c).

[35] *See* Rule 8312(a) (requiring that ''[i]n response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephonic listing,'' FINRA shall release through BrokerCheck information regarding, in pertinent part, a current or former FINRA member).

[36] The text of FINRA Rules 1011, 1017 and CAB Rule 111 incorporates the changes approved by the SEC in Securities Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR–FINRA–2019–030) (''MAP Rules Amendment Release'').

control person, principal or registered person of the member.

Reviewing CMAs is one of the ways FINRA seeks to address the risks posed by brokers with a significant history of misconduct. Rule 1017 specifies the changes in a member's ownership, control or business operations that require a CMA and FINRA's approval.[37] Among the events that require a CMA are a ''material change in business operations,'' which is defined to include: (1) Removing or modifying a membership agreement restriction; (2) market making, underwriting or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3–1.[38] In addition, a CMA is required for business expansions to increase the number of ''associated persons involved in sales,'' offices, or markets made that are a material change in business operations.[39] However, IM–1011–1 (Safe Harbor for Business Expansions) creates a safe harbor for incremental increases in these three categories of business expansions. Under this safe harbor provision, a member, subject to specified conditions and thresholds, may undergo such business expansions without filing a CMA.[40] One such expansion is an increase, within the parameters set forth in IM–1011–1, in the number of ''associated persons involved in sales.'' [41]

In determining whether to approve a CMA, Member Regulation, through the MAP Group (collectively, ''the Department''), evaluates whether the applicant and its associated persons meet each of the standards for admission in FINRA Rule 1014(a) and whether the applicant would continue to meet those standards upon approval of the CMA.[42] The Department evaluates an applicant's financial, operational, supervisory and compliance systems to ensure that each applicant meets these standards for admission.

One of the standards, Rule 1014(a)(3), requires an applicant to demonstrate that it and its associated persons are capable of complying with the federal securities laws and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade. When the Department evaluates the Rule 1014(a)(3) standard, it takes into consideration, among other things, whether persons associated with an applicant are the subject of disciplinary actions taken against them by industry authorities, criminal actions, civil actions, arbitrations, customer complaints, remedial actions or other industry-related matters that could pose a threat to public investors.[43] Some of these matters are considered whether they are adjudicated, settled or pending.[44] Some of these events are so material that, when they exist, a presumption exists that the CMA should be denied.[45]

Although firms with a ''disciplinary history'' as defined by IM–1011–1 are not eligible to use the safe harbor, none of the safe harbor's parameters relates to the history of a member firm's associated persons. Given the recent studies that provide evidence of the predictability of future regulatory-related events for brokers with a history of past regulatory-related events, FINRA is concerned about instances where a member on-boards associated persons with a significant history of misconduct and does so within the safe-harbor parameters, thus avoiding prior consultation or review by FINRA. FINRA believes there are instances in which a member firm's hiring of an associated person with a significant history of misconduct—and other associations with such persons—would reflect a material change in business operations.

➢Proposed Rule 1017(a)(7) To Require Materiality Consultations

The proposed amendments to the MAP Rules would seek to address this concern. Proposed Rule 1017(a)(7) would require that a member firm, notwithstanding Rule 1017(a)(3),[46] (a)(4),[47] (a)(5)[48] and (a)(6)[49] and IM–1011–1,[50] file a CMA when a natural person seeking to become an owner, control person, principal or registered person of a member has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events''—as further explained below—unless the member has submitted a

[37] *See* Rule 1017(a). The events that require a member to file a CMA for approval before effecting the proposed event are:

(1) A merger of the member with another member, unless both members are members of the New York Stock Exchange, Inc. (''NYSE'') or the surviving entity will continue to be a member of the NYSE;

(2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the NYSE;

(3) direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the NYSE;

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or

(5) a material change in business operations as defined in Rule 1011.

In addition, Rule 1017(a)(6) mandates a member firm to seek a materiality consultation in two situations in which specified pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements are involved. *See* MAP Rules Amendment Release.

[38] *See* Rules 1011(l), 1017(a)(5). Rule 1011(l) sets forth a non-exhaustive list of events that are material changes in business operations. FINRA also has provided guidance on additional criteria member firms should take into consideration when assessing the materiality of a proposed change. *See Notice to Members* 00–73 (October 2000). A member may file an application for approval of a material change in business operations at any time, but the member may not effect such change until the conclusion of the proceeding, unless Member Regulation and the member otherwise agree. *See* Rule 1017(c)(3).

[39] *See* Rule 1017(b)(2)(C) (''If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.'').

[40] The safe harbor is unavailable to a member that has a membership agreement that contains a specific restriction as to one or more of the three areas of expansion or to a member that has a ''disciplinary history'' as defined in IM–1011–1. The safe harbor also is not available to any member that is seeking to add one or more ''associated persons involved in sales'' and one or more of those associated persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or unpaid settlement related to an arbitration. *See* MAP Rules Amendment Release.

[41] For eligible firms, IM–1011–1 permits a firm that has one to ten ''associated persons involved in sales'' to increase that number by ten persons within a one-year period, and a firm that has 11 or more ''associated persons involved in sales'' to increase that number by ten persons or 30 percent, whichever is greater, within a one-year period. *See* IM–1011–1.

[42] *See* Rule 1017(h)(1) and (h)(1)(A).

[43] *See* Rule 1014(a)(3).

[44] *See* Rule 1014(a)(3).

[45] *See* Rule 1017(h) (''Where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied.'').

[46] Rule 1017(a)(3) requires a member to file a CMA for approval of direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the New York Stock Exchange, Inc. The reference to Rule 1017(a)(3) in proposed Rule 1017(a)(7) reflects a change from the proposal in *Regulatory Notice* 18–16.

[47] Rule 1017(a)(4) requires a member to file a CMA for approval of a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital.

[48] Rule 1017(a)(5) requires a member to file a CMA for approval of a ''material change in business operations.''

[49] *See* MAP Rules Amendment Release.

[50] The reference to IM–1011–1 in proposed Rule 1017(a)(7) reflects a change from the proposal in *Regulatory Notice* 18–16.

written request to the Department seeking a materiality consultation for the contemplated activity. Rule 1017(a)(7) would further provide, however, that Rule 1017(a)(7) would not apply when the member is required to file an SD Application or written request for relief pursuant to Rule 9522 for approval of the same contemplated association.[51] Proposed Rule 1017(a)(7) also would contain requirements for the request seeking a materiality consultation and the Department's review and determination, including a description of the possible outcomes of FINRA's determination on a materiality consultation.

Proposed Rule 1017(a)(7) also would establish that the safe harbor for business expansions in IM–1011–1 would not be available to the member firm when a materiality consultation is required under proposed Rule 1017(a)(7). In a corresponding change, proposed IM–1011–3 (Business Expansions and Persons with Specified Risk Events) would provide that the safe harbor for business expansions in IM–1011–1 would not be available to any member that is seeking to add a natural person who has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events'' and seeks to become an owner, control person, principal or registered person of the member. Proposed IM–1011–3 would further provide, in those circumstances, that if the member is not otherwise required to file a CMA, the member must comply with the requirements of proposed Rule 1017(a)(7).[52] Proposed Rule 1017(a)(7) and proposed IM–1011–3 would not apply when a person is already a principal at a member firm and seeks to add an additional principal registration at that same firm. In that instance, the proposed rule amendments would not require a materiality consultation.

Currently, FINRA has a voluntary materiality consultation process.[53] As explained above, a member is required to file a CMA when it plans to undergo an event specified under Rule 1017 (*e.g.,* acquisition or transfer of the member's assets, a business expansion). Before taking this step, a member has the option of seeking guidance, or a materiality consultation, from FINRA on whether or not such proposed event would require a CMA.[54] The materiality consultation process is voluntary, and FINRA has published guidelines about this process on *FINRA.org.*[55] A request for a materiality consultation, for which there is no fee, is a written request from a member for FINRA's determination on whether a contemplated change in business operations or activities is material and would therefore require a CMA. The characterization of a proposed change as material depends on an assessment of all the relevant facts and circumstances. Through this consultation, FINRA may communicate with the member to obtain further documents and information regarding the contemplated change and its anticipated impact on the member. Where FINRA determines that a contemplated change is material, FINRA will instruct the member to file a CMA if it intends to proceed with such change. Ultimately, the member is responsible for compliance with Rule 1017. If FINRA determines during the materiality consultation that the contemplated business change is material, then the member potentially could be subject to disciplinary action for failure to file a CMA under Rule 1017.[56]

The proposed rule change would establish an additional category of mandatory materiality consultations.[57] The materiality consultations required by proposed Rule 1017(a)(7) would focus on, and the submitting member firm would need to provide information relating to, the conduct underlying the individual's ''final criminal matters'' and ''specified risk events,'' as well as other matters relating to the subject person, such as disciplinary actions taken by FINRA or other industry authorities, adverse examination findings, customer complaints, pending or unadjudicated matters, terminations for cause or other incidents that could indicate a threat to public investors. The Department's assessment in the materiality consultation would consider, among other things, whether the events are customer-related; whether the events represent discrete actions or are based on the same underlying conduct; the anticipated activities of the person; the disciplinary history, experience and background of the proposed supervisor, if applicable; the disciplinary history, supervisory practices, standards, systems and internal controls of the member firm and whether they are reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules; whether the member firm employs or intends to employ in any capacity multiple persons with one or more ''final criminal matters'' or two or more ''specified risk events'' in the prior five years; and any other investor protection concern raised by seeking to make the person an owner, control person, principal or registered person of the member firm.

➢Proposed Definitions of ''Final Criminal Matter'' and ''Specified Risk Event''

The terms ''final criminal matter'' and ''specified risk event'' would be defined in proposed amendments to Rule 1011 (Definitions). Proposed Rule 1011(h) would define the term ''final criminal matter'' to mean a final criminal matter that resulted in a conviction of, or guilty plea or nolo contendere (no contest) by, a person that is disclosed, or was required to be disclosed, on the applicable Uniform Registration

[51] In that event, the member firm would be required to obtain FINRA's approval to associate or continue associating with the disqualified person pursuant to the FINRA Rule 9520 Series, but it would not also be required to request a materiality consultation or file a CMA pursuant to proposed Rule 1017(a)(7). The Member Regulation staff that considers the SD Application may consult with the MAP Group, as appropriate.

[52] FINRA has modified the language in proposed Rule 1017(a)(7) and IM–1011–3 from the versions that were proposed in *Regulatory Notice* 18–16. FINRA has done so for clarity and to align the structure of these proposed rules to the changes to the MAP Rules approved in the MAP Rules Amendment Release.

[53] *See* The Materiality Consultation Process for Continuing Membership Applications, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process; see also Regulatory Notice* 18–23 (July 2018).

[54] *See* IM–1011–1 (stating, ''[f]or any expansion beyond these [safe harbor] limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017''); *see also Notice to Members* 00–73 (October 2000) (stating that ''[a] member may, but is not required to, contact the District Office to obtain guidance on'' whether a change and expansion that falls outside of the safe harbor provisions is material).

[55] *See* The Materiality Consultation Process for Continuing Membership Applications, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process.*

[56] *See Notice to Members* 00–73 (October 2000).

[57] FINRA Rule 1017(a)(6) will mandate materiality consultations if a member is contemplating: (i) To add one or more ''associated persons involved in sales'' and one or more of those associated persons has a ''covered pending arbitration claim,'' an unpaid arbitration award or an unpaid settlement related to an arbitration; or (ii) any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an associated person of the transferring member has a covered pending arbitration claim, an unpaid arbitration award or an unpaid settlement related to an arbitration, and the member is not otherwise required to file a CMA. *See* MAP Rules Amendment Release. In a separate proposal, FINRA is proposing to mandate materiality consultations under other circumstances. *See Regulatory Notice* 18–23 (July 2018) (seeking comment on a proposal to the MAP rules that would, among other things, codify the materiality consultation process and mandate a consultation under specified circumstances such as where an applicant seeks to engage in, for the first time, retail foreign currency exchange activities, variable life settlement sales to retail customers, options activities or municipal securities activities).

Forms.[58] Proposed Rule 1011(p) would define ''specified risk event'' to mean any one of the following events that are disclosed, or are or were required to be disclosed, on the applicable Uniform Registration Forms: (1) A final investment-related,[59] consumer-initiated customer arbitration award or civil judgment against the person for a dollar amount at or above $15,000 in which the person was a named party; (2) a final investment-related, consumer-initiated customer arbitration settlement or civil litigation settlement for a dollar amount at or above $15,000 in which the person was a named party; (3) a final investment-related civil action where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above $15,000, or (B) the sanction against the person was a bar, expulsion, revocation, or suspension; and (4) a final regulatory action where (A) the total monetary sanctions (including civil and administrative penalties or fines, disgorgement, monetary penalties other than fines, or restitution) were ordered for a dollar amount at or above $15,000, or (B) the sanction against the person was a bar (permanently or temporarily), expulsion, rescission, revocation or suspension from associating with a member.

The proposed definitions and criteria would provide transparency regarding how the proposed rules would be applied, as they are based on disclosure events required to be reported on the Uniform Registration Forms. Firms, in general, would be able to identify the specific set of disclosure events that would count towards the proposed criteria and, using available data, determine independently whether a proposed association with an individual would require a materiality consultation.[60]

In addition, as explained more below in the Economic Impact Assessment, FINRA developed the proposed criteria and definitions with significant attention to the economic trade-off between including individuals who are less likely to subsequently pose risk of harm to customers, and not including individuals who are more likely to subsequently pose risk of harm to customers.

FINRA believes the proposed amendments to the Rule 1000 Series would further promote investor protection by applying stronger standards for continuing membership with FINRA and for changes to a current member firm's ownership, control or business operations.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.[61]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[62] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by brokers with a significant history of misconduct and the firms that employ them. Allowing Hearing Officers to impose tailored conditions and restrictions on respondents after the finding of a violation, and requiring firms to place disciplined respondent brokers with whom they associate under mandatory heightened supervision during the pendency of an appeal or a review proceeding, would create strong measures of deterrence while an appeal or review proceeding is pending and while the sanctions imposed have not yet taken effect. Likewise, requiring firms to place disqualified persons on interim plan of heightened supervision while an SD Application is pending would require that a fundamental investor protection measure—almost always required at firms that FINRA, as part of the eligibility proceedings process, permits to associate with disqualified persons—be established at an earlier point in time and thereby limit the potential for harm to the public. Broadening the disclosure through BrokerCheck of the status of a member firm as a taping firm, beyond only telephonic BrokerCheck inquiries, will inform more investors of the heightened procedures required of the taping firm, and thereby incent investors to research carefully the background of a broker associated with the taping firm. Finally, requiring member firms to seek materiality consultations when a person seeking to become an owner, control person, principal or registered person has a significant history of misconduct will give FINRA an opportunity to assess whether the proposed association is material and warrants closer regulatory scrutiny and, further, may create incentives for changes in behavior by both brokers and the firms that employ them. In situations where the proposed association of a person with a significant history of misconduct would require a CMA, FINRA would then be able to assess, if the firm still seeks to proceed, whether the member firm would continue to meet all the Rule 1014 membership standards if the proposed association were approved and prevent the proposed association if it would not continue to meet those standards.[63]

As such, the proposed rule change will help address concerns regarding brokers with a significant history of misconduct in situations where risks for potential further harm to investors may exist, particularly when such individuals concentrate at a firm or are able to move readily from firm to firm. The proposed additional obligations on such brokers and the increased scrutiny by the firms that employ them, should create incentives for brokers and firms to change activities and behaviors to mitigate FINRA's concerns.

[58] Proposed Rule 1011(r) would define ''Uniform Registration Forms'' to mean the Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5) and the Uniform Disciplinary Action Reporting Form (Form U6), as such may be amended or any successor(s) thereto.

[59] The Form U4 *Explanation of Terms* defines the term ''investment-related'' as pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

[60] The exceptions are that the Uniform Registration Forms do not provide information about customer awards or judgments against, or customer settlements with, control affiliates who have not filed a Form U4. For those events, firms would have to gather that information directly from the person.

[61] FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal rule set incorporates the Rule 9200 Series and Rule 9300 Series and Rule 9556 by reference, and the CAB rule set incorporates Rules 1011, 1017 and 8312 and the Rule 9200 Series, Rule 9300 Series and Rule 9500 Series by reference. In addition, FINRA is proposing corresponding amendments to CAB Rule 111, to reflect that a CAB would be subject to IM–1011–3, and amendments to Funding Portal Rule 900(b) to require heightened supervision during the time an eligibility request is pending.

[62] 15 U.S.C. 78*o*–3(b)(6).

[63] *See* Rule 1014(a) (Standards for Admission).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking, its potential economic impacts, including anticipated benefits and costs, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

(a) Regulatory Need

FINRA uses a number of measures to deter and discipline misconduct by brokers and the firms that employ them. These measures span across several FINRA programs, including statutory disqualification processes, review of membership applications, disclosure of brokers' regulatory backgrounds, supervision requirements, focused examinations, risk monitoring and disciplinary actions.

Nonetheless, some brokers, while relatively small in number, may continue to present heightened risk of harm to investors and act in ways that could harm their customers—sometimes substantially. Any misconduct by these brokers may also undermine confidence in the securities markets as a whole. For example, recent studies provide evidence on predictability of future regulatory-related events for brokers with a history of past regulatory-related events such as repeated disciplinary actions, arbitrations and customer complaints.[64]

Brokers with a history of misconduct can pose a particular challenge to FINRA's existing programs, such as FINRA examination and enforcement programs. For example, while the FINRA examination program can identify compliance failures and prescribe remedies to be taken, examiners are not empowered to require individuals to make changes to or limit their activities in a particular manner. While these constraints on the examination process protect against potentially arbitrary or overly onerous examination findings, an individual with a history of misconduct can take advantage of these limitations to continue ongoing activities that harm or pose risk of harm to investors until they result in an enforcement action. Likewise, enforcement actions can take significant time to develop, prosecute and conclude, during which time the individual is able to continue misconduct.

Furthermore, although FINRA has adopted rules that impose supervisory obligations on firms to ensure they are appropriately supervising their brokers' activities, some firms do not effectively carry out these supervisory obligations to ensure compliance. This is consistent with some recent academic studies, which find that some firms persistently employ brokers who engage in misconduct, and that misconduct can be concentrated at these firms, suggesting that some firms may not be acting appropriately as a first line of defense to prevent customer harm.[65]

Therefore, without additional protections, the risk of potential customer harm may continue to exist at firms that employ brokers that have a significant number of regulatory-related events and that fail to effectively carry out their supervisory obligations. The proposals are designed to further promote investor protection by mitigating these concerns while preserving principles of fairness.

(b) Economic Baseline

The following provides the economic baseline for each of the current proposals. These baselines serve as the primary points of comparison for assessing economic impacts, including incremental benefits and costs of the proposed rule amendments. For this proposal, FINRA reviewed and analyzed relevant data over the 2013–2018 period (review period).

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the Rule 9200 Series and Rule 9300 Series is the current regulatory framework under these rules.[66] FINRA analyzed disciplinary matters that were appealed to the NAC over the review period that reached a final decision by the NAC.[67] During the review period, there were approximately 20 such appeals filed each year, of which approximately 80 percent were filed by brokers, five percent were filed by firms, and the remaining 15 percent were filed jointly by brokers and firms.[68] FINRA determined that, on average, these disciplinary decisions were on appeal to the NAC for approximately 15 months.[69]

2. Proposed Amendments to the FINRA Rule 9520 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the Rule 9520 Series is the current regulatory framework under these rules. FINRA analyzed SD Applications filed during the review period and determined that there were 80 SD Applications filed by 71 firms for 79 individuals, or approximately 13 applications that were filed by 12 firms each year.[70] Approximately 65 percent of these applications were filed by small firms, 12 percent were filed by mid-size firms, and 23 percent were filed by large firms.[71] FINRA also examined the resolution of these applications and determined that approximately 12.5 percent of the SD Applications were approved, 11 percent were denied, 14 percent were pending during the review period, and the remaining applications (62.5 percent) did not require a resolution because the statutorily disqualified individual's registration with the filing firm was terminated or the SD Application was subsequently withdrawn.[72] FINRA determined that, on average, the processing time for an SD Application that reached a final

[64] *See supra* note 5.

[65] For example, *see* Mark Egan, Gregor Matvos, & Amit Seru, *The Market for Financial Adviser Misconduct,* J. Pol. Econ. 127, no. 1 (Feb. 2019): 233–295.

[66] The proposal also includes corresponding amendments to Rule 9556.

[67] This analysis included all NAC appeals (including calls for NAC review) filed during the review period that reached a final decision by May 1, 2019. The analysis includes all NAC decisions, including affirmations, modifications or reversals of the findings in the disciplinary matters. The analysis excludes appeals that were withdrawn prior to the resolution of the appeal process.

[68] FINRA further estimates that approximately 94 percent of the appeals filed by brokers involved one broker, and the remaining six percent involved two brokers. All the appeals filed by firms were associated with one firm.

[69] The median processing time was approximately 14 months, while the 25th and the 75th percentiles were approximately 11 months and 19 months, respectively.

[70] One of these 79 individuals was associated with multiple SD Applications over the review period. Of the 71 firms that filed SD Applications, approximately 90 percent filed one application during the review period, and the remaining 10 percent filed two or more applications.

[71] FINRA defines a small firm as a member with at least one and no more than 150 registered persons, a mid-size firm as a member with at least 151 and no more than 499 registered persons, and a large firm as a member with 500 or more registered persons. *See* FINRA By-Laws, Article I.

[72] In approximately 21 percent of the SD Applications, the application was withdrawn because the decision leading to the disqualifying event was overturned, thus the individual was no longer subject to a statutory disqualification, or because the sanctions were no longer in effect.

resolution (*i.e.,* an approval or a denial) was approximately 15 months.[73]

3. Proposed Amendments to FINRA Rule 8312

The economic baseline used to evaluate the economic impacts of the proposed rule changes to Rule 8312 (FINRA BrokerCheck Disclosure) is the current regulatory framework under Rules 8312 and 3170. During the review period, FINRA determined that 17 firms hired or retained enough registered persons from previously disciplined firms to be designated as a ''taping firm'' under Rule 3170 and were notified about their status during this period. All of these firms were small firms with an average size of approximately 40 registered persons. Of these 17 firms, 12 firms did not become subject to the rule's recording requirements because they either took advantage of the one-time staff-reduction opportunity in Rule 3170(c) or terminated their FINRA membership, and one firm was granted an exemption pursuant to Rule 3170(d). As a result, only four of the firms designated as ''taping firms'' became subject to the recording requirements of Rule 3170.

4. Proposed Amendments to the FINRA Rule 1000 Series

The economic baseline used to evaluate the economic impacts of the proposed rule changes to the MAP Rules is the current regulatory framework under these rules. The proposed rule change would directly impact individuals with one or more final criminal matters or two or more specified risk events within the prior five years, who seek to become owners, control persons, principals or registered persons of a member firm. The criteria used for identifying individuals under this proposal and the number of individuals meeting the proposed criteria are discussed below.

(c) Economic Impacts

The following provides the economic impacts, including the anticipated benefits and costs for each of the current proposals.

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

The proposed rule amendments would directly impact firms and brokers whose disciplinary matters are on appeal to, or review by, the NAC. These impacts would vary across appeals and depend on, among other factors, the nature and severity of the conditions or restrictions imposed on the activities of respondents. As discussed above, the scope of these conditions or restrictions would depend on what the Hearing Officer determines to be reasonably necessary for the purpose of preventing customer harm. Further, the conditions and restrictions would be tailored to the specific risks posed by the brokers or firms during the appeal period. Accordingly, the conditions and restrictions are not intended to rise to the level of the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal. In addition, respondents will be able to seek expedited reviews of orders imposing conditions or restrictions.

Anticipated Benefits

The primary benefit of this proposal accrues from limiting the potential risk of continued harm to customers by respondents during the appeal period by imposing conditions or restrictions on their activities, and requiring them to be subject to heightened supervision plans, while their disciplinary matter is on appeal. In order to evaluate these benefits and assess the potential risk posed by brokers during the appeal period, FINRA examined cases that were appealed to the NAC during 2013–2016 and determined whether the brokers associated with an appeal to the NAC had a new disclosure event—for this analysis, a final criminal matter or a specified risk event, as defined above—at any time from the filing of the appeal through the year-end after the year in which the appeal reached a decision.[74] Based on this analysis, FINRA estimates that 21 of the 75 brokers who appealed to the NAC during the 2013–2016 period were associated with a total of 28 disclosure events that occurred during the interstitial period after the filing of their appeal to the NAC.[75] FINRA anticipates that the proposed heightened supervision requirement and the conditions or restrictions placed on the activities of these brokers would lead to greater oversight of their activities by their firm during the appeal period, thereby reducing the potential risk of future customer harm during this period.[76]

Anticipated Costs

The costs of this proposal would primarily fall upon brokers or firms whose activities during the appeal period would be subject to the specific conditions or restrictions imposed by the Hearing Officer.[77] In addition, firms would incur costs associated with implementing heightened supervision for brokers while their disciplinary matters are under appeal. These costs would likely vary significantly across firms and could increase if the broker acts in a principal capacity. For example, firms employing disciplined respondents who serve as principals, executive managers or owners, or who operate in other senior capacities, would likely assume higher costs in developing and implementing tailored supervisory plans. Such plans may entail re-assignments of responsibilities, restructuring within senior management and leadership, and more complex oversight and governance approaches. These potential costs, in turn, may result in some brokers voluntarily leaving the industry rather than waiting for the resolution of the appeal process.[78]

The costs associated with this proposal would apply to brokers and their employing member firms while the brokers are employed during the pendency of the NAC appeals (the average processing time of which is 15 months) and any subsequent appeals.[79]

[73] The median processing time was approximately 14 months, and the 25th and the 75th percentiles were approximately 10 months and 19 months, respectively.

[74] In making these calculations, FINRA based its analysis on the occurrence of disclosure events as used in proposed IM–1011–3 and Rule 1017(a)(7). The analysis includes events that occurred and reached a resolution between the NAC appeal year and a year after the NAC decision year to allow sufficient time for events that occurred during the pendency of NAC to reach a resolution. Accordingly, the sample period for this analysis is based on appeals filed during the 2013–2016 period, instead of the full review period (2013–2018).

[75] These estimates are based on appeals filed by brokers, or jointly filed by brokers and firms, and excludes appeals that were filed only by firms. These estimates likely underrepresent the overall risk of customer harm posed by these brokers, because they are based on a specific set of events and outcomes used for classifying brokers for the proposed amendments to the MAP Rules. In addition, these brokers had other disclosure events after their appeal was filed, and some of these other events may also be associated with risk of customer harm.

[76] FINRA also anticipates that the proposed changes to Rule 9556, which will establish an expedited proceeding for failures to comply with conditions or restrictions, will help ensure that the firms will comply with the conditions and restrictions imposed.

[77] Brokers and firms that choose to defend against motions for conditions and restrictions and that pursue expedited reviews of orders imposing conditions or restrictions would incur additional costs associated with these reviews.

[78] The proposal may also impose costs on issuers in limited instances where a firm is enjoined from participating in a private placement and the issuer is especially reliant on that firm. The private issuer may incur search costs to find a replacement firm or individual and incur other direct and indirect costs associated with the offering.

[79] FINRA has no estimate for the time associated with subsequent appeals.

Many broker-appellants, however, are not employed with any member firms when their NAC appeal is filed or leave shortly after the appeal is filed. FINRA examined the employment history, including employment start and end dates, of the 131 brokers [80] associated with NAC appeals during the review period, and estimates that 54 of them (or 41 percent) were not employed by any member firm during the appeal process, 33 of them (or 25 percent) were employed by a member firm only for part of the appeal process, and 44 of them (or 34 percent) were employed by a member firm throughout the appeal process.

