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Presidential Documents

Title 3—

The President

Memorandum of March 31, 2020

Delegation of Certain Functions and Authorities Under the National Defense Authorization Act for Fiscal Year 2020

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[, and] the Director of National Drug Control Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

Section 1. (a) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 7426 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) (the ''Act'').

(b) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by the following provisions of the Act:

(i) section 7214;

(ii) section 7413;

(iii) section 7431; and

(iv) section 7432.

(c) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury and the Director of National Drug Control Policy, the functions and authorities vested in the President by section 7211(a)(1)(C) of the Act.

(d) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by the following provisions of the Act:

(i) section 7211(a)(1)(A)–(B);

(ii) section 7211(a)(2)–(3);

(iii) section 7211(b);

(iv) section 7211(c);

(v) section 7212;

(vi) section 7213(a)(4)–(9);

(vii) section 7213(d);

(viii) section 7215(a);

(ix) section 7233;

(x) section 7412(a); and

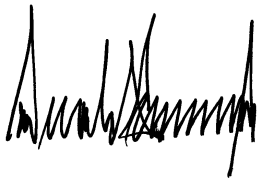
(xi) section 7412(b)(1)(A).

(e) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by section 7433 of the Act.

(f) I hereby delegate to the Secretary of State and the Secretary of Defense the functions and authorities vested in the President by section 7423 of the Act.

Sec. 2. The delegations in this memorandum shall apply to any provisions of any future public laws that are the same or substantially the same as those provisions referenced in this memorandum.

Sec. 3. The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, March 31, 2020

[FR Doc. 2020–08643
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. 1714]

RIN 7100–AF 88

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

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

ACTION: Interim final rule with request for comments.

SUMMARY: In light of recent disruptions in economic conditions caused by the Coronavirus Disease 2019 and current strains in U.S. financial markets, the Board is issuing an interim final rule that excepts certain loans that are guaranteed under the Small Business Administration's Paycheck Protection Program from the requirements of section 22(h) of the Federal Reserve Act and the corresponding provisions of the Board's Regulation O.

DATES: This rule is effective April 22, 2020. Comments on the interim final rule must be received no later than June 8, 2020.

ADDRESSES: You may submit comments, identified by Docket No. R–1714 and RIN 7100 AF 88, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://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 also may be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Deputy General Counsel, (202) 452–2272, Alison Thro, Deputy Associate General Counsel, (202) 452–3236, Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Josh Strazanac, Senior Attorney, (202) 452–2457, Jasmin Keskinen, Legal Assistant, (202) 475–6650, Legal Division; or Anna Lee Hewko, Associate Director, (202) 530–6360, Constance Horsley, Deputy Associate Director, (202) 452–5239, Kathryn Ballintine, Manager, (202) 452–2555, Joe Maldonado, Senior Financial Policy Analyst, (202) 973–7341, Division of Supervision and Regulation; 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.

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I. Background

A. The Paycheck Protection Program and Small Business Administration Lending Restrictions

The spread of the Coronavirus Disease 2019 (COVID–19) has disrupted economic activity in the United States and many other countries. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain. In light of these developments, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act which, among other things, created the Paycheck Protection Program (PPP) to facilitate lending to small businesses affected by COVID–19.

Under the PPP, qualified lenders, including many depository institutions subject to section 22(h) of the Federal Reserve Act and the Board's Regulation O,[1] may make loans to small businesses for payroll-related and other purposes specified in the CARES Act.[2] Loans that meet the requirements for the PPP (PPP loans) set forth by the Small Business Administration (SBA) are guaranteed as to the unpaid principal and accrued interest of the loan. The guarantee for PPP loans provided by the SBA is backed by the full faith and credit of the United States. Only loans made between February 15, 2020, and June 30, 2020, are eligible for the PPP.[3] The SBA has issued several interim final rules to implement the PPP.[4]

Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered by the SBA to be small, including individuals operating sole proprietorships, entities that are independent contractors of other businesses, certain franchisees, nonprofit corporations, veterans organizations, and Tribal businesses.[5] The loan amount under the PPP is limited to the lesser of $10 million and 250 percent of a borrower's average monthly payroll costs.[6]

Under the PPP, a borrower may apply to a PPP qualified lender for forgiveness of the portion of a PPP loan that is used

[1] 12 U.S.C. 375b; 12 CFR part 215.

[2] Public Law 116–136, 134 Stat. 281. CARES Act section 1102(a)(2).

[3] *Id.*

[4] Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program'' (April 2, 2020) (85 FR 20811); Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program'' (April 2, 2020) (85 FR 20817); Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans'' (April 14, 2020) (85 FR 21747).

[5] *Id.*

[6] *Id.*

in the first eight weeks of the loan for payroll costs and certain mortgage, rent, and utility payments. The SBA will reimburse the PPP lender for the forgiven amount of any PPP loan.[7] PPP loans will have a maturity of two years and an interest rate of 100 basis points.[8] PPP lenders may not alter these terms.

PPP loans are subject to the same rules, conditions, and requirements as all other loans made under section 7(a) of the Small Business Act, unless otherwise specified by the SBA in its interim final rules administering the PPP.[9] Normally, SBA regulations would prohibit a PPP lender from making a PPP loan to ''[b]usinesses in which the [PPP lender] or any of its Associates owns an equity interest'' (SBA lending restrictions).[10] SBA regulations define an ''Associate'' of a PPP lender to be ''[a]n officer, director, key employee, or holder of 20 percent or more of the value of the [PPP] [l]ender's . . . stock or debt instruments'' and any entity in which one of these individuals or certain relatives ''own or controls at least 20 percent.'' [11]

On April 14, 2020, the SBA issued an interim final rule stating, among other things, that SBA lending restrictions ''shall not apply to prohibit an otherwise eligible business owned (in whole or part) by an outside director or holder of less than 30 percent equity interest in a PPP [l]ender from obtaining a PPP loan from the PPP [l]ender on whose board the director serves or in which the equity owner holders an interest, provided that the eligible business owned by the director or equity holder follows the same process as similarly situated customer or account holder of the [l]ender.'' [12] The interim final rule also stated that SBA lending restrictions would continue to apply to officers and key employees of a PPP lender, and that ''[f]avoritism by [a PPP] [l]ender in processing time or prioritization of [a] director's or equity holder's PPP application is prohibited.'' [13]

B. Insider Lending Restrictions in the Federal Reserve Act and Regulation O

Among other things, section 22(h) and Regulation O impose requirements on a bank regarding extensions of credit made to insiders [14] of the bank or its affiliates. Loans to insiders are subject to quantitative limits, prior approval requirements by the bank's board, and qualitative requirements concerning loan terms.[15] Regulation O also requires banks to keep certain records and make certain disclosures concerning extensions of credit subject to the rule.[16] Under section 22(h), an ''extension of credit'' includes, among other things, ''making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which the person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.'' [17] Accordingly, PPP loans from a bank to an insider, including the insider's related interests,[18] would be subject to the requirements of section 22(h) and Regulation O.

The Housing and Community Development Act of 1992 (HCDA) [19] amended section 22(h) to authorize the Board to adopt, by regulation, exceptions to the definition of ''extension of credit'' in section 22(h) for transactions that ''pose minimal risk.'' Therefore, the Board may except PPP loans from the restrictions imposed by section 22(h) and the corresponding provisions of Regulation O if it determines that PPP loans pose minimal risk.[20]

II. The Interim Final Rule

The legislative history of the HCDA states that a transaction poses minimal risk when the risk is ''minuscule compared to that of other loans.'' [21] PPP loans are guaranteed by the SBA, and the guarantee is backed by the full faith and credit of the United States. Unlike other SBA loans authorized under section 7(a) of the Small Business Act,[22] the SBA's guarantee for PPP loans extends to 100 percent of the PPP loan amount. PPP loans also are less susceptible to insider abuse than other extensions of credit from a bank to an insider, other loans guaranteed by the SBA, or other extensions of credit that the Board previously has determined pose minimal risk.[23] Unlike these other extensions of credit, PPP loans have standard terms that do not allow for variation between borrowers, so banks are unable to modify the terms of PPP loans to be more favorable for insiders than for borrowers that are not insiders. Furthermore, like the PPP, which only applies to loans made between February 15 and June 30, 2020, the exception in this interim final rule only applies to loans made during the same time period. Excepting PPP loans from the definition of ''extension of credit'' in section 22(h) and the corresponding provisions of Regulation O is appropriate in light of these circumstances.

Accordingly, the Board has determined that PPP loans pose minimal risk. These PPP loans will not be subject to section 22(h) or the corresponding provisions of Regulation O if they are not prohibited by the SBA lending restrictions. The exception will help banks, particularly in smaller communities, to give effect to the PPP's purpose of helping small businesses to continue to operate under current economic conditions. The Board is providing the temporary exclusion in the interim final rule to allow banking organizations to make PPP loans to a broad range of small businesses within their communities, consistent with applicable law and safe and sound banking practices. As noted, the SBA explicitly has prohibited a banking organization from favoring in processing time or prioritization a PPP application of one of its directors or equity holders and the Board will administer this interim final rule accordingly.

SBA lending restrictions continue to apply to certain PPP loans that also would be subject to section 22(h) and the corresponding provisions of Regulation O. Excepting PPP loans that would be prohibited by the SBA lending restrictions from the requirements of section 22(h) and the corresponding provisions in Regulation O would not achieve any meaningful regulatory purpose. Excepting these loans from one regime and not the other also may create confusion because some lenders may

[7] CARES Act section 1106.

[8] Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program'' (April 2, 2020).

[9] Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program'' (April 2, 2020) at 85 FR 20816.

[10] 13 CFR 120.110(o).

[11] 13 CFR 120.10.

[12] Interim Final Rule: ''Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans'' (April 14, 2020).

[13] *Id.* at 85 FR 21750.

[14] Insider means an executive officer, director, or principal shareholder, and includes any related interest of such a person. 12 CFR 215.2(h).

[15] *See* 12 CFR 215.4.

[16] *See* 12 CFR 215.8, 215.9, and 215.10.

[17] 12 U.S.C. 375b(9)(D)(i)(I).

[18] Related interest of a person means a company that is controlled by that person or a political or campaign committee that is controlled by that person or the funds or services of which will benefit that person. 12 CFR 215.2(n).

[19] Public Law 102–550, section 955, 106 Stat. 3672 (1992).

[20] 12 U.S.C. 375b(9)(D)(ii).

[21] *See* 138 Cong. Rec. S17, 914–15 (daily ed. October 8, 1992).

[22] 15 U.S.C. 636(a)(1)(A).

[23] The Board previously excepted certain transactions from the aggregate lending limit in § 215.4(d) of Regulation O based on a determination that these transactions posed ''minimal risk.'' *See* 58 FR 26507 (May 4, 1993).

mistakenly interpret an exception under one regime to extend to both regimes.

This determination does not impact the application of other restrictions that may apply to PPP loans, including section 22(g) of the Federal Reserve Act or § 215.5 of Regulation O.[24] This determination also does not affect the SBA lending restrictions.

Question 1: What are the advantages and disadvantages of excepting PPP loans from the definition of ''extension of credit'' in section 22(h) and the corresponding provisions of the Board's Regulation O?

Question 2: What are the most appropriate terms and conditions for this exception and why?

III. 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)).[25] Pursuant to section 553(b)(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.'' [26]

The Board believes that the public interest is best served by implementing the interim final rule immediately. As discussed above, the spread of COVID–19 has disrupted economic activity in the United States and other countries. In addition, U.S. financial markets have featured substantial levels of volatility. The magnitude and persistence of COVID–19 on the economy remain uncertain. In light of the substantial disruptions in the economy, and the likelihood that this interim final rule would help ameliorate those disruptions by promoting lending to small businesses, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[27]

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.[28] Because the rules relieve a restriction by providing an exception to the definition of ''extension of credit'' in section 22(h) and Regulation O, the interim final rule is exempt from the APA's delayed effective date requirement.[29]

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 the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[30] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[31]

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.[32]

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.[33] 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.

C. Paperwork Reduction Act

The Paperwork Reduction Act (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 Office of Management and Budget (OMB) control number. On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board, as well as the authority to temporarily approve a new 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.

This interim final rule does not contain any collections of information subject to the PRA. However, the interim final rule does indirectly affect certain recordkeeping and disclosure requirements in Regulation O that have not previously been cleared by the Board under the PRA. In order to accurately account for these requirements pursuant to the PRA, the Board has temporarily approved a new collection of information titled Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100–NEW).

The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment to extend the information collections for a period not to exceed three years. Therefore, the Board is inviting comment to extend the FR O information collection for three years.

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before June 22, 2020. Comments are invited on the following:

a. Whether the collection of information is necessary for the proper performance of the Board's functions,

[24] 12 U.S.C. 375a; 12 CFR 215.5.

[25] 5 U.S.C. 553.

[26] 5 U.S.C. 553(b)(B).

[27] 5 U.S.C. 553(b)(B); 553(d)(3).

[28] 5 U.S.C. 553(d).