FINRA notes that consistent with existing FINRA guidance, some firms may have already established heightened supervision of individuals while their disciplinary matters are on appeal.[81] The existing heightened supervision plans may address all, some or none of the conditions or restrictions imposed by the Hearing Panel Officer. Accordingly, for these firms the anticipated costs of this proposal may be lower.

Other Economic Impacts

In developing the proposal, FINRA considered the possibility that, in some cases, this proposal may limit activities of brokers and firms, while their disciplinary matter is under appeal, in instances where the restricted activities do not pose a risk to customers. In such cases, these brokers and firms may lose economic opportunities, and their customers may lose the benefits associated with the provision of these services. FINRA believes that the proposed rule changes mitigate such risks by requiring the conditions or restrictions imposed to be reasonably necessary for the purpose of preventing customer harm and by providing a respondent with the right to seek expedited review of a motion to modify or remove any or all of the conditions and restrictions. Further, as discussed above, approximately 66 percent of the broker-appellants during the review period either were not employed by a member firm during the appeal process or were employed by a member firm only for part of the appeal process. Accordingly, these brokers would not be impacted by this proposal or would be subject to the proposed limitations only for a limited period of time.

[80] These 131 brokers correspond to those associated with a NAC appeal during the review period (2013–2018). The 75 brokers discussed in the Anticipated Benefits section above are a subgroup of brokers associated with a NAC appeal during the 2013–2016 period. *See supra* note 74.

[81] *See Regulatory Notice* 18–15 (April 2018).

2. Proposed Amendments to the FINRA Rule 9520 Series

The proposed rule amendments would impact statutorily disqualified individuals and their employing firms while the SD Application is being processed. These individuals would be subject to heightened supervision during the pendency of their SD Applications.

Anticipated Benefits

The primary benefit of this proposed rule change would arise from greater oversight by employing firms of the activities of statutorily disqualified individuals during the pendency of their SD Applications, thereby reducing the potential risk of customer harm during this period. In order to assess the potential risk posed by these individuals during the pendency of their SD Applications, FINRA examined whether individuals associated with an SD Application filed during the 2013–2016 period had a disclosure event [82] at any time from the filing of the SD Application through two years after filing.[83] Based on this analysis, FINRA estimates that 26 (or 51 percent) of the 51 individuals associated with SD Applications during the 2013–2016 period had a total of 41 disclosure events during the interstitial period after the filing of their SD Application.[84]

Anticipated Costs

The costs associated with this proposal would fall primarily on firms that incur direct and indirect costs associated with establishing and implementing the tailored heightened supervision plan while an SD Application is under review. As discussed above, the costs would likely vary significantly across firms and could increase if the statutorily disqualified individuals also serve as principals, executive managers, or owners or operate in other senior capacities. Moreover, the heightened supervision requirement may deter some firms from retaining these individuals and, as a result, these individuals may find it more difficult to remain in the industry.

[82] For purposes of this analysis, ''disclosure event'' included final criminal matters and specified risk events, as defined in proposed Rule 1011(h) and (p).

[83] This analysis includes events that occurred and reached a resolution from the SD Application filing year until the end of two years later to allow sufficient time for events that occurred during the eligibility proceeding to reach a resolution. Accordingly, the sample period for this analysis is based on SD Applications filed during the 2013–2016 period, instead of the full review period (2013–2018).

[84] This likely underrepresents the overall risk of customer harm, because the disclosure events in this analysis included only final criminal matters and specified risk events.

3. Proposed Amendments to the BrokerCheck Rule

The proposed amendments would impact taping firms and their registered persons. Taping firms have a proportionately significant number of registered persons who were associated with firms that were expelled by a self-regulatory organization or had their registration revoked by the SEC for sales practice violations, and as a result, may pose greater risk to their customers.

Anticipated Benefits

The primary benefit of this proposed rule change would arise from the investor protection benefits associated with disclosing a firm's status as a ''taping firm'' through BrokerCheck to the investors. This would allow investors to make more informed choices about the brokers and firms with which they conduct business. The anticipated benefits would increase with the likelihood that a potential or actual customer to a taping firm seeks information through BrokerCheck.

Anticipated Costs

The proposal would not impose any direct costs on brokers or firms. Nonetheless it may impact their businesses, as investors may rely on information about a firm's status as a taping firm in determining whom to engage for financial services and brokerage activities. Disclosing the status of a firm as a ''taping firm'' through BrokerCheck may also further deter firms from hiring or retaining brokers who were employed previously by disciplined firms in order to avoid the ''taping firm'' thresholds and resulting disclosure on BrokerCheck.[85]

4. Proposed Amendments to MAP Rules

The proposed rule change would directly impact individuals with one or more final criminal matters or two or more specified risk events within the prior five years, who seek to become owners, control persons, principals or registered persons of a member firm. To estimate the number of brokers who would meet the proposed criteria, FINRA analyzed the categories of events and conditions associated with the proposed criteria for all brokers during the review period. For each year, FINRA determined the approximate number of

[85] As discussed above, only four firms during the review period became subject to the taping requirements of Rule 3170. As a result, FINRA does not anticipate that this proposal would be associated with significant economic impacts, including the anticipated benefits or costs.

brokers who met the proposed criteria and became owners, control persons, principals or registered persons of a member firm. As discussed in more detail below, this analysis showed that there were 110–215 such individuals, per year, who would have met the proposed criteria had it been in place during the review period.

The proposal is intended to apply to brokers who may pose greater risks to their customers than other brokers. A framework for evaluating the effectiveness of the criteria is to observe the rate at which brokers identified collectively by the criteria are substantially more likely to have regulatory-related events, including specified risk events and final criminal matters, than their peers. Based on FINRA's analysis of all individuals who sought to become owners, control persons, principals or registered persons of a member firm during the review period, individuals who would have met the proposed criteria had on average 1.4–1.6 final criminal matters and specified risk events (per broker), while other brokers had on average 0.002–0.004 such events (per broker).[86] These estimates suggest that individuals who would have been affected by this proposal (had it been in place during the review period) had on average over 450–900 times more final criminal matters and specified risk events than other brokers during the same review period.

Anticipated Benefits

The primary benefit of the proposed amendments would be to reduce the potential risk of future customer harm by individuals who meet the proposed criteria and seek to become an owner, control person, principal, or registered person of a member firm. FINRA believes the proposed rule change would further promote investor protection by applying stronger standards for continuing membership with FINRA and for changes to a current member firm's ownership, control or business operations. These benefits would primarily arise from changes in broker and firm behavior and increased scrutiny by FINRA of brokers who meet the proposed criteria during the review of a materiality consultation and, where appropriate, a CMA.

To scope these potential benefits and assess the potential risk posed by brokers who would meet the proposed criteria, FINRA evaluated the extent to which brokers who would have met the criteria during 2013–2016 (had the criteria existed) and sought the proposed roles were associated with ''new'' final criminal matters or specified risk events after having met the proposed criteria. These ''new'' events correspond to events that were identified or occurred after the broker's meeting the proposed criteria, and do not include events that were pending at the time of meeting the criteria and subsequently resolved in the years afterwards. As shown in Exhibit 3e, FINRA estimates that, in 2013, 215 brokers would have met the proposed criteria and sought the proposed roles. These brokers were associated with 35 ''new'' final criminal matters or specified risk events that occurred after their meeting the proposed criteria, between 2014 and 2018. Exhibit 3e similarly shows the number of events associated with brokers who would have met the proposed criteria and sought the proposed roles in 2014, 2015, and 2016. Across 2013–2016, there were 635 unique brokers who would have met the proposed criteria and sought the proposed roles, and these brokers were associated with a total of 93 events that occurred in the years after they met the proposed criteria.

Exhibit 3e also shows, for the 2013–2016 period, a factor representing a multiple for the average number of events for brokers who would have met the proposed criteria and sought the proposed roles relative to other brokers who sought the proposed roles. For example, the factor of 16x for 2013 indicates that brokers meeting the proposed criteria and seeking the proposed roles in 2013 had on average 16 times more new events (per broker) in the subsequent years (2014–2018) than other brokers who sought those roles in 2013.[87] Overall, this analysis demonstrates that brokers who would have met the proposed criteria and sought the proposed roles during the 2013–2016 period had on average approximately 16–49 times more new criminal matters and specified risk events after meeting the criteria than other brokers who sought the proposed roles.

Anticipated Costs

The cost of this proposal would fall on the firms that seek to add owners, control persons, principals or registered persons who meet the proposed criteria. These firms would be directly impacted by the proposals through the requirements to seek a materiality consultation with FINRA and, potentially, to file a CMA. While there is no FINRA fee for seeking a materiality consultation, firms may incur internal costs or costs associated with engaging external experts in conjunction with the filing of a CMA. In addition, the proposal could result in delays to a firm's ability to add owners, control persons, principals or registered persons who meet the proposed criteria, during the time the mandatory materiality consultation and any required CMA is being processed. FINRA examined the time to process materiality consultations and determined that, on average, these consultations are completed within eight to ten days, although this time period could be longer depending on the complexity of the contemplated expansion or transaction and the aggregate number of consultations under review. These anticipated costs may deter some firms from hiring individuals meeting the proposed criteria, who as a result may find it difficult to remain in the industry or bear other labor market related costs.

Other Economic Impacts

To provide transparency and clarity regarding the application of this proposal, the proposed criteria is based on disclosure events required to be reported on the Uniform Registration Forms. Information about disclosure events reported on the Uniform Registration Forms is generally available to firms and FINRA. Accordingly, firms would be able to identify the specific set of disclosure events that would count towards the proposed criteria and replicate the proposed thresholds using available data, with a few exceptions.[88] In determining the proposed numeric threshold, FINRA considered three key factors: (1) The different types of reported disclosure events; (2) the counting criteria (*i.e.,* the number of reported events required to trigger the obligations); and (3) the time period over which the events are counted. In

[86] As discussed above, the proposed criteria includes individuals with one or more ''final criminal matters'' or two or more ''specified risk events'' in the prior five years. The individuals who would have met the proposed criteria as a result of two or more ''specified risk events'' in the prior five years had on average 2.3–2.9 such events during the review period.

[87] Brokers meeting the proposed criteria and seeking the proposed roles in 2013 had on average 0.16 new events (per broker) in the subsequent years (2014–2018) compared to 0.01 events (per broker) for other brokers seeking the proposed roles.

[88] Firms have access to disclosure events reported on Form U4, U5, and U6 filings for individuals who were previously registered with the same firms or with other firms. Firms do not have access, however, to information regarding individuals that is disclosed on another firm's Form BD. Firms may not have access to information about disclosure events for individuals, including control affiliates, who were not previously registered.

evaluating the proposed numeric threshold versus alternative criteria, significant attention was given to the impact of possible misidentification of individuals; specifically, the economic trade-off between including individuals who are less likely to subsequently pose risk of harm to customers, and *not* including individuals who are more likely to subsequently pose risk of harm to customers. There are costs associated with both types of misidentifications. For example, subjecting individuals who are less likely to pose a risk to customers to mandatory materiality consultations, and potentially CMAs, would impose additional costs on these individuals, their affiliated firms and customers. The proposed numeric threshold aims to appropriately balance these costs in the context of economic impacts associated with the proposed amendments to the MAP Rules.

The proposal may create incentives for changes in behavior to avoid meeting the proposed threshold. Under the proposal standing alone, brokers and firms may be more likely to try to settle customer complaints or arbitrations below $15,000 so that their settlements do not count towards the proposed threshold. To the extent, if any, that customers also would be willing to settle for less, this change may reduce the compensation provided to customers.[89] Alternatively, it could increase the time, effort and costs for customers associated with negotiating a settlement, even if the settled amount would not change. Brokers and firms also may consider underreporting the disclosure events to avoid being subject to the proposed rule. However, this potential impact is mitigated by the facts that many of the events are reported by FINRA or other regulators, incorrect or missing reports can trigger regulatory action by FINRA, and FINRA rules require firms to take appropriate steps to verify the accuracy and completeness of the information contained in the Uniform Registration Forms before they are filed. FINRA also has the ability to check for unreported events, particularly those that third parties report in separate public notices, such as the outcomes of some civil proceedings.

FINRA recognizes that in some instances, firms may not be able to identify certain individuals with disclosure events who may seek to become owners, control persons, principals or registered persons of the firm. Similarly, firms may have less incentive to conduct appropriate due diligence on those individuals for whom firms may not have readily available disclosure history.[90] Firms still would be required, however, to seek information on relevant disclosure events from individuals who seek to become principals or registered persons, as part of the registration process, and take reasonable steps (*e.g.,* by conducting background checks) to verify the accuracy and completeness of the information provided by the individuals. Nonetheless, FINRA recognizes that in some cases, even after conducting reasonable due diligence, firms may not have the required information to identify certain individuals who meet the proposed criteria, and these individuals may continue to pose risk of future investor harm. FINRA believes that these risks are mitigated by its own examination risk programs that monitor and examine individuals for whom there are concerns of ongoing misconduct or imminent risk of harm to investors. These programs identify high-risk individuals based on the analysis of data available to the firms as well as additional regulatory data available to FINRA.[91]

In developing this proposal, FINRA analyzed disclosure events reported on the Uniform Registration Forms for all individuals during the review period. For each year, FINRA evaluated the data and determined the approximate number of individuals who would have met the proposed numeric threshold of one or more final criminal matters or two or more specified risk events in the prior five years. Exhibit 3a shows the disclosure categories that FINRA considered and the subcategories that were used for identifying final criminal matters and specified risk events. The exhibit also shows the mapping of these disclosure categories to the underlying questions in Form U4.[92] Exhibit 3b shows the corresponding mapping of these disclosure categories to the questions in Form BD.[93] Exhibit 3c provides a breakdown of the disclosure categories for all individuals registered with FINRA in 2018.[94] The exhibit illustrates the impacts of refining subcategories of reported disclosure events and using different numeric thresholds on the number of disclosure events and the number of registered persons associated with these events.[95] This analysis has led FINRA to initially propose the numeric threshold set forth in the current proposal.

The additional proposed obligations would only apply to individuals with one or more final criminal matters or two or more specified risk events within the prior five years who seek to become owners, control persons, principals, or registered persons of a firm. Accordingly, FINRA examined registration information in order to identify all individuals who would have met the proposed criteria and sought the proposed roles during the review period. Those identified serve as a reasonable estimate for the number of individuals who would have been directly impacted by this proposal had it been in place at the time. This analysis indicates that there were 110–215 such individuals per year, as shown in Exhibit 3d. These individuals represent 0.09–0.16 percent of individuals who became owners, control persons, principals, or registered

[89] The proposed $15,000 threshold for customer settlements corresponds to the reporting threshold for the Uniform Registration Forms and for the settlement information to be displayed through BrokerCheck. Accordingly, the change in incentives to brokers and firms associated with the proposed rule should be considered in the presence of the incentives already in place.

[90] For example, as discussed above, firms do not have access to disclosure events for non-registered control affiliates at other firms. FINRA uses disclosure events reported on Form BD across all firms to identify disclosure records of non-registered control affiliates.

[91] *See supra* note 88.

[92] Forms U5 and U6 have questions similar to Form U4 that can also be mapped to the disclosure categories in Exhibit 3a.

[93] Form BD includes information on disclosure events for individual control affiliates, including non-registered control affiliates that may not have Form U4, U5, or U6 filings. Form BD is the primary source of information on disclosure events for these unregistered control affiliates. Form BD includes information on final criminal matters and certain specified risk events associated with regulatory actions and civil judicial actions, but does not include information on customer awards or settlements.

[94] Exhibit 3c does not include information on individuals who were not registered with FINRA in 2018. These non-registered individuals may include non-registered associated persons, including non-registered control affiliates.

[95] Exhibit 3c shows the number of criminal disclosures and ''disclosures considered in developing specified risk events'' (regulatory action disclosures, civil judicial disclosures, and customer complaint, arbitration, and civil litigation disclosures)—including final and pending disclosures—for brokers who were registered with FINRA in 2018, over such brokers' entire reporting history; the number of brokers associated with these disclosure events; and the impact of refining the disclosure categories and the periods over which these events are counted. For example, the exhibit shows that brokers who were registered with FINRA in 2018 had, over their entire reporting history, 19,655 criminal disclosures and 134,928 ''disclosures considered in developing specified risk events.'' It also shows that 41,915 individuals had, over their entire reporting history, one or more criminal disclosures or two or more ''disclosures considered in developing specified risk events.'' When narrowing the disclosure categories to include only the ''final criminal matters'' and ''specified risk events'' as defined in this proposal (including the five-year lookback period), the results narrow to 174 final criminal matters and 2,616 specified risk events, and to 414 brokers who met the proposed numeric threshold of one or more final criminal matters or two or more specified risk events in the prior five years.

persons with a new member in any year during the review period.[96]

FINRA also analyzed firms that employed individuals who would be directly impacted by this proposal. The analysis shows that in each year over the review period, there were between 74–155 firms employing individuals who would have met the proposed criteria. Approximately 41 percent of these firms were small, 12 percent were mid-size, and the remaining 47 percent were large.[97] FINRA estimates that approximately 31 percent of the individuals meeting the proposed criteria and who sought the proposed roles were employed by small firms, ten percent by mid-size firms and 59 percent by large firms.

(d) Alternatives Considered

FINRA recognizes that the design and implementation of the rule proposals may impose direct and indirect costs on a variety of stakeholders, including member firms, associated persons, regulators, investors, and the public. Accordingly, in developing its rule proposals, FINRA sought to identify alternative ways to enhance the efficiency and effectiveness of the proposals while maintaining their regulatory objectives. The following provides a discussion of the alternatives FINRA considered for the current proposals.

1. Proposed Amendments to the FINRA Rule 9200 Series and FINRA Rule 9300 Series

As an alternative to the proposal to authorize Hearing Officers to impose conditions or restrictions, FINRA considered whether to require sanctions imposed by the FINRA Hearing Panel or Hearing Officer in disciplinary decisions to be effective during the pendency of the NAC appeals and subsequent appeals. FINRA believes that such an approach could be too restrictive in disciplinary matters with significant sanctions and where the risk of harm may be specific to particular activities. Accordingly, FINRA believes that conditions and restrictions that are tailored specifically to the risk posed by the individuals during the pendency of the appeals, and are reasonably necessary for the purpose of preventing customer harm, would provide a better balance between protecting investors and preventing undue costs on individuals and firms while their appeals are pending.

2. Proposed Amendments to the FINRA Rule 9520 Series

This proposal would subject statutorily disqualified individuals employed with member firms to heightened supervision during the pendency of their SD Applications. Considering that the problem addressed by the proposed amendments to the FINRA Rule 9520 Series is very specific, FINRA did not consider any significant alternatives to this targeted proposal.

3. Proposed Amendments to FINRA Rule 8312

Considering that this proposal would likely not be associated with material economic impacts, FINRA did not consider any significant alternatives to this proposal.[98]

4. Proposed Amendments to the FINRA Rule 1000 Series

FINRA considered several alternatives to the numeric and categorical thresholds for identifying individuals who would be subject to the proposed amendments to the MAP Rules. In determining the proposed threshold, FINRA focused significant attention on the economic trade-off between incorrect identification of individuals who may *not* subsequently pose risk of harm to their customers, and *not* including individuals who may subsequently pose risk of harm to customers. FINRA also considered three key factors: (1) The different types of reported disclosure events, (2) the counting criteria (*i.e.,* the number of reported events), and (3) the time period over which the events are counted. FINRA considered several alternatives for each of these three factors.

a. Alternatives Associated With the Types of Disclosure Events

In determining the different types of disclosure events, FINRA considered all categories of disclosure events reported on the Uniform Registration Forms, including the financial disclosures and the termination disclosures. FINRA decided to exclude financial disclosures, which include personal bankruptcies, civil bonds, or judgments and liens. While these events may be of interest to investors in evaluating whether or not to engage a broker, these types of events are not *by themselves* direct evidence of customer harm.

FINRA also considered whether termination disclosures should be included as specified risk events. Termination disclosures include job separations after allegations against the brokers.[99] Certain termination disclosures reflect conflicts of interest between the firm and the broker and, as a result, may not necessarily be indicative of misconduct. Further, the underlying allegations in the termination disclosures may be associated with other disclosure events, such as those associated with customer settlements or awards, regulatory actions or civil judicial actions, which are already included in the proposed criteria. Where so, the underlying conduct posing potential future customer harm would be captured in the proposed criteria. As a result, FINRA did not include termination disclosures as specified risk events. Accordingly, FINRA considered the remaining five categories of disclosure events listed in Exhibit 3a.

Within each disclosure category included in the proposed criteria, FINRA considered whether pending matters should be included or if the criteria should be restricted to final matters that have reached a resolution not in favor of the broker. Pending matters may be associated with an emerging pattern of customer harm and capture timely information of potential ongoing or recent misconduct. However, pending matters may also include disclosure events that remain unresolved or subsequently get dismissed because they lack merit or suitable evidence. FINRA excluded pending matters in the current proposal because the potential adverse impacts on the individuals who may be identified because of pending matters would likely outweigh the benefit of including pending matters.[100]

Exhibit 3a shows the five categories of disclosure events that were considered and the subcategories that were included in the proposed criteria. For criminal matters, FINRA considered whether criminal charges that do not result in a conviction or a plea of guilty or nolo contendere (no contest) should be included in the proposed criteria. These events correspond to criminal matters in which the associated charges

[96] These percentages are calculated by dividing FINRA's estimate of the number of individuals who met the proposed criteria each year during the review period and sought the proposed roles (110–215 individuals per year) by the number of individuals who became owners, control persons, principals, or registered persons with a new member each year during the review period (122,003–131,156 individuals per year).

[97] *See supra* note 71.

[98] As discussed above, there were only four firms that became subject to the taping requirements of Rule 3170 during the review period.

[99] Termination disclosures involve situations where the individual voluntarily resigned, was discharged, or was permitted to resign after allegations.

[100] For example, individuals who may be identified on a fixed numeric threshold based upon pending matters could find it difficult to become owners, control persons, principals, or registered persons of a member firm while these matters are pending, even if such matters are subsequently dismissed. *See also* Exhibit 3c.

were subsequently dismissed or withdrawn and, as a result, are not necessarily evidence of misconduct. Accordingly, FINRA only included criminal convictions, including pleas of guilty or nolo contendere (no contest), in the proposed criteria.

For customer settlements and awards, FINRA considered whether settlements and awards in which the broker was not ''named'' should be considered as a specified risk event. These ''subject of'' customer settlements and awards correspond to events where the customer initiates a claim against the firm and does not specifically name the broker, but the firm identifies the broker as required by the Uniform Registration Forms.[101] In these cases, the broker is not party to the proceedings or settlement. There may be conflicts of interest between the firm and the broker such that the claim may be attributed to the broker without the ability of that broker to directly participate in the resolution. Accordingly, FINRA excluded ''subject of'' customer settlements and awards from the proposed criteria. FINRA recognizes that excluding these events may also undercount instances where the broker may have been responsible for the alleged customer harm.

For civil judicial actions and regulatory actions, FINRA considered whether all sanctions associated with final matters should be included in the proposed criteria or whether certain less severe sanctions should be excluded. Final regulatory action or civil judicial action disclosures may be associated with a wide variety of activities, ranging from material customer harm to more technical rule violations, such as a failure to make timely filings or other events not directly related to customer harm. However, due to the way in which such information is currently reported, it is not straightforward to distinguish regulatory or civil judicial actions associated with customer harm from other such actions.[102] In the absence of a reliable way to identify regulatory and civil judicial actions associated with customer harm, FINRA considered using a proxy of severity of the underlying sanctions as a way to exclude events that are likely not associated with material customer harm. Therefore, FINRA is proposing to include regulatory actions or civil judicial actions that are associated with more severe sanctions, such as bars, suspensions or monetary sanctions above a *de minimis* dollar threshold of $15,000. FINRA notes that relying strictly on a proxy for severity would likely exclude certain regulatory actions or civil judicial actions that are associated with customer harm, and may include certain regulatory actions or civil judicial actions that are not associated with customer harm.

FINRA also considered several alternative *de minimis* dollar thresholds for disclosure events included in the proposed criteria. For example, FINRA considered higher dollar thresholds of $25,000, $50,000 and $100,000 for customer settlements, customer awards, and monetary sanctions associated with regulatory actions and civil judicial actions. A dollar threshold may capture a dimension of severity of the alleged customer harm. The Uniform Registration Forms establish a *de minimis* dollar reporting threshold of $10,000 for complaints filed prior to 2009 and $15,000 afterwards. The reporting threshold may, however, be low and possibly include instances where the payment was made to end the complaint and minimize litigation costs. However, the dollar threshold does not account for the value of the customers' accounts, and there are likely cases where even low dollar amounts represent remuneration of a significant portion of customer investments. Accordingly, a dollar threshold may be both under-inclusive and over-inclusive, and as a result FINRA considered a range of alternative thresholds. Increasing the dollar threshold from $15,000 to $25,000, $50,000 and $100,000 would decrease the number of individuals impacted by this proposal from 110–215 individuals each year over the review period (as explained above) to 108–207 individuals, 103–197 individuals and 97–180 individuals each year, respectively. Finally, FINRA notes that establishing a *de minimis* dollar threshold that is different than the current reporting requirements could increase confusion among investors and registered persons and would likely create additional incentives for brokers and firms to keep future settlements below the dollar level that would trigger the restrictions, to the detriment of customers.

b. Alternatives Associated With the Counting Criteria

FINRA considered a range of alternative criteria for counting criminal matters or specified risk events. For example, FINRA considered whether the counting criteria for final criminal matters should be two or more final criminal matters or one final criminal matter and another specified risk event. This alternative would effectively count final criminal matters the same way as other specified risk events. FINRA believes that final criminal matters are generally more directly tied to serious misconduct than some of the other specified risk events. Accordingly, FINRA believes that one final criminal matter, as defined by this proposal, should be sufficient to trigger the proposed criteria.[103]

FINRA also considered alternative criteria for counting specified risk events. For example, FINRA considered decreasing the proposed threshold from two specified risk events to one. This alternative would change the proposed criteria to one or more final criminal matters or one (instead of two) or more specified risk events during the prior five-year period. This approach would increase the number of individuals impacted by this proposal from 110–215 individuals to 341–675 individuals each year, over the review period. FINRA also considered increasing the proposed threshold from two specified risk events to three, thereby changing the proposed criteria to one or more final criminal matter or three (instead of two) or more specified risk events during the prior five-year period. This approach would decrease the number of individuals impacted by this proposal from 110–215 individuals to 86–161 individuals each year, over the review period. For the reasons explained above, FINRA considered alternative criteria for counting specified risk events, but chose the specification in the current proposal.

c. Alternatives Associated With the Time Period Over Which the Disclosure Events Are Counted

FINRA also considered alternative criteria for the time period over which final criminal matters and specified risk events are counted. For example, FINRA considered whether final criminal matters or specified risk events should

[101] For example, the Instructions to Form U4 provide that the answer to Questions 14I(4) or 14I(5) should be ''yes'' if the broker was not named as a respondent/defendant but (1) the Statement of Claim or Complaint specifically mentions the individual by name and alleges the broker was involved in one or more sales practice violations or (2) the Statement of Claim or Complaint does not mention the broker by name, but the firm has made a good faith determination that the sales practice violation(s) alleged involves one or more particular brokers.