[29] 5 U.S.C. 553(d)(1).

[30] 5 U.S.C. 801 *et seq.*

[31] 5 U.S.C. 801(a)(3).

[32] 5 U.S.C. 804(2).

[33] 5 U.S.C. 808.

including whether the information has practical utility;

b. The accuracy of the Board's estimate 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;

d. Ways to minimize the burden of information collection 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 Implementation of, and Solicitation of Comment To Extend for Three Years, the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with Regulation O.

Agency form number: FR O.

OMB control number: 7100–NEW.

Effective Date: April 22, 2020.

Frequency: Annual, event generated.

Respondents: Member banks of the Federal Reserve System, savings associations, and any subsidiary of such institutions.

Estimated number of respondents: Recordkeeping (§§ 215.8 and 215.9): 1,570; disclosure (§ 215.9): 1,570.

Estimated average hours per response: Recordkeeping (§§ 215.8 and 215.9): 4; disclosure (§ 215.9): 2.

Estimated annual burden hours: Recordkeeping (§§ 215.8 and 215.9): 6,280; disclosure (§ 215.9): 3,140; total: 9,420.

General description of information collection:

Sections 22(g) and (h) of the Federal Reserve Act [34] retstrict certain transactions between banks and their insiders or insiders of their affiliates. Insiders include executive officers, directors, principal shareholders, and companies controlled by such persons. Congress enacted sections 22(g) and (h) to prevent bank insiders from abusing their positions to gain favorable treatment from their associated banks. Congress authorized the Board to prescribe rules and regulations as necessary to effectuate the purposes and to prevent the evasions of the sections. Accordingly, the Board has promulgated the Board's Regulation O to effectuate Congress' purpose of preventing insider abuse in banks.

Regulation O contains certain recordkeeping and disclosure requirements. Pursuant to § 215.8 of Regulation O, respondents must maintain records necessary for compliance with the requirements of Regulation O.[35] Any recordkeeping method adopted by a respondent shall identify, through an annual survey, all insiders of the respondent and maintain records of all extensions of credit to insiders of the respondent, including the amount and terms of each such extension of credit. Additionally, any recordkeeping method adopted by a respondent shall maintain records of extensions of credit to insiders of the respondent's affiliates by using either the survey method or borrower inquiry method, as set forth in Regulation O, or a different recordkeeping method if the appropriate Federal banking agency determines that the respondent's method is at least as effective as the listed methods.

Pursuant to § 215.9 of Regulation O, upon receipt of a written request from the public, a respondent must make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or $500,000, whichever amount is less.[36] Respondents are not required to disclose the specific amounts of individual extensions of credit. Additionally, each respondent must maintain records of all requests for the information described above and the disposition of such requests. These records may be disposed of after two years from the date of the request.

The recordkeeping and disclosure requirements in §§ 215.8 and 215.9 of Regulation O are required by section 306(o) of Public Law 102–242, 105 Stat. 2236 (1991) and authorized under 12 U.S.C. 1817(k).

Current actions: The Board has temporarily approved the collections of information contained within Regulation O. The Board has determined that this collection of information must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as these collections of information are contained in an existing regulation, and the inability of the Board to enforce these collection of information requirements due to noncompliance with the PRA would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR O information collection for three years.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [37] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[38] 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)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment are 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.

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),[39] in determining the effective

[34] 12 U.S.C. 375a, 375b.

[35] A respondent that is prohibited by law or by an express resolution of the board of directors of the respondent from making an extension of credit to any company or other entity that is covered by Regulation O as a company is not required to maintain any records of the related interests of the insiders of the respondent or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the respondent or its affiliates. 12 CFR 215.8(d).

[36] No such disclosure is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the respondent and to all related interests of such a person does not exceed $25,000.

[37] 5 U.S.C. 601 *et seq.*

[38] Under regulations issued by the SBA, 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.

[39] 12 U.S.C. 4802(a).

date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the Federal banking agencies 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.[40] 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 immediately on publication. Nevertheless, the Board seeks comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[41] 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 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?

[40] 12 U.S.C. 4802.

[41] 12 U.S.C. 4809.

List of Subjects in 12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

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 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; Pub. L. 102–242, 105 Stat. 2236 (1991) (12 U.S.C. 1811 note) and Pub. L. 116–136, 134 Stat. 281.

■ 2. In § 215.3:

■ a. In paragraph (b)(6), remove the words ''of this part'' and the word ''or'' at the end of the paragraph;

■ b. In paragraph (b)(7), remove the period at the end of the paragraph and add ''; or'' in its place; and

■ c. Add paragraph (b)(8).

The addition reads as follows:

§ 215.3 Extension of credit.

* * * * *

(b) * * *

(8) Except for purposes of § 215.5, a loan:

(i) In which the participation by the Small Business Administration on a deferred basis is 100 percent pursuant to section 1102(a)(1) of Public Law 116–136 (to be codified at 15 U.S.C. 636(a)(2)(F));

(ii) That is made during the period beginning on February 15, 2020, and ending on June 30, 2020; and

(iii) That would not be prohibited by 13 CFR 120.110(o) or rules or interpretations thereof issued by the Small Business Administration.

* * * * *

Dated: April 17, 2020.

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

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–08574 Filed 4–20–20; 11:15 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[USCBP–2020–0017; CBP Dec. 20–05]

RIN 1515–AE54

Temporary Postponement of the Time To Deposit Certain Estimated Duties, Taxes, and Fees During the National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Temporary final rule.

SUMMARY: In light of the President's Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) (Presidential Proclamation 9994) under the National Emergencies Act on March 13, 2020, and the President's Executive Order entitled ''National Emergency Authority to Temporarily Extend Deadlines for Certain Estimated Payments'' authorizing the Secretary of the Treasury to exercise the authority under section 318(a) of the Tariff Act of 1930, issued on April 18, 2020, the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), is amending the CBP regulations to temporarily postpone the deadline for importers of record with a significant financial hardship to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to entries, or withdrawals from warehouse, subject to certain specified trade remedies, and any entry summary that includes merchandise subject to those trade remedies is not eligible under this rule.

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

ADDRESSES: You may submit comments, identified by *docket number* USCBP–2020–0017, by *one* of the following methods:

- *Federal eRulemaking Portal* at *http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP–2020–0017.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of the public comments.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations Revenue Entry Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6532 or by email at *otentrysummary@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this temporary final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

On March 13, 2020, the President issued Proclamation 9994, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19), under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and found and proclaimed that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. On April 18, 2020, the President issued the Executive Order entitled ''National Emergency Authority to Temporarily Extend Deadlines for Certain Estimated Payments'' (hereinafter ''Postponement of Deposit E.O.'') authorizing the Secretary of the Treasury to respond to the national emergency declared by Presidential Proclamation 9994, pursuant to the authority in section 318(a) of the Tariff Act of 1930 (19 U.S.C. 1318(a)). Upon consultation by the Secretary of the Treasury with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), and for the reasons set forth below, CBP is amending its regulations to respond to the ongoing national emergency.

Due to the COVID–19 pandemic, local, state and national restrictions have forced the closure of offices of the importing community and those businesses have limited their operations and procedures. Many importers of record will be receiving diminished or no revenue during this time while still incurring costs, including the duties, taxes, and fees associated with imported merchandise for their clients and supply chains. Aggravating matters, many major retail chains and other businesses are closing for business—either voluntarily in response to the President's call or following state or local government requirements.

As a result, many importers of record are undergoing significant financial hardship with operations fully or partially suspended during March or April 2020 due to orders from competent governmental authorities imposing limits on commerce, travel, or group meetings because of COVID–19. Many importers of record are also having difficulty authorizing payments for duties, taxes, and fees on imported merchandise. Employees are having difficulty getting to work or are having technical issues with working remotely, making it difficult to contact the individuals responsible for the release of funds, which is leading to delays in payments of duties, taxes, and fees.

Under 19 U.S.C. 1318(a), whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time prescribed for the performance of any act. To address the specific circumstances created by the COVID–19 pandemic, and without creating, for the avoidance of doubt, a binding precedent for future exercises of the authority granted by 19 U.S.C. 1318(a), the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), under 19 U.S.C. 1318(a) and as authorized by the Postponement of Deposit E.O., is amending the CBP regulations by adding a new section 24.1a to title 19 of the Code of Federal Regulations (19 CFR 24.1a) to temporarily postpone the deadline for importers of record to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.

This emergency action is being taken in response to the extraordinary challenges facing U.S. individuals and businesses during the COVID–19 national emergency (which significantly affects the trade community), and is consistent with the Secretary of the Treasury's decision to postpone due dates for Federal income tax payments under section 7508A(a) of the Internal Revenue Code (available at *https://www.irs.gov/coronavirus*).

This temporary postponement is limited. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*). Accordingly, CBP anticipates that importers will file separate entries when a shipment contains both merchandise that is eligible for temporary postponement and merchandise that is

ineligible (because of the above-specified trade remedies).

To qualify for this temporary postponement, an importer must demonstrate a significant financial hardship. An eligible importer's operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID–19, and as a result of such suspension, the gross receipts of such importer for March 13–31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

This temporary postponement does not apply to deadlines for the payment of other debts to CBP, including but not limited to deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages due to CBP.

CBP notes that for some types of entries, the time of entry is contingent (in part) upon the deposit of estimated duties, taxes, and fees. See, *e.g.,* 19 CFR 141.68(b). To ensure clarity in the application of the temporary postponement vis-à-vis the time of entry, this emergency action includes a waiver of the regulatory requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry in those instances where it would otherwise be required under 19 CFR 141.68. The time of entry can thus be established in the absence of the deposit of estimated duties, taxes, and fees postponed in accordance with this emergency action.

III. Statutory and Regulatory Requirements

A. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B), (d)(3). CBP finds that prior notice and comment are impracticable and contrary to the public interest and that good cause exists to issue this rule immediately.

As noted above, the ongoing unprecedented situation related to COVID–19 is having a nationwide impact, as demonstrated by the declaration of a national emergency by the President. The postponement of the payment period for the deposit of certain estimated duties, taxes, and fees as of the date of entry, or withdrawal from warehouse, for consumption, of merchandise imported into the United States supports American workers and businesses who are currently affected by COVID–19. To protect our public interests during the ongoing national emergency, the Secretary of the Treasury, in consultation with CBP, concludes, pursuant to 5 U.S.C. 553(b)(B), that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, the Secretary of the Treasury, in consultation with CBP, has determined, consistent with section 553(d)(3) of the APA, that there is good cause to make this temporary final rule effective immediately.

B. Executive Orders 13563, 12866 and 13771

Executive Orders 13563 and 12866 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

This temporary final rule is a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, but not an ''economically significant regulatory action.'' Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. This regulation has been prepared under the emergency flexibilities provided under section 6(a)(3)(D) of Executive Order 12866. The costs of this rule are considered de minimis for purposes of Executive Order 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Paperwork Reduction Act

This temporary final rule does not impose an additional information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and does not involve any material change to the existing approved information collection by OMB under assigned OMB control number 1651–0078. 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 control number assigned by OMB.

E. Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues and a new specific authority is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.1a also issued under 19 U.S.C. 1318;

* * * * *

■ 2. Section 24.1a is added to read as follows:

§ 24.1a Temporary Postponement of Deadline to Deposit Certain Estimated Duties, Taxes, and Fees Because of the COVID–19 National Emergency

(a) *General.* Pursuant to the authority of 19 U.S.C. 1318(a), subject to the conditions in paragraphs (a)(1) through (4) of this section, the deadline for the deposit of estimated duties, taxes, and fees that an importer of record would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, of imported merchandise into the United States is postponed for a period of 90 days from the date that the deposit would otherwise have been due. No interest will accrue for the delayed deposit of such estimated duties, taxes, and fees during this 90-day temporary postponement.

(1) This temporary postponement applies only to entries, or withdrawals from warehouse, for consumption, made on or after March 1, 2020, and no later than April 30, 2020, by importers of record with a significant financial hardship. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid.

(2) An importer will be considered to have a significant financial hardship if the operation of such importer is fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID–19, and as a result of such suspension, the gross receipts of such importer for March 13–31, 2020, or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

(3) No penalty, liquidated damages claim, or other sanction will be imposed for the delayed deposit of estimated duties, taxes, and fees in accordance with a deadline postponed under this section.

(4) This temporary postponement does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

(b) *Time of entry.* For entries eligible for the temporary postponement of deposits under paragraph (a) of this section, the requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry stated in 19 CFR 141.68 is waived.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: April 19, 2020.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2020–08618 Filed 4–20–20; 10:30 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on April 21, 2020 and will remain in effect until 11:59 p.m. EDT on May 20, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID–19 between the United States and Canada posed a ''specific threat to human life or national interests.'' The Secretary's action is currently scheduled to expire at 11:59 p.m. EDT on April 20, 2020.