[102] For example, the Uniform Registration Forms contain information in disclosure reporting pages that could be useful in identifying regulatory actions or civil judicial actions associated with customer harm, but it is stored as ''free-text'' and, therefore, cannot be reliably compared across disclosures.

[103] FINRA recognizes that final criminal matters include felony convictions that may not be investment related (*e.g.,* a conviction associated with multiple DUIs).

be counted over the individual's entire reporting period or counted only over a more recent period. Based on its experience, FINRA believes that events that are more than ten years old do not necessarily pose the same level of possible future risk to customers as more recent events. Further, counting final criminal matters or specified risk events over an individual's entire reporting period would imply that individuals with such events would be subject to the criteria for their entire career, even if they subsequently worked without being associated with any future events. Accordingly, FINRA decided to include final criminal matters or specified risk events occurring only in a more recent period.

FINRA also considered a threshold based on a five-year lookback period for final criminal matters, but a five-to-ten year lookback period for specified risk events. Specifically, FINRA considered a threshold that would be met if the individual had one specified risk event having resolved during the previous ten years, and a second specified risk event resolved during the previous five years, or if the individual had one or more final criminal matters resolved in the prior five-year period. This approach would increase the number of individuals impacted by this proposal from 110–215 individuals to 127–236 individuals each year, over the review period. For the reasons explained above, FINRA considered alternative criteria for the lookback period for specified risk events, but chose the specification in the current proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 18–16 (April 2018). Thirteen comments were received in response to the *Regulatory Notice.*[104] A copy of the *Regulatory Notice* is attached as Exhibit 2a [sic]. A list of commenters is attached as Exhibit 2b [sic]. Copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c [sic]. Of the 13 comment letters received, eight were generally in favor of the proposed rule change, two were generally opposed, and one stated that the proposal was an improvement over the status quo but that significantly more action would be needed to protect investors.

FINRA has considered the comments received. In light of some of those comments, FINRA has made some modifications to the proposal. The comments and FINRA's responses are set forth in detail below.

General Support for and Opposition to the Proposal

Five commenters expressed general support for the proposed rule changes in *Regulatory Notice* 18–16, but all had suggestions on how aspects of the proposal should be modified.[105] Two commenters expressed support for the proposed amendments, subject to certain modifications.[106] One commenter expressed general support for the proposed amendments except the proposed amendments to the Rule 1000 Series.[107] Two commenters suggested different approaches that FINRA could take.[108] One commenter expressed opposition to specific aspects of the proposal.[109] One commenter opined that the proposal has numerous deficiencies and offered remedies.[110] All of these commenters' suggestions are discussed in more detail below.

Proposed Amendments to the FINRA Rules 9200 and 9300 Series To Enhance Investor Protection During the Pendency of an Appeal or Call-for-Review Proceeding

➢ Conditions or Restrictions

The proposed amendments to the Rule 9200 and 9300 Series would allow a Hearing Officer to impose conditions or restrictions on the activities of a respondent during the pendency of an appeal to the NAC from, or call for NAC review of, a disciplinary decision.

Some commenters expressed support for these specific proposals. FSI commented that permitting Hearing Officers to impose conditions and restrictions strikes the appropriate balance between the member's rights and investor protection concerns. NASAA supported imposing temporary remedies on parties that lose at the hearing level, writing that it would align FINRA's procedures with federal and state law. PIABA wrote that a disciplinary respondent should not be permitted to conduct business as usual during a disciplinary appeal.

Several commenters requested that a disciplined respondent and firms that associate with a disciplined respondent have an opportunity to propose to the Hearing Officers the conditions and restrictions that should be imposed.[111] Cambridge stated that this opportunity would help ensure that conditions and restrictions are not overly broad and account for a firm's size, resources and ability to supervise, and that it would alleviate concerns about potential lost income, lost opportunities and lost clients that could result from the conditions or restrictions. SIFMA wrote that this opportunity would help ensure that any conditions and restrictions imposed are reasonably necessary for the nature and scale of the misconduct at issue and tailored to a firm's business model, and that it would reduce the number of motions to modify or remove conditions or restrictions.

While FINRA appreciates the comments, FINRA notes that the proposal allows an individual respondent to make arguments concerning the potential conditions and restrictions to the Hearing Officer. In this regard, nothing in the proposed rule change prevents a respondent in a disciplinary proceeding from proposing, in opposition or response to a motion for conditions or restrictions, the conditions and restrictions that could or should be imposed. Likewise, nothing prevents an individual respondent, during the underlying disciplinary proceeding itself, from introducing relevant evidence. Moreover, FINRA rules only give named parties the right to participate in a FINRA disciplinary proceeding, and the complaint issued against an individual respondent will not always name that person's employing firm as a respondent. However, in light of these comments, FINRA is proposing to modify the proposed rule as set forth in *Regulatory Notice* 18–16 to clarify that a respondent's opposition or other response to a motion for conditions or restrictions must explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm.

Cambridge stated that the proposal does not address the recourse available for damages that could result from any conditions or restrictions imposed, in the event the underlying disciplinary decision is reversed on appeal. FINRA believes the proposal mitigates such risks. The standard for imposing conditions or restrictions—those that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm—and the ability to

[104] All references to commenters are to the comment letters as listed in Exhibit 2b.

[105] MML, NASAA, PIABA, SIFMA, Wulff Hansen.

[106] Cambridge, FSI.

[107] Janney.

[108] Better Markets, IBN.

[109] Luxor.

[110] Network 1.

[111] Cambridge, FSI, SIFMA.

request an expedited proceeding before the Review Subcommittee for prompt review of any conditions or restrictions imposed would act to ensure the conditions and restrictions imposed are reasonably tailored to address the potential concerns. The Hearing Officer that imposes conditions or restrictions in the first instance would be knowledgeable about the case and, therefore, well-suited to craft restrictions or conditions that are tailored to addressing the potential customer harm. And if a respondent believes that the conditions or restrictions imposed are too burdensome, the respondent would be permitted to request an expedited review and stay the conditions or restrictions.

Better Markets suggested that Hearing Officers should be required, not just permitted, to impose conditions or restrictions that are necessary to protect investors pending an appeal to the NAC. FINRA believes, however, that it is more appropriate to give Hearing Officers discretion. There may be situations when conditions or restrictions may be deemed not necessary, such as when a respondent firm or a respondent individual's employing firm has already undertaken substantial subsequent remedial measures or when the violations at issue do not involve the risk of customer harm.

FSI and Luxor opposed the standard in proposed FINRA Rule 9285(a) that the Hearing Officer may impose conditions or restrictions that it considers ''reasonably necessary for the purpose of preventing customer harm.'' FSI opined that that standard could lead to conditions or restrictions that are unduly burdensome or unrelated to the misconduct, and it suggested that the standard also require that the conditions and restrictions be ''reasonably designed to prevent further violations of the rule or rules the Hearing Panel or Hearing Officer [in the underlying disciplinary proceeding] has found to have been violated.'' FSI further suggested that, when imposing conditions or restrictions, Hearing Officers be required to consider the firm's size, resources and overall ability to supervise the registered representative's compliance with the conditions or restrictions. Luxor wrote that the proposed standard would have a chilling effect on a respondent's right to appeal because, depending on the conditions and restrictions imposed, the respondent may be unable to afford legal representation or may suffer irreversible damage to a book of business.

FINRA's proposed standard, however, is consistent with the rules of other self-regulatory organizations.[112] Moreover, FINRA believes that the proposed standard—both its use of the term ''reasonably necessary'' and its emphasis on ''for the purpose of preventing customer harm''—provides sufficient and appropriate limiting parameters. FINRA also believes that requiring that conditions or restrictions be reasonably designed to prevent further violations of the rule or rules found to have been violated in the underlying disciplinary decision, as FSI suggests, may not allow the Hearing Officer to adequately address the investor protection concerns that have been raised by the activities of the respondent. As FINRA explained above (and in *Regulatory Notice* 18–16), the conditions and restrictions imposed should target the misconduct demonstrated in the disciplinary proceeding and be tailored to the specific risks posed by the member firm or broker. With regard to FSI's suggestions to amend the standard to require consideration of numerous additional factors, FINRA believes that, for investor protection purposes, the primary driver of the conditions or restrictions should be what is reasonably necessary to prevent customer harm, not the size of the respondent's employing firm or its claims about its resources. FINRA believes that the proposed standard—coupled with the parties' ability to participate in the process, the knowledge of the Hearing Officers, and the availability of an expedited review—are appropriate to yield conditions or restrictions that are targeted at the specific, identifiable risks presented to customers and that are not overly burdensome. FINRA further proposes, that in light of this and other comments, to clarify the process for imposing conditions and restrictions during the pendency of an appeal. Specifically, FINRA is proposing to modify the proposed rule as set forth in *Regulatory Notice* 18–16 to clarify when and how parties can seek to impose reasonably necessary conditions and restrictions following a disciplinary decision by a Hearing Panel or Hearing Officer, the process for a respondent to request an appeal through an expedited proceeding of such conditions and restrictions, and to further clarify that such conditions and restrictions would be stayed during such expedited proceeding.

Several commenters requested that a different burden be applied in proposed Rule 9285(b)(2) for seeking the modification or removal of conditions or restrictions.[113] PIABA suggested that, to modify or remove conditions or restrictions, the respondent should be required to provide clear and convincing evidence of a manifest error by the trier of fact and show the likelihood of success of the underlying appeal. Cambridge and FSI suggested that the respondent should have to show that the Hearing Officer committed an error, that the conditions or restrictions are overly broad, or that they are not narrowly tailored to prevent future occurrences of the underlying violations.

FINRA declines these comments. As explained above, the burden in proposed Rule 9285(b)(2) is that the respondent would have to demonstrate that the conditions or restrictions imposed are not reasonably necessary for the purpose of preventing customer harm. This burden is consistent with the standard set forth in proposed Rule 9285(a) for establishing conditions and restrictions in the first place. Furthermore, FINRA believes that, for fairness reasons, a respondent's ability to seek the modification or removal of conditions or restrictions should not be constrained by the underlying merits of the respondent's disciplinary appeal. Because there would be a separate, specific standard for the imposition of conditions or restrictions—*i.e.,* those that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm—any conditions or restrictions imposed could be erroneous for a reason that is entirely unrelated to whether a respondent's underlying appeal has a likelihood of success. Likewise, FINRA does not

[112] *See* BOX Rule 12110 (''Pending effectiveness of a decision imposing a sanction on the Respondent, the person, committee or panel issuing the decision (the 'adjudicator') may impose such conditions and restrictions on the activities of the Respondent as it considers reasonably necessary for the protection of investors and the Exchange.''); CBOE Rule 13.11(b) (''Pending effectiveness of a decision imposing a sanction on the Respondent, the Hearing Panel or the CRO, as applicable, may impose such conditions and restrictions on the activities of the Respondent as the Hearing Panel or the CRO, as applicable, considers reasonably necessary for the protection of investors and the Exchange''); CBOE BZX Rule 8.11 (''Pending effectiveness of a decision imposing a penalty on the Respondent, the CRO, Hearing Panel or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent as he, she or it considers reasonably necessary for the protection of investors, creditors and the Exchange.''); MIAX Options Rule 1011(b) (''Pending effectiveness of a decision imposing a sanction on the Respondent, the person, committee or panel issuing the decision (the 'adjudicator') may impose such conditions and restrictions on the activities of the Respondent as it considers reasonably necessary for the protection of investors and the Exchange.'').

[113] Cambridge, FSI, PIABA.

support establishing a burden of proof that would be more difficult to meet, such as a ''clear and convincing evidence of a manifest error by the trier of fact'' standard. Thus, FINRA has retained that aspect of the standard proposed in *Regulatory Notice* 18–16 that would require a respondent to demonstrate, when moving to modify or remove conditions or restrictions, that the conditions or restrictions imposed are not reasonably necessary for the purpose of preventing customer harm.

PIABA and Better Markets wrote about the provisions in proposed Rule 9285(b) that would allow a respondent to seek expedited review of an order imposing conditions or restrictions. PIABA supported the proposed expedited review process. Better Markets, on the other hand, wrote that expedited reviews would add burdens to the NAC and cause delays in processing underlying disciplinary appeals. FINRA has retained the proposed expedited review process. FINRA has added the expedited review process to make the overall process more fair for the respondents involved. It also will further investor protection: Because the filing of a motion to modify or remove conditions or restrictions would stay the effectiveness of the conditions or restrictions, an expedited review would allow properly imposed conditions and restrictions to become effective sooner. Moreover, because proposed Rule 9285(b) would assign the NAC's Review Subcommittee—and not the NAC itself—to decide motions to modify or remove conditions or restrictions and establish a 30-day deadline for doing so, FINRA expects that the expedited review process will not result in materially longer times for the NAC to process underlying disciplinary appeals.

Several commenters disagreed with how, pursuant to proposed Rule 9285(b), a motion to modify or remove conditions or restrictions would effect a stay of the conditions or restrictions. Better Markets and NASAA suggested that, for investor protection reasons, there should be no stays. NASAA further commented that permitting stays would be inconsistent with how proposed Rule 9285(b) would require firms to establish heightened supervision over individuals who appeal disciplinary decisions. Luxor, on the other hand, essentially sought to expand stays, writing that no conditions and restrictions should be imposed during a disciplinary appeal except upon a showing by FINRA of clear and convincing evidence of imminent harm to the public.

In light of the conflicting comments and FINRA's belief that the stay provision strikes the right balance, FINRA is proposing to retain the proposed stay provision. It appropriately balances the investor-protection benefits of imposing reasonably necessary conditions and restrictions with the Exchange Act requirement that FINRA provide a fair procedure in disciplinary proceedings. A stay of appropriately issued conditions or restrictions would be in place only during the relatively short duration of an expedited proceeding. Moreover, FINRA does not agree that having a temporary stay of conditions or restrictions during the expedited proceeding process and requiring firms to establish heightened supervision plans during the pendency of appeals are inconsistent. Proposed Rule 9285(e) would require a disciplined respondent's member firm to establish a reasonably designed heightened supervision plan regardless of whether a Hearing Officer imposes conditions and restrictions.[114] Thus, there is no reason for a respondent's firm to delay adopting a heightened supervision plan while any conditions or restrictions are stayed pending an expedited review. Moreover, proposed Rule 9285(e) contemplates that a respondent's firm would need to create an amended plan of heightened supervision that takes into account any conditions or restrictions imposed after the initial plan is adopted.

PIABA wrote that the proposal should require that an individual respondent's employing firm be notified immediately of any conditions or restrictions imposed. FINRA generally agrees with this comment and, as explained above, has modified the proposal to require that the Office of Hearing Officers or the Office of General Counsel, as appropriate, provide a copy of the order imposing conditions and restrictions to each FINRA member with which the respondent is associated. This would be similar to how FINRA rules currently require that copies of disciplinary decisions be provided to each FINRA member with which a respondent is associated.[115]

➢ Heightened Supervision of Disciplined Respondents

FINRA also received comments concerning the proposed amendments to require, in the event of an appeal or call for review, that an individual respondent's member firm adopt heightened supervisory procedures for that individual respondent.

Better Markets and PIABA expressed support for requiring firms to adopt written plans of heightened supervision while a disciplinary appeal is pending.

FSI and SIFMA stated that requiring firms to adopt written plans of heightened supervision within ten days of any appeal or call for review is an insufficiently short amount of time, and that firms should have 30 days. FINRA believes, however, that the ten-day period is appropriate under the circumstances. The longer the time period without a plan of heightened supervision in place, the greater the risk to investors. Retaining the shorter, ten-day deadline will allow the investor-protection benefits of the heightened supervision plans to be in place sooner. FINRA also believes that the ten-day period is sufficient because a firm should be aware of the potential need to adopt a heightened supervision plan well in advance of when it would be required to do so. In this regard, Form U4 requires that registered persons report when they are the subject of a regulatory complaint that could result in an affirmative answer to other Form U4 disclosure questions that ask about self-regulatory organization findings and disciplinary actions, and FINRA rules require that the Office of Hearing Officers promptly provide a copy of a disciplinary decision to each member with which a respondent is associated. Furthermore, the ten-day deadline for adopting a heightened supervision plan would begin only when the respondent appeals the decision to the NAC or when the matter is called for review. FINRA Rules 9311 and 9312 provide 25 days to file an appeal and 25 to 45 days to call a case for review.

PIABA suggested that a firm required to adopt a plan of heightened supervision pursuant to proposed Rule 9285 also should be required to document its enforcement of that plan. FINRA has previously indicated that documenting the enforcement of a heightened supervision plan could be a useful element of such a plan.[116] Instead of singling out additional provisions like these in the rule text, however, FINRA believes that its published notices provide a thorough source of guidance on heightened supervision plans, including what provisions should

[114] *See also Regulatory Notice* 18–15 (April 2018) (Guidance on Implementing Effective Heightened Supervisory Procedures for Associated Persons with a History of Past Misconduct).

[115] *See* Rule 9268(d).

[116] *See Notice to Members* 97–19 (April 1997) (advising that firms could require supervisors of registered representatives subject to special supervisory arrangements to provide a sign-off on daily activity or to periodically attest in writing that they have carried out the terms of the special supervision).

be included at a minimum, and what other provisions can be part of an effective plan.[117] As needed or appropriate, FINRA would be able to update its published guidance to account for the heightened supervision plans required by the proposed rule change.

Luxor suggested that heightened supervision plans would not be necessary where a Hearing Officer imposes conditions or restrictions. FINRA believes that even when conditions and restrictions are imposed, the respondent's member firm would still need to address, in a heightened supervision plan, how it would implement and execute those conditions and restrictions. Furthermore, heightened supervision plans would be needed to address activities that are not subject to any imposed conditions or restrictions.

Proposed Amendments to the FINRA Rule 9520 Series To Require Automatic Interim Plans of Heightened Supervision of a Disqualified Person During the Period When FINRA Is Reviewing an Eligibility Application

Several commenters specifically approved of the proposed amendments to Rule 9522, which would require a member firm to adopt interim heightened supervisory procedures for a disqualified person during the pendency of the firm's SD Application to continue associating with that disqualified person. NASAA commented that this regulatory gap should be closed. PIABA commented that there is an obvious benefit to the proposal.

Better Markets suggested that firms should be required to adopt a plan of heightened supervision immediately when an associated person is found to have committed acts that are grounds for becoming disqualified, even pending the associated person's appeal of the underlying disqualifying event. While FINRA agrees that there may be benefits to requiring firms to place a disqualified associated person on a heightened supervision plan immediately and before the filing of an application to continue associating with that person, FINRA believes the timing requirement of the proposed rule—to require such a plan once a firm has made a determination to seek approval for continued association with the disqualified associated person—strikes the appropriate balance.

Network 1 wrote that requiring firms to expend resources on developing heightened supervision plans for disqualified persons while an SD Application is pending is a disincentive to hiring the person at all. While FINRA recognizes that the requirement to develop and implement an interim heightened supervision plan in these circumstances may deter some firms from retaining or hiring a disqualified person, FINRA believes that if a firm elects to sponsor a disqualified person it needs to provide greater oversight of the activities of such person during the pendency of the SD Application, thereby reducing the potential risk of customer harm during this period. Moreover, if the SD Application is approved by FINRA, the firm would in almost all cases be required to prepare a plan of heightened supervision.

Aderant noted that although proposed Rule 9522(g) sets a ten-day deadline to remedy a substantially incomplete application that seeks the continued associated of a disqualified person, the version proposed in *Regulatory Notice* 18–16 did not identify the specific event that triggers the ten-day deadline. FINRA agrees that a modification is appropriate and has revised proposed Rule 9522(g) to establish that the event triggering the ten-day deadline is service of the notice of delinquency.

Proposed Amendments to FINRA Rule 8312

The proposed amendments to FINRA Rule 8312 would remove the requirement that the only means through which persons can request information as to whether a particular member is subject to the provisions of the Taping Rule is a telephonic inquiry via the BrokerCheck toll-free telephone listing. The proposed amended rule would permit FINRA to release this information through BrokerCheck regardless of how it is requested.

NASAA agreed with this proposal, stating that it would advance investor protection.

Other commenters opposed it. Luxor wrote that the proposal is punitive, will disproportionately cause reputational damage to small firms, and will create a perception that a taping firm and its representatives are to be viewed negatively simply by association with behavior that occurred at other firms and other persons. Network 1 commented that there is little likelihood the public will understand the difference between a taping firm and a disciplined firm. FINRA notes that Rule 8312 already provides, however, that FINRA will release whether a particular member firm is subject to the Taping Rule in response to telephonic inquiries via the BrokerCheck toll-free telephone listing. The proposed amendments—which will only remove the telephonic inquiry limitation—will simply make it easier for investors to obtain this same information by expanding the means through which investors can access it. Moreover, the comment that the proposed amendments would have a disproportionate effect on small firms has no basis; there is currently only one firm subject to the Taping Rule.

Several comments raised concerns regarding the content of the proposed BrokerCheck disclosure relating to taping firms. Better Markets and PIABA requested that the disclosure be explained in BrokerCheck and include a specific narrative description of why the disclosure is being made. NASAA suggested that the proposed BrokerCheck disclosure appear only on the BrokerCheck reports of the few firms that are subject to the Taping Rule. NASAA further commented that the disclosure should identify the firm as subject to the Taping Rule and explain in plain English what that means. Network 1 and Better Markets raised concerns as to how the proposed amendments would impact the information disclosed through BrokerCheck concerning individuals. Network 1 requested that FINRA amend the proposal to ensure that the information disclosed on BrokerCheck not communicate any ''guilt by association'' for persons who are employees of taping firms and who have ''clean records.'' Better Markets, on the other hand, suggested that the BrokerCheck profiles of individual brokers should denote when they are associated with taping firms.

FINRA appreciates the concerns expressed and agrees that the BrokerCheck disclosure of a firm as being subject to the Taping Rule should include a clear explanation of what that means, to help investors understand why the taping firm is subject to heightened procedures and incent them to research the background of a broker associated with the taping firm.

Proposed Amendments to the FINRA Rule 1000 Series To Impose Additional Obligations on Member Firms That Associate With Persons With a Significant History of Past Misconduct

➢ General Comments

The proposed amendments to the FINRA Rule 1010 Series would require a member firm to submit a letter to Member Regulation seeking a materiality consultation when a natural person that has, in the prior five years, one or more ''final criminal matters'' or two or more ''specified risk events''

[117] *See Notice to Members* 97–17 (April 1997); *Regulatory Notice* 18–15 (April 2018).

seeks to become an owner, control person, principal or registered person.

Several commenters expressed general support for the proposed amendments to the Rule 1000 Series.[118] Better Markets characterized requiring materiality consultations before hiring as an important regulatory innovation. NASAA described the proposal as a reasonable means of getting Member Regulation more involved in members' decisions to associate with individuals who have significant disciplinary histories. PIABA wrote that the proposed amendments would promote investor protection, adequately apply stronger standards for continuing membership, and remind firms of the need to keep new representatives with significant disciplinary histories under a well-defined, well-enforced supervisory plan.

Janney and SIFMA commented that the proposed rule requiring materiality consultations is contrary to the spirit of FINRA's current guidance about materiality consultations, which they assert focuses on changes to a firm's business model and not the activity or employability of individuals. FINRA disagrees with this assertion and believes the proposed rule is consistent with FINRA rules governing the membership application process, which considers, among other things, firms' hiring decisions and individuals' past activities. For example, the safe harbor in IM–1011–1 is premised on the notion that hiring a certain number of associated persons involved in sales can be a material change in business operations that requires the filing of a CMA, and the safe harbor is not available to a member firm or a principal of a firm that has a specified disciplinary history. Likewise, FINRA rules require Member Regulation to consider, in new membership applications and CMAs, a variety of criminal, civil, regulatory, and arbitration events when assessing whether an applicant and its associated persons are capable of complying with federal securities laws, the rules and regulations thereunder, and FINRA rules.[119]

Several commenters expressed concern about the possible negative impact of the proposed rule on a firm's hiring practices and the ability of individuals with such events to be hired. Luxor commented that the proposed rule changes are unnecessary, because FINRA can contact a firm when it has hired ''high-risk brokers.'' Luxor also commented that if a person has a license to operate and has not been barred or otherwise precluded from operating, no additional consultation should be required when a firm wishes to hire that person. Janney stated that the investing public and the markets would be better protected by FINRA taking contemporaneous action, instead of disrupting the hiring practices of an unrelated firm as many as five years after the underlying disclosure events in proposed Rule 1017(a)(7) and IM–1011–3 have occurred. Janney also expressed the view that it appears that FINRA would like to review transitions specifically in the context of an affiliation change, and the proposed rule would create the ability to prevent transition of a registered representative without taking enforcement action.

FINRA believes the proposed rule is necessary to ensure that FINRA has a more meaningful regulatory touchpoint at the time an individual with a significant history of misconduct seeks to become an owner, control person, principal or registered person of a member firm. The proposal would apply in the limited circumstance where such individual meets the required thresholds for disclosure events. FINRA believes requiring firms to ask FINRA for a materiality consultation, for example, when it is planning to hire a particular individual that meets the required thresholds, would allow FINRA the opportunity to meaningfully assess the underlying disciplinary events and review the firm's supervisory practices and internal controls. The ability of FINRA to conduct this review contemporaneously furthers investor protection. Moreover, nothing in the proposed rule precludes FINRA from taking enforcement action when necessary or appropriate.

➢ Definitions and Criteria That Would Require a Materiality Consultation

FINRA received numerous comments concerning the definitions in proposed Rule 1011 of ''final criminal matter'' and ''specified risk event'' and the criteria in proposed Rule 1017(a)(7) that would trigger the need to request a materiality consultation. Some commenters expressly supported the proposed definitions and criteria.[120] FSI wrote that the numeric parameters and proposed criteria are sound and reasonable, and it supported how the ''specified risk events'' are final and investment- or regulatory-related. NASAA wrote that the proposed definition of ''final criminal matter'' appropriately captures the scope of disclosable criminal events on the Uniform Registration Forms. PIABA wrote that the criteria and definitions are appropriate and clear enough to avoid confusion, and that the minor compliance costs will be far outweighed by the increased investor protections.

Other commenters suggested alternatives to the proposed definitions and criteria. For example:

- Some commenters proposed that the definition of ''final criminal matter'' include only investment- or fraud-related criminal matters [121] or matters that would generate a risk of customer harm.[122]
- Several commenters proposed that the definition of ''specified risk event'' use a dollar threshold that is either higher [123] or lower [124] than $15,000.
- Some commenters proposed that the final awards and settlements that are counted as ''specified risk events'' be broadened [125] or narrowed.[126]
- Several commenters proposed changes to how ''specified risk events'' would be counted.[127]
- Some commenters suggested that lookback periods for events that would trigger a materiality consultation be either shortened [128] or increased.[129]
- Luxor wrote that additional factors should be included in the criteria for whether a materiality consultation is required, including the length of time the individual has been in the industry,

[118] Better Markets, Cambridge, NASAA, PIABA.

[119] *See* Rule 1014(a)(3).

[120] FSI, NASAA, PIABA.

[121] Luxor, Wulff Hansen.

[122] MML. This commenter also requested guidance concerning whether ''final criminal matter'' would include situations where a person receives a deferred sentence and can clear a conviction through compliance with a court-ordered program. Per the proposed definition, whether a ''final criminal matter'' would count for purposes of proposed Rule 1017(a)(7) and IM–1011–3 would depend on whether the matter ''is disclosed, or was required to be disclosed, on the applicable Uniform Registration Forms.'' The setting aside of a conviction does not necessarily mean that it need not be reported on, or that the matter should be expunged from, the Uniform Registration Forms. *See, e.g.,* Form U4 and U5 Interpretive Questions and Answers, *http://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf* (Questions 14A and 14B, Interpretive Question and Answer 2, stating that ''[e]ach order setting aside a conviction will be reviewed by RAD staff to determine if the conviction must be reported'').