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of April 19, there are over 2.2 million confirmed cases globally, with over 152,000 confirmed deaths.[2] There are over 720,000 confirmed cases within the United States,[3] over 32,000 in Canada,[4] and over 6,800 in Mexico.[5]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, I have determined that the risk of continued transmission and spread of

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[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd_4.*

[3] CDC, Cases of COVID–19 in the U.S. (last updated Apr. 19, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[4] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020).

[5] *Id.*

COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.''

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[6] I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail and ferry travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on May 20, 2020. This notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–08650 Filed 4–20–20; 2:00 pm]

BILLING CODE 9112–FP–P

[6] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''take any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on April 21, 2020, and will remain in effect until 11:59 p.m. EDT on May 20, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the

United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico posed a ''specific threat to human life or national interests.'' The Secretary's action is currently scheduled to expire at 11:59 p.m. EDT on April 20, 2020.

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of April 19, there are over 2.2 million confirmed cases globally, with over 152,000 confirmed deaths.[2] There are over 720,000 confirmed cases within the United States,[3] over 32,000 in Canada,[4] and over 6,800 in Mexico.[5]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, I have determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.''

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[6] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support Federal, State, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail and ferry travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on May 20, 2020. This notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–08652 Filed 4–20–20; 2:00 pm]

BILLING CODE 9112–FP–P

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

[2] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd_4.*

[3] CDC, Cases of COVID–19 in the U.S. (last updated Apr. 19, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[4] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020).

[5] *Id.*

[6] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''take any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0710, FRL–10007–31–Region 10]

Approval and Promulgation of Implementation Plans; Washington; Puget Sound Clean Air Agency, Regulation I

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) that were submitted by the Washington Department of Ecology (Ecology) in coordination with the Puget Sound Clean Air Agency (PSCAA). This action updates certain PSCAA regulations currently in the SIP, removes obsolete regulations, and approves a subset of updated Ecology regulations to apply in PSCAA's jurisdiction.

DATES: This final rule is effective May 22, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2019–0710. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

I. Background

On January 28, 2020, we proposed to approve updates to certain PSCAA regulations currently in the SIP, remove obsolete regulations, and approve a subset of updated Ecology regulations to apply in PSCAA's jurisdiction (85 FR 4921). The reasons for our proposed approval were stated in the proposed rule and will not be re-stated here.

II. Response to Comments

The public comment period for our proposed action ended on February 27, 2020. We received two comments. Both comments are included in the docket for this action. The first comment focused on permitting requirements under the Prevention of Significant Deterioration (PSD) program operated in Washington State by Ecology and the Energy Facility Site Evaluation Council (EFSEC). Saliently, the EPA did not propose any changes to the PSD regulations in Washington Administrative Code (WAC) 173–400–700 through 173–400–750. Further, as discussed in the proposal for this action, PSCAA does not issue PSD permits in Washington State. For the above reasons, we consider the first comment to be outside the scope of this action. The second comment was a generalized critique of the EPA. We do not consider these comments to be germane or relevant to this action and therefore not adverse to this action. The comments lack the required specificity to the proposed SIP revision and the relevant requirements of Clean Air Act (CAA) section 110. Moreover, none of the comments address a specific regulation or provision in question or recommend a different action on the SIP submission from what the EPA proposed. Therefore, we are finalizing our action as proposed.

III. Final Action

A. Regulations Approved and Incorporated by Reference Into the SIP

The EPA is approving and incorporating by reference into the Washington SIP at 40 CFR 52.2470(c)—*Table 7—Additional Regulations Approved for the Puget Sound Clean Air Agency (PSCAA) Jurisdiction,* the following PSCAA Regulation I sections (effective date):

- 1.01 (11/01/1999), 1.07 (12/01/2018), 3.03(f) (02/01/2012), 3.04 (07/01/2012), 3.25 (11/01/2019), 5.03 (11/01/2016), 5.05 (02/01/2017), 6.01 (05/01/2013), 6.03 (11/01/2015), 6.09 (05/01/2004), 6.10 (09/01/2001), 7.09 (02/01/2017), 9.03 (05/01/2004), 9.04 (05/01/2004), 9.07 (05/19/1994), 9.08 (05/01/2004), 9.09 (06/01/1998), 9.11(a) (04/17/1999), 9.13 (06/09/1988), 9.15 (04/17/1999), 9.16 (12/02/2010), 9.18 (03/02/2012), and 12.03 (11/01/2015).

The EPA is also approving and incorporating by reference PSCAA's adoption by reference of the following Chapter 173–400 WAC provisions submitted for approval (effective date):

- 173–400–030 (12/29/2012), 173–400–081 (04/01/2011), 173–400–110 (12/29/2012), 173–400–111 (07/01/2016), 173–400–112 (12/29/2012), 173–400–113 (12/29/2012), 173–400–117 (12/29/2012), 173–400–171 (07/01/2016), 173–400–200 (02/10/2005), 173–400–560 (12/29/2012), 173–400–800 (4/01/2011), 173–400–810 (07/01/2016), 173–400–820 (12/29/2012), 173–400–830 (07/01/2016), 173–400–840 (07/01/2016), 173–400–850 (07/01/2016), and 173–400–860 (4/01/2011).

Lastly, for Chapter 173–400 WAC provisions not adopted by reference by PSCAA, we are approving the following updates to apply within PSCAA's jurisdiction (effective date):

- 173–400–020 (12/29/2012), 173–400–040 (09/16/2018), 173–400–091 (4/1/2011), 173–400–105 (11/25/2018), 173–400–118 (12/29/2012), 173–400–131 (04/1/2011), 173–400–136 (12/29/2012), 173–400–151 (2/10/2005), and 173–400–175 (2/10/2005).

Please see the amendatory text for more detailed information about the provisions submitted and approved in this action, including local agency corollaries which replace certain Chapter 173–400 WAC provisions and exclusions to our approval.

B. Approved But Not Incorporated by Reference Regulations

In addition to the regulations approved and incorporated by reference above, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are generally not incorporated by reference so as to avoid potential conflict with the EPA's independent authorities. On August 31, 2004, the EPA reviewed and approved Regulation I, sections 3.01, 3.05, 3.09, 3.13, 3.15, 3.17, 3.19, and 3.21 as providing PSCAA adequate enforcement and other general authority for purposes of implementing and enforcing its SIP but did not incorporate these provisions by reference (69 FR 53007). While these provisions remain unchanged since our last review and approval, we are including these sections in 40 CFR 52.2470(e), *EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures,* as approved but not incorporated by reference regulatory provisions. Lastly, PSCAA updated Regulation 1, sections 3.07 and 3.11 which we are approving, but not incorporating by reference.

C. Regulations To Remove From the SIP

As discussed in the proposal for this action, we are removing from the SIP Regulation I, sections 5.02, 6.03(b)(10) [formerly 6.03(b)(17)], 6.04, 6.06, 6.07, and 6.08. We are also removing outdated Chapter 173–400 WAC provisions and replacing them with the submitted PSCAA replacement corollaries, including PSCAA's adoption by reference of certain Chapter 173–400 WAC provisions, or the currently approved updates to Chapter 173–400 WAC. Please see 85 FR 10301 (February 24, 2020) for our most recent approval of Chapter 173–400 WAC.

D. Scope of Proposed Action

This revision to the SIP applies specifically to the PSCAA jurisdiction incorporated into the SIP at 40 CFR 52.2470(c)—Table 7. As discussed in our proposal, local air agency jurisdiction in Washington is generally defined on a geographic basis; however, there are exceptions. By statute, PSCAA does not have authority for sources under the jurisdiction of EFSEC. See Revised Code of Washington Chapter 80.50. Under the applicability provisions of WAC 173–405–012, 173–410–012, and 173–415–012, PSCAA also does not have jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. For these sources, Ecology retains statewide, direct jurisdiction. Ecology and EFSEC also retain statewide, direct jurisdiction for issuing PSD permits. Therefore, the EPA is not approving into 40 CFR 52.2470(c)—Table 7 those provisions of Chapter 173–400 WAC related to the PSD program. Specifically, these provisions are WAC 173–400–116 and WAC 173–400–700 through 173–400–750, which the EPA has already approved as applying state-wide under 40 CFR 52.2470(c)—Tables 2 and 3.

Also, as described in our proposal for this action, jurisdiction to implement the visibility permitting program contained in WAC 173–400–117 varies depending on the situation. Ecology and EFSEC retain authority to implement WAC 173–400–117 as it relates to PSD permits. However, for facilities subject to major nonattainment new source review (NSR) under the applicability provisions of WAC 173–400–800, incorporated by reference in Regulation I, we are approving PSCAA's implementation of those parts of WAC 173–400–117 as they relate to major nonattainment NSR permits. Therefore, we are modifying the visibility protection Federal Implementation Plan contained in 40 CFR 52.2498 to reflect the approval of WAC 173–400–117 as it applies to implementation of the major nonattainment NSR program in PSCAA's jurisdiction.

Lastly, this SIP revision is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Review

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

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

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian

[1] 62 FR 27968 (May 22, 1997).

Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated March 21, 2018.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: April 10, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Amend § 52.2470 by revising Table 7 of paragraph (c) and Table 1 of paragraph (e), to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Puget Sound Clean Air Agency Regulations				
Regulation I—Article 1: Policy, Short Title, and Definitions				
1.01	Policy	11/01/99	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–010.
1.03	Name of Agency	11/01/99	8/31/04, 69 FR 53007.	
1.05	Short Title	11/01/99	8/31/04, 69 FR 53007.	
1.07	Definitions	12/01/18	4/22/20, [Insert **Federal Register** citation].	Except the definition ''toxic air pollutant (TAP) or toxic air contaminant.''
Regulation I—Article 3: General Provisions				
3.03(f)	General Regulatory Orders	02/01/12	4/22/20, [Insert **Federal Register** citation].	
3.04	Reasonably Available Control Technology.	07/01/12	4/22/20, [Insert **Federal Register** citation].	Except 3.04(e). Replaces WAC 173–400–040(1)(c).
3.06	Credible Evidence	11/14/98	8/31/04, 69 FR 53007.	
3.25	Federal Regulation Reference Date.	11/01/19	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–025.
Regulation I—Article 5: Registration				
5.03	Applicability of Registration Program.	11/01/16	4/22/20, [Insert **Federal Register** citation].	Except 5.03(a)(8)(Q) and 5.03(b)(5).
5.05	Registration Requirements	02/01/17	4/22/20, [Insert **Federal Register** citation].	Except 5.05(b)(1) and (2).

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Regulation I—Article 6: New Source Review				
6.01	Components of New Source Review Program.	8/01/18	4/22/20, [Insert **Federal Register** citation].	Except the parenthetical in 6.01(b) which states "as delegated by agreement with the US Environmental Protection Agency, Region 10." See subheading below for revised Chapter 173–400 WAC provisions incorporated by reference.
6.03	Notice of Construction	11/01/15	4/22/20, [Insert **Federal Register** citation].	Except 6.03(b)(10). Section 6.03 replaces WAC 173–400–110, except WAC 173–400–110(1)(c)(i) and (1)(d) which are incorporated by reference.
6.09	Notice of Completion	05/01/04	4/22/20, [Insert **Federal Register** citation].	
6.10	Work Done without an Approval	09/01/01	4/22/20, [Insert **Federal Register** citation].	
Regulation I—Article 7: Operating Permits				
7.09	General Reporting Requirements for Operating Permits.	02/01/17	4/22/20, [Insert **Federal Register** citation].	Excluding toxic air pollutants.
Regulation I—Article 8: Outdoor Burning				
8.04	General Conditions for Outdoor Burning.	01/01/01	8/31/04, 69 FR 53007.	
8.05	Agricultural Burning	01/01/01	8/31/04, 69 FR 53007.	
8.06	Outdoor Burning Ozone Contingency Measure.	01/23/03	8/05/04, 69 FR 47364.	
8.09	Description of King County No-Burn Area.	01/01/01	8/31/04, 69 FR 53007.	
8.10	Description of Pierce County No-Burn Area.	01/01/01	8/31/04, 69 FR 53007.	
8.11	Description of Snohomish County No-Burn Area.	01/01/01	8/31/04, 69 FR 53007.	
8.12	Description of Kitsap County No-Burn Area.	11/30/02	8/31/04, 69 FR 53007.	
Regulation I—Article 9: Emission Standards				
9.03	Emission of Air Contaminant: Visual Standard.	05/01/04	4/22/20, [Insert **Federal Register** citation].	Except 9.03(e). Replaces WAC 173–400–040(2).
9.04	Opacity Standards for Equipment with Continuous Opacity Monitoring Systems.	05/01/04	4/22/20, [Insert **Federal Register** citation].	Except 9.04(d)(2) and 9.04(f).
9.05	Refuse Burning	1/13/94	06/29/95, 60 FR 33734.	
9.07	Sulfur Dioxide Emission Standard	05/19/94	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–040(7).
9.08	Fuel Oil Standards	05/01/04	4/22/20, [Insert **Federal Register** citation].	Approved only as it applies to the regulation of criteria pollutants.
9.09	Particulate Matter Emission Standards.	06/01/98	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–050(1)&(3) and 173–400–060.
9.11(a)	Emission of Air Contaminant: Detriment to Person or Property.	04/17/99	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–040(6).
9.13	Emission of Air Contaminant: Concealment and Masking Restricted.	06/09/88	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–040(8).
9.15	Fugitive Dust Control Measures	04/17/99	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–040(9)(a).
9.16	Spray-Coating Operations	12/02/10	4/22/20, [Insert **Federal Register** citation].	