[123] Cambridge, IBN, Janney, MML. Cambridge asserted that some unfair high-risk characterizations resulting from a $15,000 threshold would involve control persons, principals and registered persons who are required to disclose events due to a managerial role but are ''likely not directly involved in'' the underlying violations in those disclosed events. FINRA notes that the proposed definition of ''specified risk event'' does not include final awards or settlements where the person was not named but is only the ''subject of.''

[124] Better Markets.

[125] NASAA.

[126] Luxor, Network 1.

[127] Luxor, MML, Wulff Hansen.

[128] Luxor.

[129] NASAA.

the number of events during that period, and the circumstances of those events.

• Several commenters suggested narrowing the kinds of business expansions that would require materiality consultations.[130]

After considering all the commenters' suggested alternative definitions and criteria, FINRA has decided to retain the definitions of ''final criminal matter'' and ''specified risk events'' and the criteria that would trigger a materiality consultation that it proposed in *Regulatory Notice* 18–16. Many of the comments concern issues that FINRA already considered and addressed in the economic assessment in *Regulatory Notice* 18–16, and the comments have not persuaded FINRA that any changes to the definitions or criteria would be more efficient or effective at addressing the potential for future customer harm presented. As FINRA explained in *Regulatory Notice* 18–16, the primary benefit of the proposed rule change would be to reduce the potential risk of future customer harm by individuals who meet the proposed criteria and seek to become an owner, control person, principal or registered person of a member firm. The proposed rule change would further promote investor protection by applying stronger standards for changes to a current member firm's ownership, control or business operations, including the potential that such changes would require the filing and approval of a CMA. In developing this proposal, one of the guiding principles was to provide transparency regarding the proposal's application, so that firms could largely identify with available data the specific set of disclosure events that would count towards the proposed criteria and whether a proposed business change would trigger the need for a materiality consultation. This is why FINRA's proposal is based mostly on events disclosed on the Uniform Registration Forms, which are generally available to firms and FINRA.

While FINRA generally agrees with the comments that the proposed materiality consultation process should account for situations where numerous ''specified risk events'' are related,[131] it does not believe that modifying the rule-based criteria is the best way to do so. Rather, FINRA believes the materiality consultation process should allow it to assess an individual's particular events. Moreover, based on experience gained through the materiality consultations, FINRA may be able to develop guidance for the Department concerning situations involving the ''specified risk events'' that could affect whether a proposed business expansion is or is not material.

Wulff Hansen suggested that a materiality consultation should be required when a person having two or more ''specified risk events'' is already associated with a member and seeks to become an owner or control person. FINRA notes that the proposed rule already would require materiality consultations for internal moves. As explained above, however, the proposed rule would not apply when a person who meets the proposed criteria in proposed Rule 1017(a)(7) is already a principal at a member firm and seeks to add an additional principal registration at that same firm. In that instance, the proposed rule amendments would not require a materiality consultation.

➢ Materiality Consultation Procedures

FSI and Janney requested that FINRA develop additional procedures for the materiality consultation process. For example, these commenters wrote that FINRA should establish time frames for FINRA staff to issue a decision in a materiality consultation, with one commenter explaining that time deadlines would allow firms to minimize litigation risks when making hiring decisions. FSI asked that FINRA consider establishing rule-based remedies for firms that disagree with FINRA staff's materiality consultation decisions, and a rule-based requirement that FINRA explain in writing a decision that requires a firm to file a CMA.[132] MML suggested that the proposed rule should outline the issues that would be central to the Department's materiality determination and clarify the proposed requirement that a member submit a written letter to the Department in a ''manner prescribed by FINRA.''

In general, FINRA believes that additional rule-based procedures for the materiality consultation process would undermine its informality, flexibility and expedited nature. By analogy, FINRA's existing materiality consultation process has no written-decision requirement and no appeal process. Nevertheless, FINRA believes it would be helpful to provide guidance about the materiality consultation process that would be required by the proposed rule, to supplement the already published guidance about FINRA's existing materiality consultation process.[133] For that reason, FINRA has explained in detail—both in *Regulatory Notice* 18–16 and above—the kinds of information that the firm should provide when seeking a materiality consultation required by proposed Rule 1017(a)(7) and what information would be relevant to the Department's materiality decision. FINRA also will provide more guidance as necessary as to what firms should provide when seeking the materiality consultation required by the proposed rule amendments.

Miscellaneous Comments

SIFMA requested that FINRA provide a notification to firms of registered persons who have ''specified risk events,'' similar to how FINRA provides information gathered in its public records searches for information relating to bankruptcies, judgments and liens, asserting that individuals may not identify and disclose ''specified risk events'' to firms in a timely manner. FINRA appreciates this suggestion, but notes that the events included in the definition are derived from the Uniform Registration Forms and, therefore, firms should generally be able to conduct appropriate due diligence to identify such individuals. Indeed, FINRA Rule 3110(e) already requires firms to establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contain in an applicant's initial or transfer Form U4, which would include verifying the accuracy and completeness of answers and disclosures concerning ''final criminal matters'' and the events covered by the definition of ''specified risk events.''

Cambridge commented that persons should have the opportunity to confidentially submit an application seeking a materiality consultation to ''pre-qualify'' a transition from one firm

[130] Janney, Luxor, MML, SIFMA, Wulff Hansen.

[131] MML, Wulff Hansen.

[132] FSI also wrote that additional procedures would be appropriate because the materiality consultations would be a rule-based requirement, not voluntary.

[133] *See* The Materiality Consultation Process for CMAs, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process.* FINRA's existing guidance provides that a materiality consultation submission should include, but is not limited to, the following: (i) A description of the proposed change in business sufficient for staff to understand the scope of the business and how it will be conducted; (ii) why the firm believes that the proposed new business or product is similar in scope or nature to their existing business; (iii) the anticipated impact the change will have to the firm's supervisory structure; (iv) any impact the proposed change will have to the firm's capital or liquidity; (v) the nature and scope of updates required to written supervisory procedures, systems and firm operations; (vi) any recent disciplinary matters that relate to the proposed activities as well as how the firm's overall regulatory history may impact the ability of the firm to effectively conduct the activity; and (vii) any relevant documentation to support the proposal.

to another and gain confidence that they are free to make such a transfer. FINRA does not believe, however, that prequalification of a person with a significant history of misconduct would be appropriate, or even possible, in the absence of additional information about, among other things, the specific context in which the person would be associated with a new firm and the activities and history of such proposed new firm.

Better Markets opined that the proposed rule change would reflect an improvement over the status quo but is still insufficient, and that FINRA should do more to reduce the number of brokers with a significant history of misconduct and the prevalence of recidivism. Specifically, Better Markets wrote that FINRA should ban brokers with two criminal convictions or three ''specified risk events'' at a $5,000 level (instead of the proposed $15,000 level) and immediately and permanently expel a firm where more than 20% of its brokers have three or more ''specified risk events.'' Better Markets also suggested that FINRA engage in more investor education on the topic of recidivist brokers, design a user-friendly disclosure system that clearly identifies brokers with a demonstrable pattern of violations, and repeal the part of FINRA Rule 9311 that stays a Hearing Panel or Hearing Officer decision pending an appeal to the NAC.

FINRA's efforts to address the risks posed by brokers with a significant history of misconduct are ongoing, and FINRA appreciates comments on additional steps that FINRA might take. Some of Better Markets' suggestions, however, amount to a request that FINRA create new categories of ''statutory disqualification.'' Federal law defines the types of misconduct that presumptively disqualify a broker from associating with a firm, and amending what qualifies as a statutory disqualification is beyond FINRA's jurisdiction. In addition, FINRA does not agree that repealing the provision in Rule 9311(b) that stays the effect of a Hearing Panel or Hearing Officer decision would be appropriate at this time. FINRA's rule that stays the effect of a Hearing Panel or Hearing Officer decision is consistent with rules of other self-regulatory organizations and the SEC.[134] Moreover, the proposed rule change would protect investors during a disciplinary appeal by empowering Hearing Officers to impose conditions and restrictions that they consider reasonably necessary for the purpose of preventing customer harm.

Miscellaneous Comments Outside the Scope of the Proposal

Some comments raised concerns regarding broader issues, such as arbitration proceedings and public disclosure of arbitration settlements,[135] the composition of Hearing Panels in FINRA's disciplinary proceedings,[136] questions about whether firms are permitted to pay disqualified persons consistent with FINRA Rule 8311,[137] various Constitutional protections that FINRA should adopt in investigations and disciplinary proceedings,[138] and how FINRA might improve the Taping Rule to prevent non-compliance with that rule.[139] FINRA believes, however, that these comments are all outside the scope of the proposal.

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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–011 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–FINRA–2020–011. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–

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[134] *See, e.g.,* 17 CFR 201.360(d) (providing that an SEC ALJ's initial decision shall not become final as to a party or person who timely files a petition for review); CBOE Rule 13.11(b) (providing that sanctions shall not become effective until the Exchange review process is completed or the decision otherwise becomes final); NASDAQ PHLX Rule 9311(b) (providing that an appeal to the Exchange Review Council from a disciplinary decision shall operate as a stay until the Exchange Review Council issues a decision); NYSE CHX Article 12, Rule 6 (providing that the enforcement of any orders or penalties shall be stayed upon the filing of a notice of appeal pending the outcome of final review by a Judiciary Committee or the Board of Directors).

[135] IBN suggested that FINRA should have local arbitration hearings, with panels composed of local representatives and local firms, and that FINRA should eliminate mandatory arbitration or require arbitrators to be lawyers and follow the rule of law. Network 1 commented that FINRA should consider the ''prejudicial effect'' on brokers of the six-year limitations period for filing an arbitration claim and of nuisance-value arbitration actions brought by non-attorney representatives; that references to arbitration claims brought by a non-attorney representative that are settled or that result in an award in favor of the broker should be removed from the broker's public record; and that an arbitration claim brought by a non-attorney representative that results in a settlement should not be made available to the public at all.

[136] Network 1 commented that FINRA adjudicatory panels should include one attorney with a demonstrated history of representing brokers or member firms, securities industry experience, and knowledge of securities laws, regulations and rules and industry practices in the investment banking and securities businesses. It also commented that FINRA should establish a process for soliciting ''bona fide neutrals'' to sit on adjudicatory panels.

[137] Network 1.

[138] Network 1.

[139] NASAA.

2020–011 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[140]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07777 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88589; File No. SR–NYSEAMER–2020–22]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10E

April 8, 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 March 27, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on October 20, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10E (Clearly Erroneous Executions) to the close of business on October 20, 2020. The pilot program is currently due to expire on April 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10E to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10E to extend the pilot's effectiveness to the close of business on April 20, 2020.[11]

The Exchange now proposes to amend Rule 7.10E to extend the pilot's effectiveness for a further six months until the close of business on October 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rule 7.10E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10E.

The Exchange does not propose any additional changes to Rule 7.10E. Extending the effectiveness of Rule 7.10E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the

[140] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEAmer–2010–60).

[5] *See* Securities Exchange Act Release No. 68801 (Feb. 1, 2013), 78 FR 8630 (Feb. 6, 2013) (SR–NYSEMKT–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEMKT–2014–37).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71820 (March 27, 2014), 79 FR 18595 (April 2, 2014) (SR–NYSEMKT–2014–28).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85563 (April 9, 2019), 84 FR 15241 (April 15, 2019) (SR–NYSEAMER–2019–11).

[11] *See* Securities Exchange Act Release No. 87354 (October 18, 2019), 84 FR 57139 (October 24, 2019) (SR–NYSEAMER–2019–44).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

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 proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–22. 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

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 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.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–22 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07769 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88591; File No. SR–NYSECHX–2020–09]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 8, 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 March 27, 2020 NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2020. The pilot program is currently due to expire on April 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Article 20, Rule 10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Article 20, Rule 10 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10]

On October 9, 2019, the Commission approved the Exchange's proposal to transition to trading on Pillar.[11] The Exchange's Pillar rules include Rule 7.10, which is substantively identical to Article 20, Rule 10. Article 20, Rule 10 is no longer applicable to any securities that trade on the Exchange. The Exchange later amended Rule 7.10 to extend the pilot's effectiveness to the close of business on April 20, 2020.[12]

The Exchange now proposes to amend Rule 7.10 to extend the pilot's effectiveness for a further six months until the close of business on October 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Article 20, Rule 10 prior to being amended by SR–CHX–2010–13 shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[13] In such an event, the remaining sections of Article 20, Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[5] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85533 (April 5, 2019), 84 FR 14701 (April 11, 2019) (SR–NYSECHX–2019–04).

[11] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR–NYSECHX–2019–08).

[12] *See* Securities Exchange Act Release No. 87351 (October 18, 2019), 84 FR 57068 (October 24, 2019) (SR–NYSECHX–2019–13).

[13] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of these rules for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

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 proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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[16] and Rule 19b–4(f)(6) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2020–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2020–09. 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

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 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.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2020–09 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07771 Filed 4–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88586; File No. SR–CBOE–2020–028]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule in Connection With Migration

April 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule in connection with migration. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Affiliated Exchanges''). The Cboe Affiliated Exchanges recently aligned certain system functionality, including with respect to connectivity, retaining only intended differences between the Affiliated Exchanges, in the context of a technology migration. The Exchange migrated its trading platform to the same system used by the Affiliated Exchanges, which the Exchange completed on October 7, 2019 (the ''migration''). As a result of this migration, the Exchange's pre-migration connectivity architecture was rendered obsolete, and as such, the Exchange now offers new functionality, including new logical connectivity, and therefore proposes to adopt corresponding fees.[3] In determining the proposed fee changes, the Exchange assessed the impact on market participants to ensure that the proposed fees would not create an undue financial burden on any market participants, including smaller market participants. While the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange had anticipated its post-migration connectivity revenue[4] to be approximately 1.75% lower than connectivity revenue pre-migration.[5] In addition to providing a consistent technology offering across the Cboe Affiliated Exchanges, the migration also provided market participants a latency equalized infrastructure, improved system performance, and increased sustained order and quote per second capacity, as discussed more fully below. Accordingly, in connection with the migration and in order to more closely align the Exchange's fee structure with that of its Affiliated Exchanges, the Exchange intends to update and simplify its fee structure with respect to access and connectivity and adopt new access and connectivity fees.[6]

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As of October 7, 2019, market participants no longer have the ability to connect to the old Exchange architecture.

[4] Connectivity revenue post-migration includes revenue from physical port fees (other than for disaster recovery), Cboe Data Services Port Fee, logical port fees, Trading Permit Fees, Market-Maker EAP Appointment Unit fees, Tier Appointment Surcharges and Floor Broker Trading Surcharges, less the Floor Broker ADV discounts and discounts on BOE Bulk Ports via the Affiliate Volume Plan and the Market-Maker Access Credit program.

[5] For February 2020, the Exchange's connectivity revenue was approximately 2.5% higher than connectivity revenue pre-migration. For purposes of a fair comparison of the Exchange's initial projection of post-migration connectivity revenue to realized post-migration revenue connectivity, the Exchange excluded from the February 2020 calculation revenue from a Trading Permit Holder who became a Market-Maker post October 7, 2019, a Trading Permit Holder that grew it's footprint on the Exchange significantly, and revenue derived from incremental usage in light of the extreme volatility and volume experienced in February, as such circumstances were not otherwise anticipated or incorporated into the Exchange's original projection. As noted, the Exchange had no way of predicting with certainty the impact of the proposed changes, nor control over choices market participants ultimately decided to make. The Exchange notes connectivity revenue was higher than anticipated in part due to (1) a higher number of 10 Gb Physical Ports being maintained by TPHs than expected (although 34% of Trading Permit Holders maintained the same number of 10 Gb Physical and 44% reduced the amount of 10 Gb Physical Ports maintained), (2) a higher quantity of BOE/FIX Logical Ports being purchased than predicted, and (3) a significantly higher quantity of the optional Drop, GRP, Multicast PITCH/Top Spin Server Ports and Purge Ports being purchased than predicted.

[6] The Exchange initially filed the proposed fee changes on October 1, 2019 (SR–CBOE–2019–077). On business date October 2, 2019, the Exchange withdrew that filing and submitted SR–CBOE–2019–082, *See* Securities Exchange Act Release No. 87304 (October 15, 2019), 84 FR 56240, (October 21, 2019) (''Original Filing''). On business date November 29, 2019, the Exchange withdrew the Original Filing and submitted SR–CBOE–2019–111, *See* Securities Exchange Act Release No. 87727

Continued

Physical Connectivity

A physical port is utilized by a Trading Permit Holder (''TPH'') or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses fees for Network Access Ports for these physical connections to the Exchange. Specifically, TPHs and non-TPHs can elect to connect to Cboe Options' trading system via either a 1 gigabit per second (''Gb'') Network Access Port or a 10 Gb Network Access Port. Pre-migration the Exchange assessed a monthly fee of $1,500 per port for 1 Gb Network Access Ports and a monthly fee of $5,000 per port for 10 Gb Network Access Ports for access to Cboe Options primary system. Through January 31, 2020, Cboe Options market participants will continue to have the ability to connect to Cboe Options' trading system via the current Network Access Ports. As of October 7, 2019, in connection with the migration, TPHs and non-TPHs may alternatively elect to connect to Cboe Options via new latency equalized Physical Ports.[7] The new Physical Ports similarly allow TPHs and non-TPHs the ability to connect to the Exchange at the data center where the Exchange's servers are located and TPHs and non-TPHs have the option to connect via 1 Gb or 10 Gb Physical Ports. As noted above, both the new 1 Gb and 10 Gb Physical Ports provide latency equalization, meaning that each market participant will be afforded the same latency for 1 Gb or 10 Gb Physical Ports in the primary data center to the Exchange's customer-facing switches regardless of location of the market participant's cage [8] in the primary data center relative to the Exchange's servers. Conversely, the legacy Network Access Ports are not latency equalized, meaning the location of a market participant's cage within the data center may affect latency. For example, in the legacy system, a cage located further from the Exchange's servers may experience higher latency than those located closer to the Exchange's servers.[9] As such, the proposed Physical Ports ensure all market participants connected to the Exchange via the new Physical Ports will receive the same respective latency for each port size and ensure that no market participant has a latency advantage over another market participant within the primary data center.[10] Additionally, the new infrastructure utilizes new and faster switches resulting in lower overall latency.

The Exchange proposes to assess the following fees for any physical port, regardless of whether the TPH or non-TPH connects via the current Network Access Ports or the new Physical Ports. Specifically, the Exchange proposes to continue to assess a monthly fee of $1,500 per port for 1 Gb Network Access Ports and new Physical Ports and increase the monthly fee for 10 Gb Network Access Ports and new Physical Ports to $7,000 per port. Physical port fees will be prorated based on the remaining trading days in the calendar month. The proposed fee for 10 Gb Physical Ports is in line with the amounts assessed by other exchanges for similar connections by its Affiliated Exchanges and other Exchanges that utilize the same connectivity infrastructure.[11]

In addition to the benefits resulting from the new Physical Ports providing latency equalization and new switches (*i.e.,* improved latency), TPHs and non-TPHs may be able to reduce their overall physical connectivity fees. Particularly, Network Access Port fees are assessed for unicast (orders, quotes) and multicast (market data) connectivity separately. More specifically, Network Access Ports may only receive one type of connectivity each (thus requiring a market participant to maintain two ports if that market participant desires both types of connectivity). The new Physical Ports however, allow access to both unicast and multicast connectivity with a single physical connection to the Exchange. Therefore, TPHs and non-TPHs that currently purchase two legacy Network Access Ports for the purpose of receiving each type of connectivity now have the option to purchase only one new Physical Port to accommodate their connectivity needs, which may result in reduced costs for physical connectivity.[12]

Cboe Data Services—Port Fees

The Exchange proposes to amend the ''Port Fee'' under the Cboe Data Services (''CDS'') Fees Schedule. Currently, the Port Fee is payable by any Customer [13] that receives data through two types of sources; a direct connection to CDS (''direct connection'') or through a connection to CDS provided by an extranet service provider (''extranet connection''). The Port Fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. The Exchange proposes to amend the monthly CDS Port Fee to provide that it is payable ''per source'' used to receive data, instead of ''per data port''. The Exchange also proposes to increase the fee from $500 per data port/month to $1,000 per data source/month.[14] The

(December 12, 2019), 84 FR 69428, (December 18, 2019) (''Second Proposed Rule Change''). On January 28, 2020 the Exchange withdrew that filing and submitted SR–CBOE–2020–005, *See* Securities Exchange Act Release No. 88164 (February 11, 2020), 85 FR 8897, (February 18, 2020) (''Third Proposed Rule Change''). On March 27, 2020, the Exchange withdrew that filing and submitted this filing.

[7] As previously noted, market participants will continue to have the option of connecting to Cboe Options via a 1 Gbps or 10 Gbps Network Access Port at the same rates as proposed, respectively.

[8] A market participant's ''cage'' is the cage within the data center that contains a market participant's servers, switches and cabling.

[9] The Exchange equalizes physical connectivity in the data center for its primary system by taking the farthest possible distance that a Cboe market participant cage may exist from the Exchange's customer-facing switches and using that distance as the cable length for any cross-connect.

[10] The Exchange notes that 10 Gb Physical Ports have an 11 microsecond latency advantage over 1 Gb Physical Ports. Other than this difference, there are no other means to receive a latency advantage as compared to another market participant in the new connectivity structure.

[11] *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BZX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BYX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX Options Exchange Fee Schedule, Physical Connectivity Fees; and Cboe BZX Options Exchange Fee Schedule, Physical Connectivity Fees (collectively, ''Affiliated Exchange Fee Schedules''). *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[12] The Exchange proposes to eliminate the current Cboe Command Connectivity Charges table in its entirety and create and relocate such fees in a new table in the Fees Schedule that addresses fees for physical connectivity, including fees for the current Network Access Ports, the new Physical Ports and Disaster Recovery (''DR'') Ports. The Exchange notes that it is not proposing any changes with respect to DR Ports other than renaming the DR ports from ''Network Access Ports'' to ''Physical Ports'' to conform to the new Physical Port terminology. The Exchange also notes that subsequent to the initial filings that proposed these fee changes on October 1 and 2, 2019 (SR–CBOE–2019–077 and SR–CBOE–2019–082), the Exchange amended the proposed port fees to waive fees for ports used for PULSe in filing No. SR–CBOE–2019–105. The additions proposed by filing SR–CBOE–2019–105 are double underlined in Exhibit 5A and the deletions are doubled bracketed in Exhibit 5A.

[13] A Customer is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or extranet service provider), whether that data is distributed externally or used internally.

[14] For example, under the pre-migration ''per port'' methodology, if a TPH maintained 4 ports

Exchange notes the proposed change in assessing the fee (*i.e.,* per source vs per port) and the proposed fee amount are the same as the corresponding fee on its affiliate C2.[15]

In connection with the proposed change, the Exchange also proposes to rename the ''Port Fee'' to ''Direct Data Access Fee''. As the fee will be payable ''per data source'' used to receive data, instead of ''per data port'', the Exchange believes the proposed name is more appropriate and that eliminating the term ''port'' from the fee will eliminate confusion as to how the fee is assessed.

Logical Connectivity

Next, the Exchange proposes to amend its login fees. By way of background, Cboe Options market participants were able to access Cboe Command via either a CMI or a FIX Port, depending on how their systems are configured. Effective October 7, 2019, market participants are no longer able to use CMI and FIX Login IDs. Rather, the Exchange utilizes a variety of logical connectivity ports as further described below. Both a legacy CMI/FIX Login ID and logical port represent a technical port established by the Exchange within the Exchange's trading system for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Market participants that wish to connect directly to the Exchange can request a number of different types of ports, including ports that support order entry, customizable purge functionality, or the receipt of market data. Market participants can also choose to connect indirectly through a number of different third-party providers, such as another broker-dealer or service bureau that the Exchange permits through specialized access to the Exchange's trading system and that may provide additional services or operate at a lower mutualized cost by providing access to multiple members. In light of the discontinuation of CMI and FIX Login IDs, the Exchange proposes to eliminate the fees associated with the CMI and FIX login IDs and adopt the below pricing for logical connectivity in its place.

Service	Cost per month
Logical Ports (BOE, FIX) 1 to 5	$750 per port.
Logical Ports (BOE, FIX) >5	$800 per port.
Logical Ports (Drop)	$750 per port.
BOE Bulk Ports 1 to 5	$1,500 per port.
BOE Bulk Ports 6 to 30	$2,500 per port.
BOE Bulk Ports >30	$3,000 per port.
Purge ports	$850 per port.
GRP Ports	$750/primary (A or C Feed).
Multicast PITCH/Top Spin Server Ports.	$750/set of primary (A or C feed).

The Exchange proposes to provide for each of the logical connectivity fees that new requests will be prorated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service. The Exchange notes that the proration policy is the same on its Affiliated Exchanges.[16]

Logical Ports (BOE, FIX, Drop): The new Logical Ports represent ports established by the Exchange within the Exchange's system for trading purposes. Each Logical Port established is specific to a TPH or non-TPH and grants that TPH or non-TPH the ability to operate a specific application, such as order/quote[17] entry (FIX and BOE Logical Ports) or drop copies (Drop Logical Ports). Similar to CMI and FIX Login IDs, each Logical Port will entitle a firm to submit message traffic of up to specified number of orders per second.[18] The Exchange proposes to assess $750 per port per month for all Drop Logical Ports and also assess $750 per port per month (which is the same amount currently assessed per CMI/FIX Login ID per month), for the first 5 FIX/BOE Logical Ports and thereafter assess $800 per port, per month for each additional FIX/BOE Logical Port. While the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs (for the first five logical ports), the proposed logical ports provide for significantly more message traffic as shown below:

	CMI/FIX login Ids		BOE/FIX logical ports
	Quotes	Orders	Quotes/orders
Bandwidth Limit per login	5,000 quotes/3 sec.[19]	30 orders/sec	15,000 quotes/orders/3 sec.
Cost	$750 each	$750 each	$750/$800 each.
Cost per Quote/Order Sent @Limit	$0.15 per quote/3 sec.	$25.00 per order/sec.	$0.05/$0.053 per quote/order/3 sec.

[19] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

Logical Port fees will be limited to Logical Ports in the Exchange's primary data center and no Logical Port fees will be assessed for redundant secondary data center ports. Each BOE or FIX Logical Port will incur the logical port fee indicated in the table above when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE and FIX Logical Ports. The Exchange believes that the pricing implications of going beyond 70,000 orders per trading day

that receive market data, that TPH would be assessed $2,000 per month (*i.e.,* $500 × 4 ports), regardless of how many sources it used to receive data. Under the proposed ''per source'' methodology, if a TPH maintains 4 ports that receive market data, but receives data through only one source (*e.g.,* a direct connection) that TPH would be assessed $1,000 per month (*i.e.,* $1000 × 1 source). If that TPH maintains 4 ports but receives data from both a direct connection and an extranet connection, that TPH would be assessed $2,000 per month (*i.e.,* $1,000 × 2 sources). Similarly, if that TPH maintains 4 ports and receives data from two separate extranet providers, that TPH would be assessed $2,000 per month (*i.e.,* $1,000 × 2).

[15] *See* Cboe C2 Options Exchange Fee Schedule, Cboe Data Services, LLC Fees, Section IV, Systems Fees.

[16] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[17] As of October 7, 2019, the definition of quote in Cboe Options Rule 1.1 means a firm bid or offer a Market-Maker (a) submits electronically as an order or bulk message (including to update any bid or offer submitted in a previous order or bulk message) or (b) represents in open outcry on the trading floor.

[18] Login Ids restrict the maximum number of orders and quotes per second in the same way logical ports do, and Users may similarly have multiple logical ports as they may have Trading Permits and/or bandwidth packets to accommodate their order and quote entry needs.

per Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed fee of $750 per port is the same amount assessed not only for current CMI and FIX Login Ids, but also similar ports available on an affiliate exchange.[20]

The Exchange also proposes to provide that the fee for one FIX Logical Port connection to PULSe and one FIX Logical Port connection to Cboe Silexx (for FLEX trading purposes) will be waived per TPH. The Exchange notes that only one FIX Logical Port connection is required to support a firm's access through each of PULSe and Cboe Silexx FLEX.

BOE Bulk Logical Ports: The Exchange also offers BOE Bulk Logical Ports, which provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. While BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity, as the primary purpose of the proposed bulk message functionality is to encourage market-maker quoting on exchanges. As indicated above, BOE Bulk Logical Ports are assessed $1,500 per port, per month for the first 5 BOE Bulk Logical Ports, assessed $2,500 per port, per month thereafter up to 30 ports and thereafter assessed $3,000 per port, per month for each additional BOE Bulk Logical Port. Like CMI and FIX Login IDs, and FIX/BOX Logical Ports, BOE Bulk Ports will also entitle a firm to submit message traffic of up to specified number of quotes/orders per second.[21] The proposed BOE Bulk ports also provide for significantly more message traffic as compared to current CMI/FIX Login IDs, as shown below:

	CMI/FIX login Ids	BOE bulk ports
.....	Quotes	Quotes[22]
Bandwidth Limit	5,000 quotes/3 sec[23]	225,000 quotes 3 sec.
Cost	$750 each	$1,500/$2,500/$3,000 each.
Cost per Quote/Order Sent @Limit	$0.15 per quote/3 sec	$0.006/$0.011/$0.013 per quote/3 sec.

[22] *See* Cboe Options Rule 1.1.

[23] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

Each BOE Bulk Logical Port will incur the logical port fee indicated in the table above when used to enter up to 30,000,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 30,000,000 orders per day per BOE Bulk Logical Port will incur an additional logical port fee of $3,000 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE Bulk Logical Ports. The Exchange believes that the pricing implications of going beyond 30,000,000 orders per trading day per BOE Bulk Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed BOE Bulk Logical Port fees are similar to the fees assessed for these ports by BZX Options.[24]

Purge Ports: As part of the migration, the Exchange introduced Purge Ports to provide TPHs additional risk management and open order control functionality. Purge ports were designed to assist TPHs, in the management of, and risk control over, their quotes, particularly if the TPH is dealing with a large number of options. Particularly, Purge Ports allow TPHs to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID''). This would allow TPHs to seamlessly avoid unintended executions, while continuing to evaluate the direction of the market. While Purge Ports are available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity and are therefore exposed to a large amount of risk across a number securities. The Exchange notes that market participants are also able to cancel orders through FIX/BOE Logical Ports and as such a dedicated Purge Port is not required nor necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk. As indicated in the table above, the Exchange proposes to assess a monthly charge of $850 per Purge Port. The Exchange notes that the proposed fee is in line with the fee assessed by other exchanges, including its Affiliated Exchanges, for Purge Ports.[25]

Multicast PITCH/Top Spin Server and GRP Ports: In connection with the migration, the Exchange also offers optional Multicast PITCH/Top Spin Server (''Spin'') and GRP ports and proposes to assess $750 per month, per port. Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH/Top data feeds. The Exchange's Multicast PITCH/Top data feeds are available from two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the ''B feed'' and the ''D feed.'' All secondary feed Spin and GRP Ports will be provided for redundancy at no additional cost. The Exchange notes a dedicated Spin and GRP Port is not required nor necessary. Rather, Spin ports enable a market participant to receive a snapshot of the current book quickly in the middle of the trading session without worry of gap request limits and GRP Ports were specially developed to request and receive retransmission of data in the event of missed or dropped message. The Exchange notes that the proposed fee is

[20] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[21] The Exchange notes that while technically there is no bandwidth limit per BOE Bulk Port, there may be possible performance degradation at 15,000 messages per second (which is the equivalent of 225,000 quotes/orders per 3 seconds). As such, the Exchange uses the number at which performance may be degraded for purposes of comparison.

[24] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[25] *See e.g.,* Nasdaq ISE Options Pricing Schedule, Section 7(C), Ports and Other Services. *See also* Cboe EDGX Options Exchange Fee Schedule, Options Logical Port Fees; Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees and Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

in line with the fee assessed for the same ports on BZX Options.[26]

Access Credits

The Exchange next proposes to amend its Affiliate Volume Plan (''AVP'') to provide Market-Makers an opportunity to obtain credits on their monthly BOE Bulk Port Fees.[27] By way of background, under AVP, if a TPH Affiliate [28] or Appointed OFP [29] (collectively, an ''affiliate'') of a Market-Maker qualifies under the Volume Incentive Program (''VIP'') (*i.e.,* achieves VIP Tiers 2–5), that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider (''LP'') Sliding Scale transaction fees and Trading Permit fees. The Exchange proposes to amend AVP to provide that qualifying Market-Makers will receive a discount on Bulk Port fees (instead of Trading Permits) where an affiliate achieves VIP Tiers 4 or 5. As discussed more fully below, the Exchange is amending its Trading Permit structure, such that off-floor Market-Makers no longer need to hold more than one Market-Maker Trading Permit. As such, in place of credits for Trading Permits, the Exchange will provide credits for BOE Bulk Ports.[30] The proposed credits are as follows:

Market maker affiliate access credit	VIP tier	Percent credit on monthly BOE bulk port fees
Credit tier	1	0
	2	0
	3	0
	4	15
	5	25

The Exchange believes the proposed change to AVP continues to allow the Exchange to provide TPHs that have both Market-Maker and agency operations reduced Market-Maker costs via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees. AVP also continues to provide incremental incentives for TPHs to strive for the higher tier levels, which provide increasingly higher benefits for satisfying increasingly more stringent criteria.

In addition to the opportunity to receive credits via AVP, the Exchange proposes to provide an additional opportunity for Market-Makers to obtain credits on their monthly BOE Bulk Port fees based on the previous month's make rate percentage. By way of background, the Liquidity Provider Sliding Scale Adjustment Table provides that Taker fees be applied to electronic ''Taker'' volume and a Maker rebate be applied to electronic ''Maker'' volume, in addition to the transaction fees assessed under the Liquidity Provider Sliding Scale.[31] The amount of the Taker fee (or Maker rebate) is determined by the Liquidity Provider's percentage of volume from the previous month that was Maker (''Make Rate'').[32] Market-Makers are given a Performance Tier based on their Make Rate percentage which currently provides adjustments to transaction fees. Thus, the program is designed to attract liquidity from traditional Market-Makers. The Exchange proposes to now also provide BOE Bulk Port fee credits if Market-Makers satisfy the thresholds of certain Performance Tiers. Particularly, the Performance Tier earned will also determine the percentage credit applied to a Market-Maker's monthly BOE Bulk Port fees, as shown below:

Market maker access credit	Liquidity provider sliding scale adjustment performance tier	Make rate (percent based on prior month)	Percent credit on monthly BOE bulk port fees
Credit Tier	1	0–50	0
	2	Above 50–60	0
	3	Above 60–75	0
	4	Above 75–90	40
	5	Above 90	40

The Exchange believes the proposal mitigates costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). The Exchange lastly notes that both the Market-Maker Affiliate Access Credit under AVP and the Market-Maker Access Credit tied to Performance Tiers can both be earned by a TPH, and these credits will each apply to the total monthly BOE Bulk Port Fees including any incremental BOE Bulk Port fees incurred, before any credits/adjustments have been applied (*i.e.* an electronic MM can earn a credit from 15% to 65%).

Bandwidth Packets

As described above, post-migration, the Exchange utilizes a variety of logical ports. Part of this functionality is similar to bandwidth packets that were previously available on the Exchange. Bandwidth packets restricted the maximum number of orders and quotes per second. Post-migration, market

[26] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[27] As noted above, while BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market Makers or firms that conduct similar business activity.

[28] For purposes of AVP, ''Affiliate'' is defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

[29] *See* Cboe Options Fees Schedule Footnote 23. Particularly, a Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP.

[30] The Exchange notes that Trading Permits currently each include a set bandwidth allowance and 3 logins. Current logins and bandwidth are akin to the proposed logical ports, including BOE Bulk Ports which will primarily be used by Market-Makers.

[31] *See* Cboe Options Exchange Fees Schedule, Liquidity Provider Sliding Scale Adjustment Table.

[32] More specifically, the Make Rate is derived from a Liquidity Provider's electronic volume the previous month in all symbols excluding Underlying Symbol List A using the following formula: (i) The Liquidity Provider's total electronic automatic execution (''auto-ex'') volume (*i.e.,* volume resulting from that Liquidity Provider's resting quotes or single sided quotes/orders that were executed by an incoming order or quote), divided by (ii) the Liquidity Provider's total auto-ex volume (*i.e.,* volume that resulted from the Liquidity Provider's resting quotes/orders and volume that resulted from that LP's quotes/orders that removed liquidity). For example, a TPH's electronic Make volume in September 2019 is 2,500,000 contracts and its total electronic auto-ex volume is 3,000,000 contracts, resulting in a Make Rate of 83% (Performance Tier 4). As such, the TPH would receive a 40% credit on its monthly Bulk Port fees for the month of October 2019. For the month of October 2019, the Exchange will be billing certain incentive programs separately, including the Liquidity Provider Sliding Scale Adjustment Table, for the periods of October 1—October 4 and October 7—October 31 in light of the migration of its billing system. As such, a Market-Maker's Performance Tier for November 2019 will be determined by the Market-Maker's percentage of volume that was Maker from the period of October 7—October 31, 2019.

participants may similarly have multiple Logical Ports and/or BOE Bulk Ports as they may have had bandwidth packets to accommodate their order and quote entry needs. As such, the Exchange proposes to eliminate all of the current Bandwidth Packet fees.[33] The Exchange believes that the proposed pricing implications of going beyond specified bandwidth described above in the logical connectivity fees section will be able to otherwise mitigate message traffic as necessary.

CAS Servers

By way of background, in order to connect to the legacy Cboe Command, which allowed a TPH to trade on the Cboe Options System, a TPH had to connect via either a CMI or FIX interface (depending on the configuration of the TPH's own systems). For TPHs that connected via a CMI interface, they had to use CMI CAS Servers. In order to ensure that a CAS Server was not overburdened by quoting activity for Market-Makers, the Exchange allotted each Market-Maker a certain number of CASs (in addition to the shared backups) based on the amount of quoting bandwidth that they had. The Exchange no longer uses CAS Servers, post-migration. In light of the elimination of CAS Servers, the Exchange proposes to eliminate the CAS Server allotment table and extra CAS Server fee.

Trading Permit Fees

By way of background, the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits.[34] Pre-migration, the Exchange issued the following three types of Trading Permits: (1) Market-Maker Trading Permits, which were assessed a monthly fee of $5,000 per permit; (2) Floor Broker Trading Permits, which were assessed a monthly fee of $9,000 per permit; and (3) Electronic Access Permits (''EAPs''), which were assessed a monthly fee of $1,600 per. The Exchange also offered separate Market-Maker and Electronic Access Permits for the Global Trading Hours (''GTH'') session, which were assessed a monthly fee of $1,000 per permit and $500 per permit respectively.[35] For further color, a Market-Maker Trading Permit entitled the holder to act as a Market-Maker, including a Market-Maker trading remotely, DPM, eDPM, or LMM, and also provided an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins, trading floor access and TPH status.[36] A Floor Broker Trading Permit entitled the holder to act as a Floor Broker, provided an order entry bandwidth allowance, up to 3 logins, trading floor access and TPH status.[37] Lastly, an EAP entitled the holder to electronic access to the Exchange. Holders of EAPs must have been broker-dealers registered with the Exchange in one or more of the following capacities: (a) Clearing TPH, (b) TPH organization approved to transact business with the public, (c) Proprietary TPHs and (d) order service firms. The permit did not provide access to the trading floor. An EAP also provided an order entry bandwidth allowance, up to 3 logins and TPH status.[38] The Exchange also provided an opportunity for TPHs to pay reduced rates for Trading Permits via the Market Maker and Floor Broker Trading Permit Sliding Scale Programs (''TP Sliding Scales''). Particularly, the TP Sliding Scales allowed Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they committed in advance to a specific tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year.[39]

As noted above, Trading Permits were tied to bandwidth allocation, logins and appointment costs, and as such, TPH organizations may hold multiple Trading Permits of the same type in order to meet their connectivity and appointment cost needs. Post-Migration, bandwidth allocation, logins and appointment costs are no longer tied to a Trading Permit, and as such, the Exchange proposes to modify its Trading Permit structure. Particularly, in connection with the migration, the Exchange adopted separate on-floor and off-floor Trading Permits for Market-Makers and Floor Brokers, adopted a new Clearing TPH Permit, and proposes to modify the corresponding fees and discounts. As was the case pre-migration, the proposed access fees discussed below will continue to be non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Membership Services Department by 4 p.m. CT on the second-to-last business day of the prior month to cancel the Trading Permit effective at or prior to the end of the applicable month. Trading Permit Holders will only be assessed a single monthly fee for each type of electronic Trading Permit it holds.

First, TPHs no longer need to hold multiple permits for each type of electronic Trading Permit (*i.e.,* electronic Market-Maker Trading Permits and/or and Electronic Access Permits). Rather, for electronic access to the Exchange, a TPH need only purchase one of the following permit types for each trading function the TPH intends to perform: Market-Maker Electronic Access Permit (''MM EAP'') in order to act as an off-floor Market-Maker and which will continue to be assessed a monthly fee of $5,000, Electronic Access Permit (''EAP'') in order to submit orders electronically to the Exchange[40] and which will be assessed a monthly fee of $3,000, and a Clearing TPH Permit, for TPHs acting solely as a Clearing TPH, which will be assessed a monthly fee of $2,000 (and is more fully described below). For example, a TPH organization that wishes to act as a Market-Maker and also submit orders electronically in a non-Market Maker capacity would have to purchase one MM EAP and one EAP. TPHs will be assessed the monthly fee for each type of Permit once per electronic access capacity.

Next, the Exchange proposes to adopt a new Trading Permit, exclusively for Clearing TPHs that are approved to act solely as a Clearing TPH (as opposed to those that are also approved in a capacity that allows them to submit orders electronically). Currently any TPH that is registered to act as a Clearing TPH must purchase an EAP, whether or not that Clearing TPH acts solely as a Clearing TPH or acts as a Clearing TPH and submits orders electronically. The Exchange proposes to adopt a new Trading Permit, for any TPH that is registered to act solely as

[33] *See* Cboe Options Fees Schedule, Bandwidth Packet Fees.

[34] *See* Cboe Options Rules 3.1(a)(iv)–(v).

[35] The fees were waived through September 2019 for the first Market-Maker and Electronic Access GTH Trading Permits.

[36] *See* Cboe Options Fees Schedule.

[37] Id.

[38] Id.

[39] Due to the October 7 migration, the Exchange had amended the TP Sliding Scale Programs to provide that any commitment to Trading Permits under the TP Sliding Scales shall be in place through September 2019, instead of the calendar year. *See* Cboe Options Fees Schedule, Footnotes 24 and 25.

[40] EAPs may be purchased by TPHs that both clear transactions for other TPHs (*i.e.,* a ''Clearing TPH'') and submit orders electronically.

Clearing TPH at a discounted rate of $2,000 per month.[41]

Additionally, the Exchange proposes to eliminate its fees for Global Trading Hours Trading Permits. Particularly, the Exchange proposes to provide that any Market-Maker EAP, EAP and Clearing TPH Permit provides access (at no additional cost) to the GTH session.[42] Additionally, the Exchange proposes to amend Footnote 37 of the Fees Schedule regarding GTH in connection with the migration. Currently Footnote 37 provides that separate access permits and connectivity is needed for the GTH session. The Exchange proposes to eliminate this language as that is no longer the case post-migration (*i.e.,* an electronic Trading Permits will grant access to both sessions and physical and logical ports may be used in both sessions, eliminating the need to purchase separate connectivity). The Exchange also notes that in connection with migration, the Book used during Regular Trading Hours (''RTH'') will be the same Book used during GTH (as compared to pre-migration where the Exchange maintained separate Books for each session). The Exchange therefore also proposes to eliminate language in Footnote 37 stating that GTH is a segregated trading session and that there is no market interaction between the two sessions.

The Exchange next proposes to adopt MM EAP Appointment fees. By way of background, a registered Market-Maker may currently create a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in an appropriate number of classes selected from ''tiers'' that have been structured according to trading volume statistics, except for the AA tier.[43] Each Trading Permit historically held by a Market-Maker had an appointment credit of 1.0. A Market-Maker could select for each Trading Permit the Market-Maker held any combination of classes whose aggregate appointment cost did not exceed 1.0. A Market-Maker could not hold a combination of appointments whose aggregate appointment cost was greater than the number of Trading Permits that Market-Maker held.[44]

As discussed, post-migration, bandwidth allocation, logins and appointment costs are no longer tied to a single Trading Permit and therefore TPHs no longer need to have multiple permits for each type of electronic Trading Permit. Market-Makers must still select class appointments in the classes they seek to make markets electronically.[45] Particularly, a Market-Maker firm will only be required to have one permit and will thereafter be charged for one or more ''Appointment Units'' (which will scale from 1 ''unit'' to more than 5 ''units''), depending on which classes they elect appointments in. Appointment Units will replace the standard 1.0 appointment cost, but function in the same manner. Appointment weights (formerly known as ''appointment costs'') for each appointed class will be set forth in Cboe Options Rule 5.50(g) and will be summed for each Market-Maker in order to determine the total appointment units, to which fees will be assessed. This was the manner in which the tier costs per class appointment were summed to meet the 1.0 appointment cost, the only difference being that if a Market-Maker exceeds this ''unit'', then their fees will be assessed under the ''unit'' that corresponds to the total of their appointment weights, as opposed to holding another Trading Permit because it exceeded the 1.0 ''unit''. Particularly, the Exchange proposes to adopt a new MM EAP Appointment Sliding Scale. Appointment Units for each assigned class will be aggregated for each Market-Maker and Market-Maker affiliate. If the sum of appointments is a fractional amount, the total will be rounded up to the next highest whole Appointment Unit. The following lists the progressive monthly fees for Appointment Units:[46]

Market-maker EAP appointments	Quantity	Monthly fees (per unit)
Appointment Units.	1	$0
	2	6,000
	3 to 5	4,000
	>5	3,100

As noted above, upon migration the Exchange required separate Trading Permits for on-floor and off-floor activity. As such, the Exchange proposes to maintain a Floor Broker Trading Permit and adopt a new Market-Maker Floor Permit for on-floor Market-Makers. In addition, RUT, SPX, and VIX Tier Appointment fees will be charged separately for Permit, as discussed more fully below.

As briefly described above, the Exchange currently maintains TP Sliding Scales, which allow Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they commit in advance to a specific tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year. The Exchange proposes to eliminate the current TP Sliding Scales, including the requirement to commit to a specific tier, and replace it with new TP Sliding Scales as follows:[47]

Floor TPH permits	Current permit Qty	Current monthly fee (per permit)	Proposed permit Qty	Proposed monthly fee (per permit)
Market-Maker Floor Permit	1–10	$5,000	1	$6,000
	11–20	3,700	2 to 5	4,500
	21 or more	1,800	6 to 10	3,500
			>10	2,000
Floor Broker Permit	1	9,000	1	7,500
	2–5	5,000	2 to 3	5,700
6 or more	$3,000		4 to 5	$4,500.

[41] Cboe Option Rules provides the Exchange authority to issue different types of Trading Permits which allows holders, among other things, to act in one or more trading functions authorized by the Rules. *See* Cboe Options Rule 3.1(a)(iv). The Exchange notes that currently 17 out of 38 Clearing TPHs are acting solely as a Clearing TPH on the Exchange.

[42] The Exchange notes that Clearing TPHs must be properly authorized by the Options Clearing Corporation (''OCC'') to operate during the Global Trading Hours session and all TPHs must have a Letter of Guarantee to participate in the GTH session (as is the case today).

[43] *See* Cboe Options Rule 5.50 (Appointment of Market-Makers).

[44] For example, if a Market-Maker selected a combination of appointments that has an aggregate appointment cost of 2.5, that Market-Maker must hold at least 3 Market-Maker Trading Permits.

[45] *See* Cboe Options Rule 5.50(a).

[46] For example, if a Market-Maker's total appointment costs amount to 3.5 unites, the Market-Maker will be assessed a total monthly fee of $14,000 (1 appointment unit at $0, 1 appointment unit at $6,000 and 2 appointment units at $4,000) as and for appointment fees and $5,000 for a Market-Maker Trading Permit, for a total monthly sum of $19,000, where a Market-Maker currently (*i.e.,* prior to migration) with a total appointment cost of 3.5 would need to hold 4 Trading Permits and would therefore be assessed a monthly fee of $20,000.

[47] In light of the proposed change to eliminate the TP Sliding Scale, the Exchange proposes to eliminate Footnote 24 in its entirety.

Floor TPH permits	Current permit Qty	Current monthly fee (per permit)	Proposed permit Qty	Proposed monthly fee (per permit)
>5	$3,200.			

Floor Broker ADV Discount

Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer or professional customer/voluntary customer (collectively ''customer'') open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades (''Qualifying Symbols''), will receive a rebate on that TPH's Floor Broker Trading Permit Fees. Specifically, any Floor Broker Trading Permit Holder that executes an average of 15,000 customer (''C'' origin code) and/or professional customer and voluntary customer (''W'' origin code) open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $9,000 on that TPH's Floor Broker Trading Permit fees. Additionally, any Floor Broker that executes an average of 25,000 customer open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $14,000 on that TPH's Floor Broker Trading Permit fees. The Exchange proposes to maintain, but modify, its discount for Floor Broker Trading Permit fees. First, the measurement criteria to qualify for a rebate will be modified to only include customer (''C'' origin code) open-outcry contracts executed per day over the course of a calendar month in all underlying symbols, while the rebate amount will be modified to be a percentage of the TPH's Floor Broker Permit total costs, instead of a straight rebate.[48] The criteria and corresponding percentage rebates are noted below.[49]

Floor broker ADV discount tier	ADV	Floor broker permit rebate (%)
1	0 to 99,999	0
2	100,000 to 174,999	15
3	>174,999	25

Next, the Exchange proposes to modify its SPX, VIX and RUT Tier Appointment Fees. Currently, these fees are assessed to any Market-Maker TPH that either (i) has the respective SPX, VIX or RUT appointment at any time during a calendar month and trades a specified number of contracts or (ii) trades a specified number of contracts in open outcry during a calendar month. More specifically, the Fees Schedule provides that the $3,000 per month SPX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 SPX contracts while that appointment is active or (ii) conducts any open outcry transaction in SPX or SPX Weeklys at any time during the month. The $2,000 per month VIX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 VIX contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in VIX at any time during the month. Lastly, the $1,000 RUT Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an RUT Tier Appointment at any time during a calendar month and trades at least 100 RUT contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in RUT at any time during the month.

Because the Exchange is separating Market-Maker Trading Permits for electronic and open-outcry market-making, the Exchange will be assessing separate Tier Appointment Fees for each type of Market-Maker Trading Permit. The Exchange proposes that a MM EAP will be assessed the Tier Appointment Fee whenever the Market-Maker executes the corresponding specified number of contracts, if any. The Exchange also proposes to modify the threshold number of contracts a Market-Maker must execute in a month to trigger the fee for SPX, VIX and RUT. Particularly, for SPX, the Exchange proposes to eliminate the 100 contract threshold for electronic SPX executions.[50] The Exchange notes that historically, all TPHs that trade SPX electronically executed more than 100 contracts electronically each month (*i.e.,* no TPH electronically traded between 1 and 100 contracts of SPX). As no TPH would currently be negatively impacted by this change, the Exchange proposes to eliminate the threshold for SPX and align the electronic SPX Tier Appointment Fee with that of the floor SPX Tier Appointment Fee, which is not subject to any executed volume threshold. For the VIX and RUT Tier appointments, the Exchange proposes to increase the threshold from 100 contracts a month to 1,000 contracts a month. The Exchange notes the Tier Appointment Fee amounts are not changing.[51] In connection with the proposed changes, the Exchange

[48] As is the case today, the Floor Broker ADV Discount will be available for all Floor Broker Trading Permits held by affiliated Trading Permit Holders and TPH organizations.

[49] In light of the proposal to eliminate the TP Sliding Scales and the Floor Broker rebates currently set forth under Footnote 25, the Exchange proposes to eliminate Footnote 25 in its entirety.

[50] The Exchange notes that subsequent to the Original Filing that proposed these changes on October 1 and 2, 2019 (SR–CBOE–2019–077 and SR–CBOE–2019–082), and subsequent to the Second Proposed Rule Change filing that proposed these changes on November 29, 2019 (SR–CBOE–2019–111), the Exchange amended the proposed Market-Maker Tier Appointment fees to provide that the SPX Tier Appointment Fee will be assessed to any Market-Maker EAP that executes at least 1,000 contracts in SPX (including SPXW) excluding contracts executed during the opening rotation on the final settlement date of VIX options and futures with the expiration used in the VIX settlement calculation in filing No. SR–CBOE–2019–124. The additions proposed by filing SR–CBOE–2019–124 are double underlined in Exhibit 5A and the deletions are doubled bracketed in Exhibit 5A.

[51] Floor Broker Trading Surcharges for SPX/SPXW and VIX are also not changing. The Exchange however, is creating a new table for Floor Broker Trading Surcharges and relocating such fees in the Fees Schedule in connection with the proposal to eliminate fees currently set forth in the ''Trading Permit and Tier Appointment Fees'' Table.

proposes to relocate the Tier Appointment Fees to a new table and eliminate the language in the current respective notes sections of each Tier Appointment Fee as it is no longer necessary.

Trading Permit Holder Regulatory Fee

The Fees Schedule provides for a Trading Permit Holder Regulatory Fee of $90 per month, per RTH Trading Permit, applicable to all TPHs, which fee helps more closely cover the costs of regulating all TPHs and performing regulatory responsibilities. In light of the changes to the Exchange's Trading Permit structure, the Exchange proposes to eliminate the TPH Regulatory Fee. The Exchange notes that there is no regulatory requirement to maintain this fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[52] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[53] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[54] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[55] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange first stresses that the proposed changes were not designed with the objective to generate an overall increase in access fee revenue, as demonstrated by the anticipated loss of revenue discussed above. Rather, the proposed changes were prompted by the Exchange's technology migration and the adoption of a new (and improved) connectivity infrastructure, rendering the pre-migration structure obsolete. Such changes accordingly necessitated an overhaul of the Exchange's previous access fee structure and corresponding fees. Moreover, the proposed changes more closely aligns the Exchange's access fees to those of its Affiliated Exchanges, and reasonably so, as the Affiliated Exchanges offer substantially similar connectivity and functionality and are on the same platform that the Exchange has now migrated to.

The Exchange also notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 21% of the market share.[56] Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange. There is also no regulatory requirement that any market participant connect to any one options exchange, that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer.[57] The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. The Exchange is also not aware of any reason why any particular market participant could not simply drop its connections and cease being a TPH of the Exchange if the Exchange were to establish ''unreasonable'' and uncompetitive price increases for its connectivity alternatives. Indeed, a number of firms currently do not participate on the Exchange, or participate on the Exchange though sponsored access arrangements rather than by becoming a member.