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
9.18	Crushing Operations	03/02/12	4/22/20, [Insert **Federal Register** citation].	
9.20	Maintenance of Equipment	6/9/88	08/29/94, 59 FR 44324.	
Regulation I—Article 12: Standards of Performance for Continuous Emission Monitoring Systems				
12.01	Applicability	06/01/98	8/31/04, 69 FR 53007.	
12.03	Continuous Emission Monitoring Systems.	11/01/15	4/22/20, [Insert **Federal Register** citation].	Replaces WAC 173–400–105(7).
Regulation I—Article 13: Solid Fuel Burning Device Standards				
13.01	Policy and Purpose	12/01/12	5/29/13, 78 FR 32131.	
13.02	Definitions	12/01/12	5/29/13, 78 FR 32131.	
13.03	Opacity Standards	12/01/12	5/29/13, 78 FR 32131.	
13.04	Prohibited Fuel Types	12/01/12	5/29/13, 78 FR 32131.	
13.05	Curtailment	12/01/12	5/29/13, 78 FR 32131.	
13.06	Emission Performance Standards	12/01/12	5/29/13, 78 FR 32131.	
13.07	Contingency Plan	12/01/12	5/29/13, 78 FR 32131.	
Regulation II—Article 1: Purpose, Policy, Short Title, and Definitions				
1.01	Purpose	11/01/99	08/31/04, 69 FR 53007.	
1.02	Policy	11/01/99	08/31/04, 69 FR 53007.	
1.03	Short Title	11/01/99	08/31/04, 69 FR 53007.	
1.04	General Definitions	12/11/80	02/28/83, 48 FR 8273.	
1.05	Special Definitions	9/1/03	09/17/13, 78 FR 57073.	
Regulation II—Article 2: Gasoline Marketing Emission Standards				
2.01	Definitions	08/13/99	08/31/04, 69 FR 53007.	
2.03	Petroleum Refineries	07/15/91	08/29/94, 59 FR 44324.	
2.05	Gasoline Loading Terminals	01/13/94	06/29/95, 60 FR 33734.	
2.06	Bulk Gasoline Plants	07/15/91	08/29/94, 59 FR 44324.	
2.07	Gasoline Stations	01/10/00	08/31/04, 69 FR 53007.	
2.08	Gasoline Transport Tanks	08/13/99	08/31/04, 69 FR 53007.	
2.09	Oxygenated Gasoline Carbon Monoxide Contingency Measure and Fee Schedule.	01/23/03	08/05/04, 69 FR 47365.	
2.10	Gasoline Station Ozone Contingency Measure.	01/23/03	08/05/04, 69 FR 47365.	
Regulation II—Article 3: Miscellaneous Volatile Organic Compound Emission Standards				
3.01	Cutback Asphalt Paving	7/15/91	08/29/94, 59 FR 44324.	
3.02	Volatile Organic Compound Storage Tanks.	8/13/99	08/31/04, 69 FR 53007.	
3.03	Can and Paper Coating Operations.	3/17/94	06/29/95, 60 FR 33734.	
3.04	Motor Vehicle and Mobile Equipment Coating Operations.	9/1/03	09/17/13, 78 FR 57073.	
3.05	Graphic Arts Systems	1/13/94	06/29/95, 60 FR 33734.	
3.08	Polyester, Vinylester, Gelcoat, and Resin Operations.	1/13/94	06/29/95, 60 FR 33734.	
3.09	Aerospace Component Coating Operations.	1/13/94	6/29/95, 60 FR 33734.	
Washington Administrative Code, Chapter 173–400 Regulations Incorporated by Reference in Regulation I, Section 6.01				
173–400–030	Definitions	12/29/12	4/22/20, [Insert **Federal Register** citation].	Except: 173–400–030(91).
173–400–081	Startup and Shutdown	04/01/11	4/22/20, [Insert **Federal Register** citation].	
173–400–110	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	4/22/20, [Insert **Federal Register** citation].	173–400–110(1)(c)(i) and 173–400–110(1)(d) only.

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173–400–111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	07/01/16	4/22/20, [Insert **Federal Register** citation].	Except: 173–400–111(3)(h);—The part of 173–400–111(8)(a)(v) that says, "and 173–460–040,"; 173–400–111(9).
173–400–112	Requirements for New Sources in Nonattainment Areas.	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–113	Requirements for New Sources in Attainment or Unclassifiable Areas.	12/29/12	4/22/20, [Insert **Federal Register** citation].	Except: 173–400–113(3), second sentence.
173–400–117	Special Protection Requirements for Federal Class I Areas.	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–171	Public Notice and Opportunity for Public Comment.	07/01/16	4/22/20, [Insert **Federal Register** citation].	Except: —The part of 173–400–171(3)(b) that says, "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC"; 173–400–171(12).
173–400–200	Creditable Stack Height and Dispersion Techniques.	02/10/05	4/22/20, [Insert **Federal Register** citation].	
173–400–560	General Order of Approval	12/29/12	4/22/20, [Insert **Federal Register** citation].	Except: — The part of 173–400–560(1)(f) that says, "173–460 WAC".
173–400–800	Major Stationary Source and Major Modification in a Nonattainment Area.	4/01/11	4/22/20, [Insert **Federal Register** citation].	EPA did not review WAC 173–400–800 through 860 for consistency with the August 24, 2016 $PM_{2.5}$ implementation rule (81 FR 58010); nor does PSCAA have an obligation to submit rule revisions to address the 2016 $PM_{2.5}$ implementation rule at this time.
173–400–810	Major Stationary Source and Major Modification Definitions.	07/01/16	4/22/20, [Insert **Federal Register** citation].	
173–400–820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–830	Permitting Requirements	07/01/16	4/22/20, [Insert **Federal Register** citation].	
173–400–840	Emission Offset Requirements	07/01/16	4/22/20, [Insert **Federal Register** citation].	
173–400–850	Actual Emissions Plantwide Applicability Limitation (PAL).	07/01/16	4/22/20, [Insert **Federal Register** citation].	
173–400–860	Public Involvement Procedures	4/01/11	4/22/20, [Insert **Federal Register** citation].	
Washington Department of Ecology Regulations				
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
173–400–020	Applicability	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–040	General Standards for Maximum Emissions.	09/16/18	4/22/20, [Insert **Federal Register** citation].	173–400–040(1)(a) & (b), 173–400–040(4); and 173–400–040(9)(b) only.
173–400–070	Emission Standards for Certain Source Categories.	03/22/91	06/02/95, 60 FR 28726	Except (7).