Additionally, the Exchange notes that non-TPHs such as Service Bureaus and Extranets resell Cboe Options connectivity.[58] This indirect connectivity is another viable alternative that is already being used by non-TPHs, which further constrains the price that the Exchange is able to charge for connectivity to its Exchange. Accordingly, in the event that a market participant views one exchange's direct connectivity and access fees as more or less attractive than the competition, they can choose to connect to that exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 15 options markets. For example, two TPHs that connected directly to the Exchange pre-migration, now connect indirectly via an extranet provider. The Exchange notes that it has not received any comments or evidence to suggest the two TPHs that transitioned from direct connections to an indirect connections post-migration were the result of an

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78f(b)(4).

[55] 15 U.S.C. 78f(b)(5).

[56] *See* Cboe Global Markets U.S. Options Market Volume Summary (March 26, 2020), *available at https://markets.cboe.com/us/options/market_statistics/.*

[57] The Exchange further notes that even the number of members between the Exchange and its 3 other options exchange affiliates vary.

[58] Prior to migration, there were 13 firms that resold Cboe Options connectivity. Post-migration, the Exchange anticipated that there would be 19 firms that resell Cboe Options connectivity (both physical and logical) and as of January 2020 there are 15 firms that resell Cboe Options connectivity. The Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. The Exchange does not have specific knowledge as to what latency a market participant may experience using an indirect connection versus a direct connection and notes it may vary by the service provided by the extranet provider and vary between extranet providers. The Exchange believes however, that there are extranet providers able to provide connections with a latency that is comparable to latency experienced using a direct connection.

undue financial burden resulting from the proposed fee changes. Rather, the Exchange believes the transitions demonstrate that indirect connectivity is in fact a viable option for market participants, therefore reflecting a competitive environment.

Additionally, pre-migration, in August 2019, the Exchange had 97 members (TPH organizations), of which nearly half connected indirectly to the Exchange. Similarly, in December 2019, the Exchange had 97 members, of which nearly half of the participants connected indirectly to the Exchange. More specifically, in December 2019, 47 TPHs connected directly to the Exchange and accounted for approximately 66% of the Exchange's volume, 46 TPHs connected indirectly to the Exchange and accounted for approximately 29% of the Exchange's volume and 4 TPHs utilized both direct and indirect connections and accounted for approximately 5% of the Exchange's volume. In December 2019, TPHs that connected directly to the Exchange purchased a collective 179 physical ports (including legacy physical ports), 144 of which were 10 Gb ports and 35 of which were 1 Gb ports.[59] The Exchange notes that of those market participants that do connect to the Exchange, it is the individual needs of each market participant that determine the amount and type of Trading Permits and physical and logical connections to the Exchange.[60] With respect to physical connectivity, many TPHs were able to purchase small quantities of physical ports. For example, approximately 36% of TPHs that connected directly to the Exchange purchased only one to two 1 Gb ports, approximately 40% purchased only one to two 10 Gb ports, and approximately 40% had purchased a combined total of one to two ports (for both 1 Gb and 10 Gb). Further, no TPHs that connected directly to the Exchange had more than five 1 Gb ports, and only 8.5% of TPHs that connected directly to the Exchange had between six and ten 10 GB ports and only 8.5% had between ten and fourteen 10 Gb ports. There were also a combined total of 41 ports used for indirect connectivity (twenty-one 1 Gb ports and twenty 10 Gb ports).[61] The Exchange notes that all types of members connected indirectly to the Exchange including Clearing firms, Floor Brokers, order flow providers, and on-floor and off-floor Market-Makers, further reflecting the fact that each type of market participant has the option to participate on an exchange without direct connectivity. Accordingly, market participants choose if and how to connect to a particular exchange and because it is a choice, the Exchange must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity.

Moreover, the Exchange notes that the Commission itself has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.'' [62] The number of available exchanges to connect to ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees for access to its market. The Exchange is also not aware of any evidence that has been offered or demonstrated that a market share of approximately 21% provides the Exchange with anti-competitive pricing power. As discussed, if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the Exchange.

The Exchange also believes that competition in the marketplace constrains the ability of exchanges to charge supracompetitive fees for access to its market, even if such market, like the Exchange, offers proprietary products exclusive to that market. Notably, just as there is no regulatory requirement to become a member of any one options exchange, there is also no regulatory requirement for any market participant to trade any particular product, nor is there any requirement that any Exchange create or indefinitely maintain any particular product.[63] The Exchange also highlights that market participants may trade an Exchange's proprietary products through a third-party without directly or indirectly connecting to the Exchange. Additionally, market participants may trade any options product, including proprietary products, in the Over-the-Counter (OTC) markets. Market participants may also access other exchanges to trade other similar or competing proprietary or multi-listed products. Alternative products to the Exchange's proprietary products may include other options products, including options on ETFs or options futures, as well as particular ETFs or futures. For example, singly-listed SPX options may compete with the following products traded on other markets: Multiply-listed SPY options (options on the ETF), E-mini S&P 500 Options (options on futures), and E-Mini S&P 500 futures (futures on index). Other options exchanges are also not precluded from creating new proprietary products that may achieve similar objectives to (and therefore compete with) the Exchange's existing proprietary products. Indeed, even though exclusively-listed proprietary products may not be offered by competitors, a competitor could create similar products if demand were adequate. In connection with a recently proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[64] the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. Specifically, the Commission contemplated the possibility of a forced exit by an exchange as a result of a proposed amendment that could reduce the amount of CAT funding a participant could recover if certain implementation milestones were missed. The Commission acknowledged that, even if an exchange were to exit

[59] Of the 4 TPHs that connected both directly and indirectly to the Exchange, 1 TPH had two 1 Gb Ports and the remaining 3 TPHs had a combined total of six 10 Gb ports.

[60] To assist market participants that are connected or considering connecting to the Exchange, the Exchange provides detailed information and specifications about its available connectivity alternatives in the Cboe C1 Options Exchange Connectivity Manual, as well as the various technical specifications. *See http://markets.cboe.com/us/options/support/technical/.*

[61] The Exchange notes that it does not know how many, and which kind of, connections each TPH that indirectly connects to the Exchange has.

[62] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[63] If an option class is open for trading on another national securities exchange, the Exchange may delist such option class immediately. For proprietary products, the Exchange may determine to not open for trading any additional series in that option class; may restrict series with open interest to closing transactions, provided that, opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and opening transactions by TPH organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with Rule 6.74(b) or (d) may be permitted; and may delist the option class when all series within that class have expired. *See* Cboe Rule 4.4, Interpretations and Policies .11.

[64] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[65] The Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [66] The Commission further recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if they did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[67] Similarly, although the Exchange may have proprietary products not offered by other competitors, not unlike unique business models, a competitor could create similar products to an existing proprietary product if demand were adequate. As such, the Exchange is still very much subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products. Rather, the Exchange must still set reasonable connectivity pricing, otherwise prospective members would not connect, and existing members would disconnect or connect through a third-party reseller of connectivity, regardless of what products its offers.

For all the reasons discussed above and in this filing, the Exchange believes its proposed fees are reasonable as the Exchange was subject to significant competitive forces in setting its proposed fees. In addition, the Exchange believes its proposed fees are reasonable in light of the numerous benefits the new connectivity infrastructure provides market participants. As described, the post-migration connectivity architecture provides for a latency equalized infrastructure, improved system performance, and increased sustained order and quote per second capacity. As such, even where a fee for a particular type or kind of connectivity may be higher than it was to its pre-migration equivalent, such increase is reasonable given the increased benefits market participants are getting for a similar or modestly higher price. The Exchange further believes that the reasonableness of its proposed connectivity fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of connectivity at other Exchanges,[68] including its own affiliated exchanges which have the same connectivity infrastructure the Exchange has migrated to.[69]

Furthermore, in determining the proposed fee changes discussed above, the Exchange reviewed the current competitive landscape, considered the fees historically paid by market participants for connectivity to the pre-migration system, and also assessed the impact on market participants to ensure that the proposed fees would not create an undue financial burden on any market participants, including smaller market participants. Indeed, the Exchange received no comments from any TPH suggesting they were unduly burdened by the proposed changes described herein, which were first announced via Exchange Notice nearly two months in advance of the migration (*i.e.,* now seven months ago), nor were any timely comment letters received by the Commission by the comment period submission deadline of November 12, 2019.[70] The Exchange also underscores the fact that no comment letters were received in response to either its Second Proposed Rule Change or Third Proposed Rule Change, and that no market participant has provided any written comments specifically suggesting that the Exchange has failed to provide sufficient information in either the Second Proposed Rule Change or Third Proposed Rule Change to meets its burden to demonstrate its proposed fees are consistent with the requirements of the Exchange Act.

The proposed connectivity structure and corresponding fees, like the pre-migration connectivity structure and fees, continues to provide market participants flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of physical and logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it does not have unlimited system capacity to support an unlimited number of order and quote entry per second. Accordingly, the proposed connectivity fees, and connectivity structure are designed to encourage market participants to be efficient with their respective physical and logical port usage. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase, if any, the Exchange anticipates that like today, some market participants will continue to decline to connect and participate on the Exchange, some will participate on the Exchange via indirect connectivity, some will only purchase one physical connection and/or logical port connection, and others will purchase multiple connections.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its access fees in connection with the migration of its technology platform, while still attracting market participants to continue to be, or become, connected to the Exchange.

Physical Ports

The Exchange believes increasing the fee for the new 10 Gb Physical Port is reasonable because unlike, the current 10 Gb Network Access Ports, the new Physical Ports provides a connection through a latency equalized infrastructure with faster switches and also allows access to both unicast order entry and multicast market data with a single physical connection. As discussed above, legacy Network Access Ports do not permit market participants to receive unicast and multicast connectivity. As such, in order to receive both connectivity types pre-migration, a market participant needed to purchase and maintain at least two 10 Gb Network Access Ports. The proposed Physical Ports not only provide latency equalization (*i.e.,* eliminate latency advantages between market participants based on location) as compared to the legacy ports, but also alleviate the need to pay for two physical ports as a result of needing unicast and multicast connectivity. Accordingly, market participants who historically had to

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[69] *See e.g.,* Affiliated Exchange Fee Schedules, Physical Connectivity Fees. For example, Cboe BZX, Cboe EDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

[70] *See* Exchange Notice ''Cboe Options Exchange Access and Capacity Fee Schedule Changes Effective October 1, 2019 and November 1, 2019'' Reference ID C2019081900.

purchase two separate ports for each of multicast and unicast activity, will be able to purchase only one port, and consequently pay lower fees overall. For example, pre-migration if a TPH had two 10 Gb legacy Network Access Ports, one of which received unicast traffic and the other of which received multicast traffic, that TPH would have been assessed $10,000 per month ($5,000 per port). Under the proposed rule change, using the new Physical Ports, that TPH has the option of utilizing one single port, instead of two ports, to receive both unicast and multicast traffic, therefore paying only $7,000 per month for a port that provides both connectivity types. The Exchange notes that pre-migration, approximately 50% of TPHs maintained two or more 10 Gb Network Access Ports. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase post-migration, the Exchange anticipated approximately 50% of the TPHs with two or more 10 Gb Network Access Ports to reduce the number of 10 Gb Physical Ports that they purchase and expected the remaining 50% of TPHs to maintain their current 10 Gb Physical Ports, but reduce the number of 1 Gb Physical Ports. Particularly, pre-migration, a number of TPHs maintained two 10 Gb Network Access Ports to receive multicast data and two 1 Gb Network Access Ports for order entry (unicast connectivity). As the new 10 Gb Physical Ports are able to accommodate unicast connectivity (order entry), TPHs may choose to eliminate their 1 Gb Network Access Ports and utilize the new 10 Gb Physical Ports for both multicast and unicast connectivity. The Exchange notes that in February 2020, approximately 78% of TPHs that maintained a 1 Gb Network Access Port pre-migration, no longer maintained a 1 Gb Physical Port. Additionally, as of February 2020, approximately 44% reduced the quantity of 10 Gb Physical Ports they maintained as compared to pre-migration.

As discussed above, if a TPH deems a particular exchange as charging excessive fees for connectivity, such market participants may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for physical connectivity. The Exchange also notes that the proposal represents an equitable allocation of reasonable dues, fees and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives, as discussed above. The proposed amounts are in line with, and in some cases lower than, the costs of physical connectivity at other Exchanges,[71] including the Cboe Affiliated Exchanges which have the same connectivity infrastructure the Exchange has migrated to.[72] The Exchange does not believe it is unreasonable to assess fees that are in line with fees that have already been established for the same physical ports used to connect to the same connectivity infrastructure and common platform. The Exchange believes the proposed Physical Port fees are equitable and not unreasonably discriminatory as the connectivity pricing is associated with relative usage of the various market participants and the Exchange has not been presented with any evidence to suggest its proposed fee changes would impose a barrier to entry for participants, including smaller participants. In fact, as noted above, the Exchange is unaware of any market participant that has terminated direct connectivity solely as a result of the proposed fee changes. The Exchange also believes increasing the fee for 10 Gb Physical Ports and charging a higher fee as compared to the 1 Gb Physical Port is equitable as the 1 Gb Physical Port is 1/10th the size of the 10 Gb Physical Port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). Thus the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb Physical Ports utilize the most bandwidth and therefore consume the most resources from the network. As such, the Exchange believes the proposed fees for the 1 and 10 Gb Physical Ports, respectively are reasonably and appropriately allocated.

Data Port Fees

The Exchange believes assessing the data port fee per data source, instead of per port, is reasonable because it may allow for market participants to maintain more ports at a lower cost and applies uniformly to all market participants. The Exchange believes the proposed increase is reasonable because, as noted above, market participants may pay lower fees as a result of charging per data source and not per data port. Indeed, while the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange had anticipated approximately 76% of the 51 market participants who pay data port fees to pay the same or lower fees upon implementation of the proposed change. As of December 2019, 46 market participants[73] pay the proposed data port fees, of which approximately 78% market participants are paying the same or lower fees in connection with the proposed change. Monthly savings for firms paying lower fees range from $500 to $6,000 per month. The Exchange also anticipated that 19% of TPHs who pay data port fees would pay a modest increase of only $500 per month. In December 2019, approximately 22% market participants paid higher fees, with the majority of those market participants paying a modest monthly increase of $500 and only 3 firms paying either $1,000 or $1,500 more per month. Additionally, as discussed above, the Exchange's affiliate C2 has the same fee which is also assessed at the proposed rate and assessed by data source instead of per port. The proposed name change is also appropriate in light of the Exchange's proposed changes and may alleviate potential confusion.

Logical Connectivity

Port fees

The Exchange believes it's reasonable to eliminate certain fees associated with legacy options for connecting to the Exchange and to replace them with fees

[71] *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[72] *See e.g.,* Affiliated Exchange Fee Schedules, Physical Connectivity Fees. For example, Cboe BZX, Cboe EDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

[73] The Exchange notes the reduction in market participants that pay the data port fee is due to firm consolidations and acquisitions.

associated with new options for connecting to the Exchange that are similar to those offered at its Affiliated Exchanges. In particular, the Exchange believes it's reasonable to no longer assess fees for CMI and FIX Login IDs because the Login IDs were retired and rendered obsolete upon migration and because the Exchange is proposing to replace them with fees associated with the new logical connectivity options. The Exchange believes that it is reasonable to harmonize the Exchange's logical connectivity options and corresponding connectivity fees now that the Exchange is on a common platform as its Affiliated Exchanges. Additionally, the Exchange notes the proposed fees are the same as, or in line with, the fees assessed on its Affiliated Exchanges for similar connectivity.[74] The proposed logical connectivity fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same respective connectivity options.

The Exchange believes the proposed Logical Port fees are reasonable as it is the same fee for Drop Ports and the first five BOE/FIX Ports that is assessed for CMI and FIX Logins, which the Exchange is eliminating in lieu of logical ports. Additionally, while the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs, the proposed logical ports provide for significantly more message traffic. Specifically, the proposed BOE/FIX Logical Ports will provide for 3 times the amount of quoting [75] capacity and approximately 165 times order entry capacity. Similarly, the Exchange believes the proposed BOE Bulk Port fees are reasonable because while the fees are higher than the CMI and FIX Login Id fees and the proposed Logical Port fees, BOE Bulk Ports offer significantly more bandwidth capacity than both CMI and FIX Login Ids and Logical Ports. Particularly, a single BOE Bulk Port offers 45 times the amount of quoting bandwidth than CMI/FIX Login Ids [76] and 5 times the amount of quoting bandwidth than Logical Ports will offer. Additionally, the Exchange believes that its fees for logical connectivity are reasonable, equitable, and not unfairly discriminatory as they are designed to ensure that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. Although the Exchange charges a ''per port'' fee for logical connectivity, it notes that this fee is in effect a capacity fee as each FIX, BOE or BOE Bulk port used for order/quote entry supports a specified capacity (*i.e.,* messages per second) in the matching engine, and firms purchase additional logical ports when they require more capacity due to their business needs.

An obvious driver for a market participant's decision to purchase multiple ports will be their desire to send or receive additional levels of message traffic in some manner, either by increasing their total amount of message capacity available, or by segregating order flow for different trading desks and clients to avoid latency sensitive applications from competing for a single thread of resources. For example, a TPH may purchase one or more ports for its market making business based on the amount of message traffic needed to support that business, and then purchase separate ports for proprietary trading or customer facing businesses so that those businesses have their own distinct connection, allowing the firm to send multiple messages into the Exchange's trading system in parallel rather than sequentially. Some TPHs that provide direct market access to their customers may also choose to purchase separate ports for different clients as a service for latency sensitive customers that desire the lowest possible latency to improve trading performance. Thus, while a smaller TPH that demands more limited message traffic may connect through a service bureau or other service provider, or may choose to purchase one or two logical ports that are billed at a rate of $750 per month each, a larger market participant with a substantial and diversified U.S. options business may opt to purchase additional ports to support both the volume and types of activity that they conduct on the Exchange. While the Exchange has no way of predicting with certainty the amount or type of logical ports market participants will in fact purchase post-migration, the Exchange anticipated approximately 16% of TPHs to purchase one to two logical ports, and approximately 22% of TPHs to not purchase any logical ports. In December 2019, 13% of TPHs purchased one to two logical ports and 27% have not purchased any logical ports. At the same time, market participants that desire more total capacity due to their business needs, or that wish to segregate order flow by purchasing separate capacity allocations to reduce latency or for other operational reasons, would be permitted to choose to purchase such additional capacity at the same marginal cost. The Exchange believes the proposal to assess an additional Logical and BOE Bulk port fee for incremental usage per logical port is reasonable because the proposed fees are modestly higher than the proposed Logical Port and BOE Bulk fees and encourage users to mitigate message traffic as necessary. The Exchange notes one of its Affiliated Exchanges has similar implied port fees.[77]

In sum, the Exchange believes that the proposed BOE/FIX Logical Port and BOE Bulk Port fees are appropriate as these fees would ensure that market participants continue to pay for the amount of capacity that they request, and the market participants that pay the most are the ones that demand the most resources from the Exchange. The Exchange also believes that its logical connectivity fees are aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [78]

The Exchange believes waiving the FIX/BOE Logical Port fee for one FIX Logical Port used to access PULSe and Silexx (for FLEX Trading) is reasonable because it will allow all TPHs using PULSe and Silexx to avoid having to pay a fee that they would otherwise have to pay. The waiver is equitable and not unfairly discriminatory because TPHs using PULSe are already subject to a monthly fee for the PULSe Workstation, which the Exchange views as inclusive of fees to access the Exchange. Moreover, while PULSe users today do not require a FIX/CMI Login Id, post-migration, due to changes to the connectivity infrastructure, PULSe users will be required to maintain a FIX Logical Port and as such incur a fee they previously would not have been subject to. Similarly, the Exchange believes that the waiver for Silexx (for FLEX trading) will encourage TPHs to transact business using FLEX Options using the new Silexx System and encourage trading of FLEX Options. Additionally, the Exchange notes that it currently waives the Login Id fees for Login IDs used to access the CFLEX system.

[74] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[75] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

[76] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

[77] *See e.g.,* Cboe C2 Options Exchange Fees Schedule, Logical Connectivity Fees.

[78] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

The Exchange believes its proposed fee for Purge Ports is reasonable as it is also in line with the amount assessed for purge ports offered by its Affiliated Exchanges, as well as other exchanges.[79] Moreover, the Exchange believes that offering purge port functionality at the Exchange level promotes robust risk management across the industry, and thereby facilitates investor protection. Some market participants, and, in particular, larger firms, could build similar risk functionality on their trading systems that permit the flexible cancellation of orders entered on the Exchange. Offering Exchange level protections however, ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality. The Exchange operates in a highly competitive market in which exchanges offer connectivity and related services as a means to facilitate the trading activities of TPHs and other participants. As the proposed Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all TPHs that choose to use dedicated Purge Ports. The proposed Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no TPH is required or under any regulatory obligation to utilize them. The Exchange believes that adopting separate fees for these ports ensures that the associated costs are borne exclusively by TPHs that determine to use them based on their business needs, including Market-Makers or similarly situated market participants. Similar to Purge Ports, Spin and GRP Ports are optional products that provide an alternative means for market participants to receive multicast data and request and receive a retransmission of such data. As such excessive fees would simply serve to reduce demand for these products, which TPHs are under no regulatory obligation to utilize. All TPHs that voluntarily select these service options (*i.e.,* Purge Ports, Spin Ports or GRP Ports) will be charged the same amount for the same respective services. All TPHs have the option to select any connectivity option, and there is no differentiation among TPHs with regard to the fees charged for the services offered by the Exchange.

Access Credits

The Exchange believes the proposal to adopt credits for BOE Bulk Ports is reasonable, equitable and not unfairly discriminatory because it provides an opportunity for TPHs to pay lower fees for logical connectivity. The Exchange notes that the proposed credits are in lieu of the current credits that Market-Makers are eligible to receive today for Trading Permits fees. Although only Market-Makers may receive the proposed BOE Bulk Port credits, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have. The Exchange also believes that the proposals provide incremental incentives for TPHs to strive for the higher tier levels, which provide increasingly higher benefits for satisfying increasingly more stringent criteria, including criteria to provide more liquidity to the Exchange. The Exchange believes the value of the proposed credits is commensurate with the difficulty to achieve the corresponding tier thresholds of each program.

First, the Exchange believes the proposed BOE Bulk Port fee credits provided under AVP will incentivize the routing of orders to the Exchange by TPHs that have both Market-Maker and agency operations, as well as incent Market-Makers to continue to provide critical liquidity notwithstanding the costs incurred with being a Market-Maker. More specifically, in the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders, but also of the operations costs on the Market-Maker side. The Exchange believes the proposed change to AVP continues to allow the Exchange to provide relief to the Market-Maker side via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees. Additionally, the proposed credits may incentivize and attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the required criteria to receive the credits, the Exchange had anticipated approximately two TPHs (out of approximately 5 TPHs that are eligible for AVP) to reach VIP Tiers 4 or 5 and consequently earn the BOE Bulk Port fee credits for their respective Market-Maker affiliate. For the month of October 2019, two TPHs received access credits under Tier 5 and no TPHs received credits under Tier 4. The Exchange notes that it believes its reasonable, equitable and not unfairly discriminatory to no longer provider access credits for Market-Makers whose affiliates achieve VIP Tiers 2 or 3 as the Exchange has adopted another opportunity for all Market-Makers, not just Market-Makers that are part of a consolidator, to receive credits on BOE Bulk Port fees (*i.e.,* credits available via the proposed Market-Maker Access Credit Program). More specifically, limiting the credits under AVP to the top two tiers enables the Exchange to provide further credits under the new Market-Maker Access Credit Program. Furthermore, the Exchange notes that it is not required to provide any credits at any tier level.

The Exchange believes the proposed BOE Bulk Port fee credits available for TPHs that reach certain Performance Tiers under the Liquidity Provider Sliding Scale Adjustment Table is reasonable as the credits provide for reduced connectivity costs for those Market-Makers that reach the required thresholds. The Exchange believe it's reasonable, equitable and not unfairly discriminatory to provide credits to those Market-Makers that primarily provide and post liquidity to the Exchange, as the Exchange wants to continue to encourage Market-Makers with significant Make Rates to continue to participate on the Exchange and add liquidity. Greater liquidity benefits all market participants by providing more trading opportunities and tighter spreads.

Moreover, the Exchange notes that Market-Makers with a high Make Rate percentage generally require higher amounts of capacity than other Market-Makers. Particularly, Market-Makers with high Make Rates are generally streaming significantly more quotes than those with lower Make Rates. As such, Market-Makers with high Make Rates may incur more costs than other Market-Makers as they may need to purchase multiple BOE Bulk Ports in order to accommodate their capacity needs. The Exchange believes the

[79] *See* Affiliated Exchange Fee Schedules, Logical Port Fees. *See also*, Nasdaq ISE Pricing Schedule, Section 7(C). ISE charges a fee of $1,100 per month for SQF Purge Ports.

proposed credits for BOE Bulk Ports encourages Market-Makers to continue to provide liquidity for the Exchange, notwithstanding the costs incurred by purchasing multiple ports. Particularly, the proposal is intended to mitigate the costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). While the Exchange cannot predict with certainty which Market-Makers will reach Performance Tiers 4 and 5 each month, based on historical performance it anticipated approximately 10 Market-Makers would achieve Tiers 4 or 5. In October 2019, 12 Market-Makers achieved Tiers 4 or 5. Lastly, the Exchange notes that it is common practice among options exchanges to differentiate fees for adding liquidity and fees for removing liquidity.[80]

Bandwidth Packets and CMI CAS Server Fees

The Exchange believes it's reasonable to eliminate Bandwidth Packet fees and the CMI CAS Server fee because TPHs will not pay fees for these connectivity options and because Bandwidth Packets and CAS Servers have been retired and rendered obsolete as part of the migration. The Exchange believes that even though it will be discontinuing Bandwidth Packets, the proposed incremental pricing for Logical Ports and BOE Bulk Ports will continue to encourage users to mitigate message traffic. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Access Fees

The Exchange believes the restructuring of its Trading Permits is reasonable in light of the changes to the Exchange's connectivity infrastructure in connection with the migration and the resulting separation of bandwidth allowance, logins and appointment costs from each Trading Permit. The Exchange also believes that it is reasonable to harmonize the Exchange's Trading Permit structure and corresponding connectivity options to more closely align with the structures offered at its Affiliated Exchanges once the Exchange is on a common platform as its Affiliated Exchanges.[81] The proposed Trading Permit structure and corresponding fees are also in line with the structure and fees provided by other exchanges. The proposed Trading Permit fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same type and number of Trading Permits.

With respect to electronic Trading Permits, the Exchange notes that TPHs previously requested multiple Trading Permits because of bandwidth, login or appointment cost needs. As described above, in connection with migration, bandwidth, logins and appointment costs are no longer tied to Trading Permits or Bandwidth Packets and as such, the need to hold multiple permits and/or Bandwidth Packets is obsolete. As such, the Exchange believes the structure to require only one of each type of applicable electronic Trading Permit is appropriate. Moreover, the Exchange believes offering separate marketing making permits for off-floor and on-floor Market-Makers provides for a cleaner, more streamlined approach to trading permits and corresponding fees. Other exchanges similarly provide separate and distinct fees for Market-Makers that operate on-floor vs off-floor and their corresponding fees are similar to those proposed by the Exchange.[82]

The Exchange believes the proposed fee for its MM EAP Trading Permits is reasonable as it is the same fee it assess today for Market-Maker Trading Permits (*i.e.,* $5,000 per month per permit). Additionally, the proposed fee is in line with, and in some cases even lower than, the amounts assessed for similar access fees at other exchanges, including its affiliate C2.[83] The Exchange believes the proposed EAP fee is also reasonable, and in line with the fees assessed by other Exchanges for non-Market-Maker electronic access.[84] The Exchange notes that while the Trading Permit fee is increasing, TPHs overall cost to access the Exchange may be reduced in light of the fact that a TPH no longer must purchase multiple Trading Permits, Bandwidth Packets and Login Ids in order to receive sufficient bandwidth and logins to meet their respective business needs. To illustrate the value of the new connectivity infrastructure, the Exchange notes that the cost that would be incurred by a TPH today in order to receive the same amount of order capacity that will be provided by a single Logical Port post-migration (*i.e.,* 5,000 orders per second), is approximately 98% higher than the cost for the same capacity post-migration. The following examples further demonstrate potential cost savings/value added for an EAP holder with modest capacity needs and an EAP holder with larger capacity needs:

TPH That Holds 1EAP, No Bandwidth Packets and 1 CMI Login

	Current fee structure	Post-migration fee structure
EAP	$1,600	$3,000.
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	30 orders/sec	5,000 orders/sec.
Total Cost	$2,350	$3,750.
Total Cost per message	$78.33/order/sec	$0.75/order/sec.

[80] *See e.g.,* MIAX Options Fees Schedule, Section 1(a), Market Maker Transaction Fees.

[81] For example, the Exchange's affiliate, C2, similarly provides for Trading Permits that are not tied to connectivity, and similar physical and logical port options at similar pricings. *See* Cboe C2 Options Exchange Fees Schedule. Physical connectivity and logical connectivity are also not tied to any type of permits on the Exchange's other options exchange affiliates.

[82] *See e.g.*, PHLX Section 8A, Permit and Registration Fees. *See also,* BOX Options Fee Schedule, Section IX Participant Fees; NYSE American Options Fees Schedule, Section III(A) Monthly ATP Fees and NYSE Arca Options Fees and Charges, OTP Trading Participant Rights. For similar Trading Floor Permits for Floor Market Makers, Nasdaq PHLX charges $6,000; BOX charges up to $5,500 for 3 registered permits in addition to a $1,500 Participant Fee, NYSE Arca charges up to $6,000; and NYSE American charges up to $8,000.

[83] *See e.g.*, Cboe C2 Options Exchange Fees Schedule. *See also,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees, which assesses up to $6,000 per Market Maker OTP and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees, which assess up to $8,000 per Market Maker ATP. *See also,* PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Market Maker Permit.

[84] *See e.g.*, PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Permit for all member and member organizations other than Floor Specialists and Market Makers.

TPH THAT HOLDS 1 EAP, 4 BANDWIDTH PACKETS AND 15 CMI LOGINS

	Current fee structure	Post-migration fee structure
EAP	$1,600	$3,000.
CMI Login/Logical Port	$11,250 (15@750)	$750.
Bandwidth Packets	$6,400 (4@$1,600)	N/A.
Total Bandwidth Available	150 orders/sec	5,000 orders/sec.
Total Cost	$19,250	$3,750.
Total Cost per message	$128.33/order/sec	$0.75/order/sec.

The Exchange believes the proposal to adopt a new Clearing TPH Permit is reasonable because it offers TPHs that only clear transactions of TPHs a discount. Particularly, Clearing TPHs that also submit orders electronically to the Exchange would purchase the proposed EAP at $3,000 per permit. The Exchange believe it's reasonable to provide a discount to Clearing TPHs that only clear transactions and do not otherwise submit electronic orders to the Exchange. The Exchange notes that another exchange similarly charges a separate fee for clearing firms.[85]

The Exchange believes the proposed fee structure for on-floor Market-Makers is reasonable as the fees are in line with those offered at other Exchanges.[86] The Exchange believes that the proposed fee for MM Floor Permits as compared to MM EAPs is reasonable because it is only modestly higher than MM EAPs and Floor MMs don't have other costs that MM EAP holders have, such as MM EAP Appointment fees.

The Exchange believes its proposed fees for Floor Broker Permits are reasonable because the fees are similar to, and in some cases lower than, the fees the Exchange currently assesses for such permits. Specifically, based on the number of Trading Permits TPHs held upon migration, 60% of TPHs that hold Floor Broker Trading Permits will pay lower Trading Permit fees. Particularly, any Floor Broker holding ten or less Floor Broker Trading Permits will pay lower fees under the proposed tiers as compared to what they pay today. While the remaining 40% of TPHs holding Floor Broker Trading Permits (who each hold between 12–21 Floor Broker Trading Permits) will pay higher fees, the Exchange notes the monthly increase is de minimis, ranging from an increase of 0.6%–2.72%.[87]

The Exchange believes the proposed ADV Discount is reasonable because it provides an opportunity for Floor Brokers to pay lower FB Trading Permit fees, similar to the current rebate program offered to Floor Brokers. The Exchange notes that while the new ADV Discount program includes only customer volume (''C'' origin code) as compared to Customer and Professional Customer/Voluntary Professional, the amount of Professional Customer/Voluntary Professional volume was de minimis and the Exchange does not believe the absence of such volume will have a significant impact.[88] Additionally, the Exchange notes that while the ADV requirements under the proposed ADV Discount program are higher than are required under the current rebate program, the proposed ADV Discount counts volume from all products towards the thresholds as compared to the current rebate program which excludes volume from Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades. Moreover, the ADV Discount is designed to encourage the execution of orders in all classes via open outcry, which may increase volume, which would benefit all market participants (including Floor Brokers who do not hit the ADV thresholds) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the ADV thresholds). The Exchange believes the proposed discounts are equitable and not unfairly discriminatory because all Floor Brokers are eligible. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the various thresholds under the ADV Discount, the Exchange anticipated approximately 3 Floor Brokers to receive a rebate under the program. In December 2019, 2 Floor Brokers received a rebate under the program.

The Exchange believes its proposed MM EAP Appointment fees are reasonable in light of the Exchange's elimination of appointment costs tied to Trading Permits. Other exchanges also offer a similar structure with respect to fees for appointment classes.[89] Additionally, the proposed MM EAP Appointment fee structure results in approximately 36% electronic MMs paying lower fees for trading permit and appointment costs. For example, in order to have the ability to make electronic markets in every class on the Exchange, a Market-Maker would need 1 Market-Maker Trading Permit and 37 Appointment Units post-migration. Under, the current pricing structure, in order for a Market-Maker to quote the entire universe of available classes, a Market-Maker would need 33 Appointment Credits, thus necessitating 33 Market-Maker Trading Permits. With respect to fees for Trading Permits and Appointment Unit Fees, under the proposed pricing structure, the cost for a TPH wishing to quote the entire universe of available classes is approximately 29% less (if they are not eligible for the MM TP Sliding Scale) or approximately 2% less (if they are eligible for the MM TP Sliding Scale). To further demonstrate the potential cost savings/value added, the Exchange is providing the following examples comparing current Market-Maker connectivity and access fees to projected connectivity and access fees for different scenarios. The Exchange notes that the below examples not only compare Trading Permit and Appointment Unit costs, but also the cost incurred for logical connectivity and bandwidth. Particularly, the first example demonstrates the total minimum cost that would be incurred today in order for a Market-Maker to have the same amount of capacity as a Market-Maker post-migration that would have only 1 MM EAP and 1 Logical Port (*i.e.,* 15,000 quotes/3 sec). The Exchange is also providing examples that demonstrate the costs of

[85] *See e.g.,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees.

[86] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which assesses $6,000 per permit for Floor Specialists and Market Makers.

[87] The Floor Brokers whose fees are increasing have each committed to a minimum number of permits and therefore currently receive the rates set forth in the current Floor Broker TP Sliding Scale.

[88] Furthermore, post-migration the Exchange will not have Voluntary Professionals.

[89] *See e.g.,* PHLX Section 8. Membership Fees, B, Streaming Quote Trader (''SQT'') Fees and C. Remote Market Maker Organization (RMO) Fee.

(i) a Market-Maker with small capacity needs and appointment unit of 1.0 and (ii) a Market-Maker with large capacity needs and appointment cost/unit of 30.0:

MARKET-MAKER THAT NEEDS CAPACITY OF 15,000/QUOTES/3 SECONDS

	Current fee structure	Post-migration fee structure
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750[90]	$750.
Bandwidth Packets	$5,500 (2@$2,750)	N/A.
Total Bandwidth Available	15,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$11,250	$5,750.
Total Cost per message allowed	$0.75/quote/3 sec	$0.38/quote/3 sec.

MARKET MAKER THAT NEEDS CAPACITY OF NO MORE THAN 5,000 QUOTES/3 SECS

	Current fee structure	Post-migration fee structure
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	5,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$5,750	$5,750.
Total Cost per message allowed	$1.15/quote/3 sec	$0.38/quote/3 sec.

MARKET-MAKER THAT NEEDS 30 APPOINTMENT UNITS AND CAPACITY OF 300,000 QUOTES/3 SEC

	Current fee structure	Post-migration fee structure
MM Permits/MM EAP	$105,000 (30 MM Permits assumes eligible for MM TP Sliding Scale)[91].	$5,000.
Appointment Units Cost	N/A (30 appointment costs)	$95,500 (30 appointment units).
CMI Logins/BOE Bulk Port	$3,000 (4@$750)[92]	$3,000 (2 BOE Bulk@$1,500).
Bandwidth Packets	$82,500(30@$2750)	N/A.
Total Bandwidth Available	300,000 quotes/3 sec	450,000 quotes/3 sec.*
Total Cost	$190,500	$103,500.
Total Cost per message allowed	$0.63/quotes/3 sec	$0.23/quote/3 sec.

* Possible performance degradation at 15,000 messages per second.

The Exchange believes its proposal to provide separate fees for Tier Appointments for MM EAPs and MM Floor Permits as the Exchange will be issuing separate Trading Permits for on-floor and off-floor market making as discussed above. The proposal to eliminate the volume threshold for the electronic SPX Tier Appointment fee is reasonable as no TPHs in the past several months have electronically traded more than 1 SPX contract or less than 100 SPX contracts per month and therefore will not be negatively impacted by the proposed change, and because it aligns the electronic SPX Tier Appointment with the floor SPX Tier Appointment, which has no volume threshold. The Exchange believes the proposal to increase the electronic volume thresholds for VIX and RUT are reasonable as those that do not regularly trade VIX or RUT in open-outcry will continue to not be assessed the fee. In fact, any TPH that executes more than 100 contracts but less than 1,000 in the respective classes will no longer have to pay the proposed Tier Appointment fee. As noted above, the Exchange is not proposing to change the amounts assessed for each Tier Appointment Fee. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Trading Permit Holder Regulatory Fee

The Exchange believes it's reasonable to eliminate the Trading Permit Holder Regulatory fee because TPHs will not pay this fee and because the Exchange is restructuring its Trading Permit structure. The Exchange notes that although it will less closely be covering the costs of regulating all TPHs and performing its regulatory responsibilities, it still has sufficient funds to do so. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

The Exchange believes corresponding changes to eliminate obsolete language in connection with the proposed changes described above and to relocate and reorganize its fees in connection with the proposed changes maCintain clarity in the Fees Schedule and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[90] The maximum quoting bandwidth that may be applied to a single Login Id is 80,000 quotes/3 sec.

[91] For simplicity of the comparison, this assumes no appointments in SPX, VIX, RUT, XEO or OEX (which are not included in the TP Sliding Scale).

[92] Given the bandwidth limit per Login Id of 80,000 quotes/3 sec, example assumes Market-Maker purchases minimum amount of Login IDs to accommodate 300,000 quotes/3 sec.

With respect to intra-market competition, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can buy the less expensive 1 Gb Physical Port and utilize only one Logical Port. Moreover, the pricing for 1 Gb Physical Ports and FIX/BOE Logical Ports are no different than are assessed today (*i.e.,* $1,500 and $750 per port, respectively), yet the capacity and access associated with each is greatly increasing. While pricing may be increased for larger capacity physical and logical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed in the Statutory Basis section above, options market participants are not forced to connect to (or purchase market data from) all options exchanges, as shown by the number of TPHs at Cboe and shown by the fact that there are varying number of members across each of Cboe's Affiliated Exchanges. The Exchange operates in a highly competitive environment, and its ability to price access and connectivity is constrained by competition among exchanges and third parties. As discussed, there are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or taking the exchange's data indirectly. For example, there are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange or reseller to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [93] and paragraph (f) of Rule 19b–4 [94] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–028, and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07767 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

[93] 15 U.S.C. 78s(b)(3)(A).

[94] 17 CFR 240.19b–4(f).

[95] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88590; File No. SR–NYSEARCA–2020–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related To Rule 7.10–E

April 8, 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 March 27, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on October 20, 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.

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 extend the current pilot program related to Rule 7.10–E (Clearly Erroneous Executions) to the close of business on October 20, 2020. The pilot program is currently due to expire on April 20, 2020.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10–E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of that change, the Exchange amended Rule 7.10–E to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange later amended Rule 7.10–E to extend the pilot's effectiveness to the close of business on April 20, 2020.[11]

The Exchange now proposes to amend Rule 7.10–E to extend the pilot's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rule 7.10–E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10–E.

The Exchange does not propose any additional changes to Rule 7.10–E. Extending the effectiveness of Rule 7.10–E for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[5] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEArca–2014–48).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[8] *See* Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 31, 2014) (SR–NYSEArca–2014–32).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[10] *See* Securities Exchange Act Release No. 85532 (April 5, 2019), 84 FR 14708 (April 11, 2019) (SR–NYSEArca–2019–21).

[11] *See* Securities Exchange Act Release No. 87355 (October 18, 2019), 84 FR 57094 (October 24, 2019) (SR–NYSEArca–2019–75).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10–E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

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 proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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[15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2020–25 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–2020–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–25 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07770 Filed 4–13–20; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 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.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88599; File No. SR–CboeBZX–2020–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Approving a Proposed Rule Change To Provide Members Certain Optional Risk Settings Under Proposed Interpretation and Policy .03 of Rule 11.13

April 8, 2020.

I. Introduction

On February 12, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide members certain optional risk settings under proposed Interpretation and Policy .03 of Rule 11.13. The proposed rule change was published for comment in the **Federal Register** on February 27, 2020.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to offer two optional credit risk settings that would authorize the Exchange to take automated action if a designated limit for a member is breached. Specifically, the Exchange proposes to offer: (i) The ''Gross Credit Risk Limit,'' a pre-established maximum daily dollar amount for purchases and sales across all symbols, where both purchases and sales are counted as positive values, and (ii) the ''Net Credit Risk Limit,'' a pre-established maximum daily dollar amount for purchases and sales across all symbols, where purchases are counted as positive values and sales are counted as negative values.[4]

The Exchange also proposes to provide that if a member does not self-clear, the member may allocate the responsibility for establishing and adjusting the Gross Credit and Net Credit risk settings to a clearing member that clears transactions on behalf of the member, if designated in a manner prescribed by the Exchange.[5] A member that allocates this responsibility to its clearing member would be able to view any risk setting established by the clearing member and would be notified of any action taken by the Exchange with respect to the member's trading activity.[6] However, the member would cede all control and ability to establish and adjust the risk settings to its clearing member,[7] but the member would retain the ability to revoke the responsibility allocated to its clearing member at any time, if designated in a manner prescribed by the Exchange.[8]

Pursuant to the proposal, any specified limits for the risk settings applicable to the Gross Credit or Net Credit Risk Limits may only be set at the MPID level and may be established or adjusted before the beginning of a trading day or during the trading day.[9] Both the member and the clearing member may enable alerts to signal when the member is approaching the designated limits.[10] These alerts would generate when a member breaches certain percentage thresholds of its designated risk limit, which would send an email message to the recipients designated by the member or clearing member.[11] According to the Exchange, it anticipates initially setting the thresholds at fifty, seventy, or ninety percent of the designated risk limit.[12]

The proposed rule change would also specify that if a risk setting is breached, the Exchange would automatically block new orders submitted and cancel open orders until the applicable risk control is adjusted to a higher limit by the member or clearing member with the responsibility of establishing and adjusting the risk settings.[13] Finally, the Exchange proposes to amend Rule 11.15(f) to specify that the Exchange may share any of a member's risk settings specified in Interpretation and Policy .03 of Rule 11.13 with the clearing member that clears transactions on behalf of the member.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is reasonably designed to provide members with an optional tool to manage their credit risk. The Commission notes that other exchanges have established risk protection controls that are similar in many respects to the Exchange's proposal.[16] The Commission also notes that the Exchange currently provides credit controls that measure gross and net exposure, similar to the proposed risk limits.[17] Unlike the proposed risk limits, however, the Exchange's existing credit controls apply at the logical port level, rather than by MPID, and are applied based on a combination of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88263 (February 21, 2020), 85 FR 11421 (''Notice'').

[4] *See* proposed Interpretation and Policy .03(a) of Rule 11.13. For purposes of calculating both the Gross Credit Risk Limit and the Net Credit Risk Limit, only executed orders would be included. *See id.*

[5] *See* proposed Interpretation and Policy .03(c) of Rule 11.13. The Exchange notes that all members are required to either clear their own transactions or to have in place a relationship with a clearing member that has agreed to clear transactions on their behalf in order to conduct business on the Exchange. *See* Notice, *supra* note 3, at 11422.

[6] *See* proposed Interpretation and Policy .03(c) of Rule 11.13.

[7] *See* Notice, *supra* note 3, at 11422.

[8] *See* proposed Interpretation and Policy .03(c) of Rule 11.13.

[9] *See* proposed Interpretation and Policy .03(b) of Rule 11.13.

[10] *See* proposed Interpretation and Policy .03(d) of Rule 11.13. The Exchange notes that a clearing member would have the ability to enable alerts regardless of whether it was allocated responsibilities pursuant to proposed Interpretation and Policy .03(c) of Rule 11.13. *See* Notice, *supra* note 3, at 11423 n.11.

[11] *See* Notice, *supra* note 3, at at 11423.

[12] *See id.*

[13] *See* proposed Interpretation and Policy .03(e) of Rule 11.13. The Exchange notes, however, that orders entered for participation in the opening or closing auction cannot be canceled or modified after the applicable ''cut-off'' time, but will be marked for cancellation. *See* Notice, *supra* note 3, at 11423 n.13. Similarly, the Exchange notes that orders entered for participation in the Cboe Market Close (''CMC'') will be matched for execution at the applicable cut-off time, and cannot be canceled or modified after such time. *See id.* According to the Exchange, therefore, if a risk setting breach occurs after the applicable cut-off time for an opening or closing auction, or the CMC, the auction orders or CMC auction orders would not be canceled or modified. *See id. See also* Rule 11.23(b)(1)(B) and (c)(1)(B) and Rule 11.28(a) and (b).

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See, e.g.,* Investors Exchange LLC Rule 11.380.

[17] *See* Interpretation and Policy .01(h) of Rule 11.13.

outstanding orders on the Exchange's book and notional execution value, rather than based simply on a notional execution value.[18] The Commission believes that the proposed rule change would provide an additional option for members seeking to further tailor their risk management capability while transacting on the Exchange. The Commission also believes that the proposed rule change is reasonably designed to provide clearing members additional opportunity to monitor and manage the potential risks that they assume when clearing for members of the Exchange, as well as to provide clearing members with greater control over their risk tolerance and exposure on behalf of their correspondent members, while also providing an alert system designed to help ensure that both members and clearing members are made aware of developing issues.

The Commission notes that the proposed Gross Credit and Net Credit Risk Limits are optional functionalities. The Commission reminds members electing to use the proposed risk limits to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and the decision to utilize the proposed risk settings, including the parameters set forth by the member for the risk setting, must be consistent with this duty.[19] For instance, under the proposal, members, or their respective clearing members on their behalf, have discretion to set the Gross Credit Risk Limit or Net Credit Risk Limit. While the Exchange did not affirmatively establish minimum and maximum permissible settings for these limits in its proposed rule change, the Commission expects the Exchange to periodically assess whether the risk limits are operating in a manner that is consistent with the promotion of fair and orderly markets. In addition, the Commission expects that members will consider their best execution obligations when establishing the parameters for the risk limits.[20] For example, to the extent that a member's risk settings are set to overly-sensitive parameters, particularly if a member's order flow to the Exchange contains agency orders, a member should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to the Exchange in various market conditions.[21] The Commission cautions that brokers considering their best execution obligations should be aware that agency orders they represent may be blocked or canceled on account of the Gross Credit and Net Credit Risk Limits.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–CboeBZX–2020–006) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07776 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

[18] *See id. See also* Notice, *supra* note 3, at 11422.

[19] *See* Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Release''); 51808 (June 9, 2005), 70 FR 37496, 37537–38 (June 29, 2005).

[20] The Commission reminds broker-dealers that they must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices. *See* Order Handling Rules Release, *supra* note 19, at 48323.

[21] For example, a marketable agency order that would have otherwise executed on the Exchange might be prevented from reaching the Exchange on account of other interest from the member that causes it to exceed the pre-established risk limit and thereby results in the Exchange blocking new orders from the member.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88587; File No. SR–NASDAQ–2020–015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4759

April 8, 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 April 3, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4759 (Data Feeds Utilized) to include the Long-Term Stock Exchange, Inc. (''LTSE'') in the list of proprietary and network processor feeds that the Exchange utilizes for the handling, routing, and execution of orders as well as regulatory compliance processes related to those functions.

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

On May 10, 2019, the Commission approved the Long-Term Stock Exchange, Inc. (''LTSE'') as a national securities exchange.[3] In anticipation of the planned launch of LTSE,[4] the Exchange proposes to amend and update Rule 4759, which lists the proprietary and network processor feeds that the Exchange utilizes for the handling, routing and execution of orders as well as regulatory compliance processes related to those functions. Specifically, the Exchange proposes to specify that LTSE will be an additional market center source for quotation data

[3] See Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10–234) (Order approving LTSE application for registration as a national securities exchange).

[4] LTSE expects to launch on May 15, 2020. *See* LTSE Update on adjusted phase-in schedule published on March 18, 2020, available at: *https://longtermstockexchange.com/static/MA-2020-006-14f9b362b7bd1103c9545525d246e778.pdf.*

by including LTSE in its table in Rule 4759.[5]

As proposed, the Exchange will use securities information processor (''SIP'') data, *i.e.,* CQS SIP data, for securities reported under the Consolidated Quotation Services and Consolidated Quotation Plan and UQDF SIP data for securities reported under the Nasdaq Unlisted Trading Privileges Plan to obtain LTSE quotation information.[6] While the Exchange currently utilizes proprietary market data as the primary source of quotation data for certain markets that provide a reliable direct feed,[7] the Exchange will solely utilize the SIP data for LTSE because LTSE will only distribute market data using the SIPs.[8] No secondary source for LTSE market data will be specified because LTSE has announced that it will not maintain a proprietary market data feed.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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 Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because adding LTSE to its list of market centers for which the exchange consumes quotation data will provide clarity to market participants. Additionally, it is necessary and consistent with the public interest and the protection of investors to add LTSE to the Exchange's table in Rule 4759 in order to provide transparency with respect to all the proprietary and network processor feeds from which the Exchange obtains market data. Further, the Exchange also believes that it is consistent with the Act to specify that the Exchange will consume quotation data for LTSE from the SIP feed, to enhance clarity to market participants.

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 deigned to address any competitive issue; instead, its purpose is to enhance transparency with respect to the operation of the Exchange and its use of market data feeds.

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 [12] and Rule 19b–4(f)(6) thereunder.[13]

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–NASDAQ–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–NASDAQ–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 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–2020–015 and should be submitted on or before May 5, 2020.

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[5] A similar proposed rule change has been proposed by one other exchange. *See* Securities Exchange Act Release No. 88313 (March 3, 2020), 85 FR 13684 (March 9, 2020) (SR–IEX–2020–03).

[6] The LTSE's Market Center Originator ID on the SIP will be ''L''. *See* LTSE Updated FAQ for Exchange Operations published on February 28, 2020, available at: *https://longtermstockexchange.com/static/MA-2020-003-f00ac3fc666c5521974cd55976404019.pdf.*

[7] The Exchange utilizes proprietary market data as the Primary Source of quotation data for the following markets: NYSE American, Nasdaq BX, CBOE EDGA, CBOE EDGX, NYSE, NYSE Arca, Nasdaq, Nasdaq PSX, CBOE BYX, and CBOE BZX.

[8] *See* LTSE Updated FAQ for Exchange Operations published on February 28, 2020, available at: *https://longtermstockexchange.com/static/MA-2020-003-f00ac3fc666c5521974cd55976404019.pdf.*

[9] *See id.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07768 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88596; File No. SR–NYSEArca–2020–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

April 8, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to waive certain Floor-based fixed fees for the month of April 2020. The Exchange proposes to implement the fee change effective April 1, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to waive certain Floor-based fixed fees for the month of April 2020. The Exchange proposes to implement the fee change effective April 1, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Because the Trading Floor is temporarily unavailable, the Exchange proposes to waive for April 2020 certain Floor-based fixed fees. Specifically, for the month of April 2020, the Exchange proposes to waive fees associated with:

- Floor Booths;
- Market Maker Podia;
- Options Floor Access;
- Wire Services; and
- ISP Connection.[4]

The Exchange notes that these fixed fees, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor. These fees are unrelated to trading volume and are charged for use of services made available to Floor participants on the Trading Floor. This proposed change is designed to reduce monthly costs for Floor participants while the Trading Floor is temporarily closed and Floor participants are unable to use the services associated with these fixed fees. The Exchange believes that this fee waiver would ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.[5]

The Exchange believes that all OTP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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 Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[10]

This proposed change is designed to reduce monthly costs for Floor

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* proposed Fee Schedule, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO–LOCATION FEES. The Exchange will re-evaluate the time limitations on this change (*i.e.,* whether it will need to apply to May) depending upon how long the Trading Floor remains temporarily closed and would file a separate proposed rule change if an extension is warranted.

[5] The Exchange will refund participants of the Floor Broker Prepayment Program for any prepaid April 2020 fees that are waived. *See* proposed Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the ''FB Prepay Program'') (providing that ''the Exchange will refund certain of the prepaid Eligible Fixed costs that were waived for April 2020, per Sections NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO–LOCATION FEES'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[10] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

participants that are unable to conduct Floor operations, including any open outcry trading, while the Trading Floor is temporarily closed. The Exchange believes that this fee waiver would ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

The Exchange believes that all OTP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal waives certain Floor-based fixed fees for the month of April 2020, during the period that the Trading Floor is temporarily closed. The fees being waived are charged only to Floor participants and do not apply to participants that conduct business off-Floor. These fees are unrelated to trading volume and are charged for use of services made available to Floor participants on the Trading Floor. This proposed change is equitable as it is designed to reduce monthly costs for Floor participants that are unable to conduct Floor operations. The Exchange believes that this fee waiver would allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed fees indefinitely, but rather only during the period that the Trading Floor is temporarily closed. The proposed fee change is designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of affected OTP Holders, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. 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.'' [11]

Intramarket Competition. The proposed fee change is designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange. The Exchange believes that the proposed waiver of fees would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[13]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to ease the financial burden and allow affected participants to reallocate funds to assist with the cost of shifting operations from on-Floor to off-Floor. Absent this change, such participants may experience an unintended increase in the cost of doing business on the Exchange, which would make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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) [16] 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:

[11] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[12] *See supra* note 9.

[13] Based on OCC data, *supra* note 10, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January, 2020.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

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–2020–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–29 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07775 Filed 4–13–20; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88601; File No. SR–NYSE–2020–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From the Long-Term Stock Exchange, Inc.

April 8, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 6, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify the Exchange's source of data feeds from the Long-Term Stock Exchange, Inc. (''LTSE'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37, which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(e) to specify that, with respect to the LTSE, the Exchange will receive the SIP feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance. The Exchange will not have a secondary source for data from LTSE.

The Exchange proposes that this proposed rule change would be operative on the day that LTSE launches operations as an equities exchange, which is currently scheduled for May 15, 2020.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37(e) to include the data feed source for the LTSE will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors

[4] On March 25, 2020, LTSE announced that it would begin phasing in securities on its production system on May 15, 2020. *See* LTSE Market Announcement: MA–202–008, available here: *https://longtermstockexchange.com/static/MA-2020-008-dfec5067f88285a0f563a894451b1f22.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

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) [10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–31 and should be submitted on or before May 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07778 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.* 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.

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88594; File No. SR–NYSEAMER–2020–26]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify the NYSE American Options Fee Schedule

April 8, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to raise the existing cap on the available credit for certain Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective April 1, 2020. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the existing cap on the available credit to Floor Brokers that execute a specified number of Qualified Contingent Cross (''QCC'') transactions.

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility that has resulted from the ongoing spread of the novel COVID–19 virus. In addition, beginning March 16, 2020, to slow the spread of COVID–19 through social-distancing measures, significant limitations have been placed on large gatherings throughout the country.[4] Shortly thereafter, U.S. options exchanges that operate physical trading floors, such as Cboe, Inc. and NASDAQ PHLX, announced the temporarily closure of such floors as a precautionary measure to prevent the potential spread of COVID–19. The Exchange likewise announced the temporarily closure of the Trading Floor, effective March 23, 2020, which meant that Exchange Floor Brokers could not engage in open outcry trading. Following the floor closures, including the Exchange's Trading Floor, the Exchange has experienced an increase in QCC volume.

Currently, Floor Brokers earn a credit for executed QCC orders of $0.07 per contact up to 300,000 contracts or $0.10 per contract above 300,000.[5] The Exchange currently limits the maximum Floor Broker credit to $425,000 per month per Floor Broker firm (the ''Cap'').[6]

Given the unanticipated surge in QCC volume that has resulted from the unprecedented temporary closure of the Trading Floor, the Exchange proposes to increase the Cap solely for the month of April 2020. Specifically, the Exchange proposes that the Cap would remain at $425,000, except that for the month of April 2020, the Cap would be $625,000 per Floor Broker firm.[7] The Exchange believes that this change would allow Exchange incentives to operate as intended—to encourage Floor Brokers to execute volume on the Exchange, and for the period when open outcry is unavailable, to execute all QCC transactions on Exchange and, for the month of April, to continue to increase the number of such QCC transactions. The Exchange also believes the proposed change would also facilitate fair and orderly markets by attempting to avoid an unintended increase in the cost of Floor Brokers' QCC trading on the Exchange.

Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that increasing the Cap for the month of April when the Trading Floor may continue to be unavailable would provide Floor Brokers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.

Moreover, the Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those with similar QCC rebate programs and associated caps on same.[8] Thus, Floor Brokers have a choice of where they direct their order flow. This proposed change—which increases the maximum available credit for the month of April 2020—is designed to incent Floor Brokers to increase their QCC volumes on the Exchange. The Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, without this proposed change during a time when Floor Brokers have increasingly turned to QCCs because the temporary Trading Floor closure prevents open outcry trading, the Exchange believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the Cap.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based

[4] For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

[5] *See* Fee Schedule, Section I.F., QCC Fees & Credits, n. 1, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.* QCC executions in which a Customer or Professional Customer is on both sides of the QCC trade are not eligible for the Floor Broker credit.

[6] *See id.* (providing that ''[t]he maximum Floor Broker credit paid shall not exceed $425,000 per month per Floor Broker firm'').

[7] *See* proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (providing that ''[t]he maximum Floor Broker credit paid shall not exceed $425,000 per month per Floor Broker firm (the ''Cap''), except that for the month of April 2020, the Cap will be $625,000 per Floor Broker firm''). The Exchange will re-evaluate the time limitations on this change (*i.e.,* whether it will need to apply to May) depending upon how long the Trading Floor remains temporarily closed and would file a separate proposed rule change if an extension is warranted.

[8] *See, e.g.,* NASDAQ PHLX, Options 7 Pricing Schedule, Section 4. Multiply Listed Options Fees, QCC Rebate Schedule, *available here, http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F3%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Dllcrules%2F* (providing that ''[t]he maximum QCC Rebate to be paid in a given month will not exceed $550,000''); NASDAQ ISE, Options 7 Pricing Schedule, Section 6. Other Options Fees and Rebates, A. QCC and Solicitation Rebate, *available here, http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_22&manual=/contents/ise/ise-rules/* (providing no cap on the maximum on the amount of QCC rebate to be paid in a given month).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades in January 2020.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow. The proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those with similar QCC credit programs and associated caps on same.[14]

Given the recent uptick in QCC transactions on the Exchange following the temporary closures of options trading floors—including the Exchange's Trading Floor, the Exchange believes the proposed increase to the Cap for the month of April would allow Exchange incentives to operate as intended and would also facilitate fair and orderly markets by attempting to avoid an unintended increase in the cost of Floor Brokers' QCC trading on the Exchange. Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that increasing the Cap for the month of April when the Trading Floor may continue to be unavailable would provide Floor Brokers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.

Furthermore, as a general matter, the proposal is designed to encourage Floor Brokers to execute all QCC transactions on Exchange and, for the month of April, to continue to increase the number of such QCC transactions. The proposal caps fees on all similar (QCC) transactions, regardless of size and similarly-situated Floor Brokers can opt to try to achieve the modified (and increased) credit during the month of April. To the extent that the proposed change attracts more QCC trades to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, without this proposed change during a time when Floor Brokers have increasingly turned to QCCs because the temporary Trading Floor closure prevents open outcry trading, the Exchange believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the Cap.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange during the month of April and Floor Brokers can opt to avail themselves of the modified Cap (*i.e.,* by executing more QCC transactions) or not. The proposed change would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges (*e.g.,* NASDAQ ISE has no cap on its rebate).[15] As the proposal is designed to encourage Floor Brokers to execute QCC transactions on the Exchange, any resulting increase in order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers because the proposed modification would be available to all similarly-situated market participants (*i.e.,* Floor Brokers) on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange during April 2020 and Floor Brokers are not obligated to try to achieve the modified Cap. The proposed change would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges (*e.g.,* NASDAQ ISE has no cap on its rebate).[16] As such, the proposal is designed encourage Floor Brokers to utilize the Exchange as a primary trading venue for QCC transactions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, 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.

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[13] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

[14] *See supra* note 7 [sic] (regarding NASDAQ PHLX's $550,000 monthly cap on QCC rebate and NASDAQ ISE's lack of any such monthly cap of QCC rebate).

[15] *See supra* note 7 [sic] (regarding NASDAQ ISE's lack of any monthly cap of QCC rebate).

[16] *See id.*

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 all market participants. 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.'' [17]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly QCC trades) to the Exchange. The Exchange believes that the proposed increased QCC Floor Broker credit would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges (*e.g.,* NASDAQ ISE has no cap on its rebate).[18]. [sic] Greater liquidity benefits all market participants on the Exchange and increased QCC transactions would increase opportunities for execution of other trading interest. The proposed increased cap would be available to all similarly-situated market participants that execute QCC transactions, 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 favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[19] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the fourth quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[20]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges (*e.g.,* NASDAQ ISE has no cap on its rebate).[21] To the extent that Floor Brokers are encouraged to direct trading interest (particularly QCC transactions) to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar QCC credits (and caps thereon), by encouraging additional orders to be sent to the Exchange for execution.[22]

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) [23] of the Act and subparagraph (f)(2) of Rule 19b–4 [24] 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) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–26 and should be submitted on or before May 5, 2020.

[17] *See* Reg NMS Adopting Release, *supra* note 10 [sic], at 37499.

[18] *See id.* [sic]

[19] *See supra* note 11 [sic].

[20] Based on OCC data, *supra* note 12, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January, 2020.

[21] *See supra* note 7 [sic] (regarding NASDAQ ISE's lack of any monthly cap of QCC rebate).

[22] *See id.*

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–07773 Filed 4–13–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before June 15, 2020.

ADDRESSES: Send all comments to Cassandra Fooks, Program Analyst, Office of Business Development, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cassandra Fooks, Program Analyst, Office of Business Development, *Cassandra.fooks@sba.gov,* 202–619–0305, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: All 8(a) participants are required to provide semi-annual to report the Small Business Administration on compensation provided to any Agents, or Representatives, (hereafter referred to as Representatives), including attorneys, accountants and consultants, for assisting the Participants to receive Federal contracts. The information includes the amount of compensation provided to the Representative and a description of the services performed in return for such compensation received and description of the activities performed in return for such compensation. The information is used to ensure that Participants do not engage in any improper or illegal activity in connection with obtaining a contract.

[26] 17 CFR 200.30–3(a)(12).

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Representatives Used and Compensation Paid for Services in Connection with Obtaining Federal Contracts.

Description of Respondents: 8(a) Participants.

Form Number: SBA Form 1790.

Total Estimated Annual Responses: 4,624.

Total Estimated Annual Hour Burden: 2,976.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–07852 Filed 4–13–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11087]

Advisory Committee on Historical Diplomatic Documentation; Notice of Cancellation of Open Meeting

Due to concerns surrounding the spread of COVID–19, the Advisory Committee on Historical Diplomatic Documentation is cancelling its open meeting previously scheduled on Monday, June 1. If the meeting is rescheduled, the Department of State will issue a **Federal Register** Notice with details.

For additional information, contact Adam Howard, Office of the Historian, at *history@state.gov.*

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2020–07758 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice: 11091]

Designation of Nikolay Nikolayevich Trushchalov as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Nikolay Nikolayevich Trushchalov, also known as Mykola Mykolayovych Trushchalov, also known as Nikolaj Nikolaevich Trushhalov, also known as Nicholas Truschalov, also known as Nikolay Trushchalov, also known as Nicholas Trushchalov, is a leader of Russian Imperial Movement, a group whose property and interests in property are concurrently blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 27, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–07858 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11090]

Designation of Denis Valiullovich Gariyev as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Denis Valiullovich Gariyev, also known as Denis Gariyev, also known as Denis Gariev, is a leader of Russian Imperial Movement, a group whose property and interests in property are concurrently blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 27, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–07857 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11086]

Defense Trade Advisory Group; Notice of Open Meeting

The Defense Trade Advisory Group (DTAG) will meet in open session from 1:00 p.m. until 5:00 p.m. on Thursday, May 14, 2020. Based on federal and state guidance in response to the Covid-19 pandemic, the meeting will be held virtually. The virtual forum will open at 12:00 p.m. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The DTAG was established as an advisory committee under the authority of 22 U.S.C. Sections 2651a and 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. The purpose of the meeting will be to discuss current defense trade issues and topics for further study. The following agenda topics will be discussed and final reports presented: (1) Prioritizing Defense Export Control and Compliance System (DECCS) enhancements. (2) Improving compliance guidelines for companies and universities. (3) Exploring options for improving reporting on political contributions, gifts, commissions, and fees (commonly referred to as ITAR ''Part 130'' reporting) pursuant to 22 U.S.C. 2779, and where appropriate making recommendations for improvement. (4) Exploring types of ''open'' or other flexible export authorizations administered by other countries, and in the member's experience what works well when operating within such authorizations.

The meeting will be held in WebEx. There will be one WebEx invitation for each attendee, and only the attendee should use the invitation. In addition, each attendee should access the virtual meeting from a private location. Please let us know if you need any of the following accommodations: live captions, digital/text versions of webinar materials, or other (please specify).

Members of the public may attend this virtual session and will be permitted to participate in the question and answer discussion period following the formal DTAG presentation on each agenda topic in accordance with the Chair's instructions. Members of the public may also submit a brief statement (less than three pages) to the committee in writing for inclusion in the public minutes of the meeting. Virtual attendance is limited to 125 persons, so each member of the public that wishes to attend this session must provide: Name and contact information, including an email address and phone number, and any request for reasonable accommodation to the DTAG Alternate Designated Federal Officer (ADFO), Neal Kringel, via email at *DTAG@state.gov* by COB Monday, April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Eisenbeiss, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2835 or email *DTAG@state.gov.*

Neal F. Kringel,

Alternate Designated Federal Officer, Defense Trade Advisory Group, U.S. Department of State.

[FR Doc. 2020–07829 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11088]

Designation of Russian Imperial Movement as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Russian Imperial Movement, also known as RIM, also known as Russkoie Imperskoe Dvizhenie, also known as Russkoe Imperskoye Dvizheniye, also known as RID, also known as Russian Imperial Legion, also known as RIL, also known as Imperial Legion, also known as Saint Petersburg Imperial Legion, is a foreign person who has participated in training to commit acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 27, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–07835 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11089]

Designation of Stanislav Anatolyevich Vorobyev as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, Executive Order 13284 of January 23, 2003, and Executive Order 13886 of September 9, 2019, I hereby determine that the person known as Stanislav Anatolyevich Vorobyev, also known as Vorobyov Stanislav Anatolyevich, also known as Stanislav Vorobyov, also known as Stanislav Vorobev, is a leader of Russian Imperial Movement, a group whose property and interests in property are concurrently blocked pursuant to a determination by the Secretary of State pursuant to Executive Order 13224.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a

constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: March 27, 2020.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2020–07854 Filed 4–13–20; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Multnomah County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge retrofit or replacement project in Multnomah County, Oregon.

FOR FURTHER INFORMATION CONTACT: Emily Cline, Environmental Program Manager, Federal Highway Administration, Oregon Division, 530 Center Street NE, Salem, Oregon 97301, Telephone: (503) 316–2547, Email: *emily.cline@dot.gov,* or Megan Neill, Project Manager, Multnomah County Transportation Division, 1403 SE Water Ave., Portland, Oregon 97214, Telephone: (503) 988–0437, Email: *megan.neill@multco.us.*

SUPPLEMENTARY INFORMATION: The FHWA, together with Multnomah County and the Oregon Department of Transportation (DOT), will prepare an environmental impact statement (EIS) on a proposal to create a seismically resilient Burnside Street crossing of the Willamette River in downtown Portland, Oregon. The purpose of this project is to create a seismically resilient Burnside Street lifeline crossing of the Willamette River that will remain fully operational and accessible for vehicles and other modes of transportation immediately following a major earthquake. The project is intended to address the need to support the region's ability to provide rapid and reliable emergency response, rescue and evacuation after a major earthquake; the need for long-term, multi-modal travel access across the river; and to enable post-earthquake economic recovery.

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), 23 U.S.C. 139, Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139), and applicable Executive Orders and DOT NEPA policies. The EIS will also document compliance with other applicable environmental review laws, regulations, Executive Orders, policies, and guidance. For example, an evaluation under Section 4(f) of the DOT Act of 1966 may also be required due to the potential for impacts to public recreational areas and resources on or eligible for the National Register of Historic Places. The FHWA intends to issue a combined Final EIS/Record of Decision pursuant to 23 CFR 771.124, unless FHWA determines the regulatory criteria or practicability considerations preclude issuance of a combined document.

Analyses developed and decisions reached during the transportation planning stage have helped narrow the range of alternatives and focus the NEPA evaluation for the project. These analyses and decisions, captured in the 2015 Willamette River Bridges Capital Improvement Program and the 2018 Earthquake Ready Burnside Bridge Feasibility Study, include the purpose and need, and the identification and screening of alternatives.

Multnomah County and the Oregon DOT submitted this planning work to extensive public involvement. This ''informal'' scoping included multiple public and agency meetings, held between August 2018 and October 2019, to invite comment on the statement of purpose and need, the range of alternatives, issues to be studied in the EIS, screening criteria, and evaluation criteria for selecting a preferred alternative. Multnomah County and the Oregon DOT held an online open house between September 3 and October 4, 2019. With the Feasibility Study and the informal scoping process, Multnomah County and the Oregon DOT evaluated over 100 potential alternatives and options, ultimately deciding to carry forward three build alternatives plus a No-build alternative for further analysis in an EIS.

In accordance with 23 U.S.C. 168 and 23 U.S.C. 139(f)(4), FHWA intends to adopt the planning analyses, purpose and need, and decisions on the alternatives, and rely on them for the NEPA process.

This notice begins the formal scoping period. The FHWA will use this opportunity to determine the scope and the significant issues to be analyzed in depth in the EIS, and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies; Tribes; and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Agencies that were identified as potential Cooperating and Participating agencies are being invited to review and comment on the Agency Coordination Plan. In addition, with this notice, the lead agencies (FHWA, Multnomah County, and the Oregon DOT) invite comments and suggestions from all interested parties to ensure that the full range of issues related to this proposed action are considered and that all significant issues are identified.

Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above. The lead agencies have developed a project website at *www.burnsidebridge.org* that includes project schedules, the Public Involvement Plan, and information about past and upcoming project meetings.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Phillip Ditzler,

Oregon Division Administrator, Portland, Oregon.

[FR Doc. 2020–07827 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0030]

Petition for Waiver of Compliance

Under part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that on March 31, 2020, the American Short Line and Regional Railroad Association (ASLRRA), on behalf of its member railroads Allegheny Valley Railroad, Southwest Pennsylvania Railroad, Ohio Terminal Railway, and Delmarva Central Railroad, petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from

certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2020–0030.

Specifically, ASLRRA seeks relief from 49 CFR 236.586, *Daily or after trip test,* and § 236.588, *Periodic test.* Section 236.586(a) provides that, except where tests prescribed by § 236.588 are performed at intervals of not more than two months, each locomotive equipped with an automatic cab signal or train stop or train control device operating in equipped territory shall be inspected for damage to the equipment and tested at least once each calendar day or within 24 hours before departure upon each trip. Section 236.588 requires that except as provided in § 236.586, periodic tests of the automatic train stop, train control, or cab signal apparatus be made at least once every 92 days, and on multiple-unit cars as specified by the carrier, subject to approval by FRA. ASLRRA petitions to increase the time between inspections under § 236.588 to 184 days for a five-year waiver period, subject to conditions, during which time it aims to show that there would be no degradation in safety resulting from this change.

ASLRRA states that like the locomotive controls covered under 49 CFR 229.23, today's automatic train stop, train control, and cab signal apparatus devices use microprocessor-based technology. This technology provides enhanced safety for the following reasons: (1) The microprocessor-based system has diagnostics that monitor the functioning of cab signal equipment and records faults, particularly with respect to features relevant to the periodic inspection; (2) major faults are instantly addressed; (3) minor faults are addressed through later data analysis; (4) in some cases, railroads have the capability of analyzing the data remotely, without the need for the locomotive to be shopped; and (5) if the system detects a failure, the system goes into fail-safe mode and triggers a penalty air brake application. ALSRRA contends performing signal inspections pursuant to § 236.588 in conjunction with and under the same schedule as the locomotive inspections under § 229.23(b) would increase efficiency without compromising safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 29, 2020 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2020–07787 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0221 (Notice No. 2020–03)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICRs) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. These ICRs describe the nature of the information collections and their expected burdens. A **Federal Register** notice with a 60-day comment period soliciting comments on these ICRs was published in the **Federal Register** on January 16, 2020 under Docket No. PHMSA–2019–0221 (Notice No. 2019–12).

DATES: Interested persons are invited to submit comments on, or before May 14, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

We invite comments on: (1) 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; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Docket: For access to the Dockets to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S.

Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for each information collection activity and will publish a notice in the **Federal Register** alerting the public upon OMB's approval.

PHMSA requests comments on the following information collections:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection specifies provisions for documenting qualifications, inspections, tests, and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers (IBCs) under various provisions of the HMR. It is necessary to ascertain whether portable tanks and IBCs have been qualified, inspected, and retested in accordance with the HMR. The information is used to verify that certain portable tanks and IBCs meet required performance standards prior to their being authorized for use. Additionally, it is used to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials. The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Design Qualification Testing for IBCs—Applications for the Certification Mark	13	494	3	1,482
Periodic Design Requalification Testing of IBCs—Submission of Changes to Test Frequency to the Associate Administrator	13	494	3	1,482
Applications for Approval of Equivalent Packaging—IBCs	5	5	3	15
Reporting Requirements for Retest and Inspection of IBCs	1,000	100,000	0.25	25,000
Recordkeeping for IBC Testing	150	150	0.25	38
Manufacturers Data Report (ASME) for Portable Tanks	50	50,000	0.25	12,500
Approval Applications for Specification UN Portable Tank Design	13	494	3	1,482
Applications for Modifications to Portable Tank Designs	13	494	3	1,482
Portable Tanks—Approval Agency Retention of Documents	13	494	0.25	124
Portable Tanks—Manufacturers Retention of Documents	50	50,000	0.25	12,500
Recordkeeping for the Testing of Portable Tanks	150	150	0.25	38

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 1,470.

Total Annual Responses: 202,775.

Total Annual Burden Hours: 56,143.

Frequency of Collection: On occasion.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of an incident as prescribed in 49 CFR 171.15 and 171.16. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a person in physical possession of a hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a main artery. Incidents meeting criteria specified in 49 CFR 171.15 also require a telephonic report. This information collection enhances the Agency's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway. The following information collections and their burdens are associated with this OMB Control Number:

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Telephone Notifications	733	733	0.08	58
Incident Reports Paper—Written	803	3,420	1.6	5,472
Incident Reports—Electronic	803	16,737	0.8	13,390

Affected Public: Shippers and carriers of hazardous materials.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 2,339.

Total Annual Responses: 20,890.

Total Annual Burden Hours: 18,920.

Frequency of Collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection,

repair, maintenance, and operation of certain DOT specification and non-specification cargo tank motor vehicles used to transport liquefied compressed gases. These requirements are intended to ensure cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking, and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector. Please note that respondents identified in this information collection may be responsible for multiple information collection activities indicated below.

The following information collections and their burdens are associated with this OMB Control Number:

Information Collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Marking New/Repaired Hoses with Unique Identifier	6,800	12,172	0.083	1,010
Monthly Hose Inspections Record	6,800	439,960	0.1	43,996
Record of Monthly Piping Tests Record	6,800	400,112	0.2	80,022
Hose Pressure Test Marking Record	6,800	12,172	0.083	1,010
Annual Hose Test Record	6,800	36,652	0.42	15,393
Cargo Tanks in Other Than Metered Delivery Service—Design Certification for Automatic Shutoff	150	900	8	7,200
Cargo Tanks in Other Than Metered Delivery Service—Instillation of Shutoff System by a Registered Inspector	150	900	8	7,200
Cargo Tank Motor Vehicles in Metered Delivery Service—Certification of Remote Control Equipment by a Registered Inspector	150	3,300	8	26,400

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,950.

Total Annual Responses: 906,168.

Total Annual Burden Hours: 182,231.

Frequency of Collection: On occasion.

Title: Inspection and Testing of Meter Provers.

OMB Control Number: 2137–0620.

Summary: This information collection and recordkeeping burden results from the requirements pertaining to the use, inspection, and maintenance of mechanical displacement meter provers (meter provers) used to check the accurate flow of liquid hazardous materials into bulk packagings, such as portable tanks and cargo tank motor vehicles, under the HMR. These meter provers are used to ensure that the proper amount of liquid hazardous materials is being loaded and unloaded. These meter provers consist of a gauge and several pipes that always contain small amounts of the liquid hazardous material in the pipes as residual material and, therefore, must be inspected and maintained in accordance with the HMR to ensure they are in proper calibration and working order. These meter provers are not subject to the specification testing and inspection requirements in 49 CFR part 178. However, they must be visually inspected annually and hydrostatic pressure tested every 5 years to ensure they are properly working as specified in 49 CFR 173.5a of the HMR. Therefore, this information collection requires that:

(1) Each meter prover must undergo and pass an external visual inspection annually to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(2) Each meter prover must undergo and pass a hydrostatic pressure test at least every 5 years to ensure that the meter provers used in the flow of liquid hazardous materials into bulk packagings are accurate and in conformance with the performance standards in the HMR.

(3) Each meter prover must successfully complete the test and inspection and must be marked in accordance with 49 CFR 180.415(b) and 173.5a.

(4) Each owner must retain a record of the most recent visual inspection and pressure test until the meter prover is requalified.

The following information collections and their burdens are associated with this OMB Control Number:

Information Collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Annual Visual Inspection	250	250	0.5	125
Hydrostatic Pressure Test (Every 5 Years)	250	250	0.2	50

Affected Public: Owners of meter provers used to measure liquid hazardous materials flow into bulk packagings such as cargo tanks and portable tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 250.

Total Annual Responses: 500.

Total Annual Burden Hours: 175.

Frequency of Collection: On occasion.

Issued in Washington, DC, on April 9, 2020.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2020–07803 Filed 4–13–20; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to the Employee Plans Determination Letter Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the application form for a determination letter for Employee Benefit Plans.

DATES: Written comments should be received on or before June 15, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Determination Letter Program.

OMB Number: 1545–0197.

Form Number: 5300.

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax-exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust.

Current Actions: There is no change to the burden previously approved by OMB. This request is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 84 hours, 43 min.

Estimated Total Annual Burden Hours: 7,201,200.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: April 8, 2020.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2020–07825 Filed 4–13–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will take place via conference call on May 5, 2020 at 9:00 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

At this meeting, the Committee will consider the effects of the COVID–19 outbreak and associated policy response on Treasury borrowing. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202,§ 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may

not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2020–07838 Filed 4–13–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee Charter Renewals

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Advisory Committee charter renewals.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee ACT (FACA) and after consultation with the General Services Administration, the Secretary of Veterans Affairs has determined that the following Federal advisory committee is vital to the mission of the Department of Veterans Affairs (VA) and renewing its charter would be in the public interest. Consequently, the charter for the following Federal advisory committee is renewed for a two-year period, beginning on the dates listed below:

Committee name	Committee description	Charter renewed on
VA National Academic Affiliations Council.	Provides advice regarding partnerships between VA and its academic affiliates	March 13, 2020.
Genomic Medical Program Advisory Committee.	Provides advice on the scientific and ethical issues related to the establishment, development, and operation of a genomic medicine program within VA.	March 23, 2020.

The Secretary has also renewed the charter for the following statutorily authorized Federal advisory committee for a two-year period, beginning on the date listed below:

Committee name	Committee description	Charter renewed on
Advisory Committee on Women Veterans.	Provides advice on the needs of women Veterans regarding health care, rehabilitation benefits, compensation, outreach, and other programs administered by VA.	October 15, 2019.
Veterans' Advisory Committee on Rehabilitation.	Provides advice on the rehabilitation needs of disabled Veterans and the administration of VA's rehabilitation programs.	November 18, 2019.
Advisory Committee on Minority Veterans.	Provides advice on the administration of VA benefits for Veterans who are minority group members in the areas of compensation, health care, rehabilitation, outreach, and other services.	March 25, 2020.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW, Washington, DC 20420; telephone (202) 266–4660 or (202) 714–1578; or via email at *Jeffrey.Moragne@va.gov.* To view a copy of a VA Federal advisory committee charters, please visit *http://www.va.gov/advisory.*

Dated: April 9, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–07853 Filed 4–13–20; 8:45 am]

BILLING CODE 8320–01–P

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