TABLE 7—ADDITIONAL REGULATIONS APPROVED FOR THE PUGET SOUND CLEAN AIR AGENCY (PSCAA) JURISDICTION—Continued

[Applicable in King, Kitsap, Pierce and Snohomish counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation); any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
173–400–091	Voluntary Limits on Emissions	4/1/11	4/22/20, [Insert **Federal Register** citation].	9/20/93 version continues to be approved under the authority of CAA Section 112(l) with respect to Section 112 hazardous air pollutants. See 60 FR 28726 (June 2, 1995).
173–400–105	Records, Monitoring and Reporting.	11/25/18	4/22/20, [Insert **Federal Register** citation].	Except: 173–400–105(7).
173–400–107	Excess Emissions	09/20/93	06/02/95, 60 FR 28726.	
173–400–118	Designation of Class I, II, and III Areas.	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–131	Issuance of Emission Reduction Credits.	04/1/11	4/22/20, [Insert **Federal Register** citation].	
173–400–136	Use of Emission Reduction Credits (ERC).	12/29/12	4/22/20, [Insert **Federal Register** citation].	
173–400–151	Retrofit Requirements for Visibility Protection.	2/10/05	4/22/20, [Insert **Federal Register** citation].	
173–400–161	Compliance Schedules	3/22/91	06/02/95, 60 FR 28726.	
173–400–175	Public Information	2/10/05	4/22/20, [Insert **Federal Register** citation].	
173–400–190	Requirements for Nonattainment Areas.	3/22/91	06/02/95, 60 FR 28726.	
173–400–205	Adjustment for Atmospheric Conditions.	3/22/91	06/02/95, 60 FR 28726.	
173–400–210	Emission Requirements of Prior Jurisdictions.	3/22/91	06/02/95, 60 FR 28726.	

* * * * * (e) * * *

TABLE 1—APPROVED BUT NOT INCORPORATED BY REFERENCE REGULATIONS

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Washington Department of Ecology Regulations				
173–400–220	Requirements for Board Members	3/22/91	06/02/95, 60 FR 28726.	
173–400–230	Regulatory Actions	3/20/93	06/02/95, 60 FR 28726.	
173–400–240	Criminal Penalties	3/22/91	06/02/95, 60 FR 28726.	
173–400–250	Appeals	9/20/93	06/02/95, 60 FR 28726.	
173–400–260	Conflict of Interest	07/01/16	10/06/16, 81 FR 69385.	
173–433–200	Regulatory Actions and Penalties	10/18/90	01/15/93, 58 FR 4578.	
Energy Facility Site Evaluation Council Regulations				
463–78–135	Criminal Penalties	11/11/04	05/30/17, 82 FR 24533.	
463–78–140	Appeals Procedure	3/26/06	05/30/17, 82 FR 24533	Except (3) and (4).
463–78–170	Conflict of Interest	11/11/04	05/30/17, 82 FR 24533.	
463–78–230	Regulatory Actions	11/11/04	05/30/17, 82 FR 24533.	
Benton Clean Air Agency Regulations				
2.01	Powers and Duties of the Benton Clean Air Agency (BCAA).	12/11/14	11/17/15, 80 FR 71695.	
2.02	Requirements for Board of Directors Members.	12/11/14	11/17/15, 80 FR 71695	Replaces WAC 173–400–220.
2.03	Powers and Duties of the Board of Directors.	12/11/14	11/17/15, 80 FR 71695.	
2.04	Powers and Duties of the Control Officer.	12/11/14	11/17/15, 80 FR 71695.	
2.05	Severability	12/11/14	11/17/15, 80 FR 71695.	

TABLE 1—APPROVED BUT NOT INCORPORATED BY REFERENCE REGULATIONS—Continued

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
2.06	Confidentiality of Records and Information.	12/11/14	11/17/15, 80 FR 71695.	
Olympic Region Clean Air Agency Regulations				
8.1.6	Penalties	05/22/10	10/03/13, 78 FR 61188.	
Puget Sound Clean Air Agency Regulations				
3.01	Duties and Powers of the Control Officer.	11/01/99	4/22/20, [Insert **Federal Register** citation].	
3.05	Investigations by the Control Officer.	03/17/94	4/22/20, [Insert **Federal Register** citation].	
3.07	Compliance Tests	05/01/06	4/22/20, [Insert **Federal Register** citation].	
3.09	Violations—Notice	09/12/91	4/22/20, [Insert **Federal Register** citation].	
3.11	Civil Penalties	11/01/19	4/22/20, [Insert **Federal Register** citation].	
3.13	Criminal Penalties	09/12/91	4/22/20, [Insert **Federal Register** citation].	
3.15	Additional Enforcement	09/12/91	4/22/20, [Insert **Federal Register** citation].	
3.17	Appeal of Orders	11/14/98	4/22/20, [Insert **Federal Register** citation].	
3.19	Confidential Information	09/12/91	4/22/20, [Insert **Federal Register** citation].	
3.21	Separability	09/12/91	4/22/20, [Insert **Federal Register** citation].	
Southwest Clean Air Agency Regulations				
400–220	Requirements for Board Members	3/18/01	04/10/17, 82 FR 17136.	
400–230	Regulatory Actions and Civil Penalties.	10/9/16	04/10/17, 82 FR 17136.	
400–240	Criminal Penalties	3/18/01	04/10/17, 82 FR 17136.	
400–250	Appeals	11/9/03	04/10/17, 82 FR 17136.	
400–260	Conflict of Interest	3/18/01	04/10/17, 82 FR 17136.	
400–270	Confidentiality of Records and Information.	11/9/03	04/10/17, 82 FR 17136.	
400–280	Powers of Agency	3/18/01	04/10/17, 82 FR 17136.	
Spokane Regional Clean Air Agency Regulations				
8.11	Regulatory Actions and Penalties	09/02/14	09/28/15, 80 FR 58216.	

* * * * *

■ 3. Amend § 52.2498 by revising paragraph (a)(1) to read as follows:

§ 52.2498 Visibility protection.

(a) * * *

(1) Sources subject to the jurisdiction of local air authorities (except Benton Clean Air Agency, Puget Sound Clean Air Agency, and Southwest Clean Air Agency);

* * * * *

[FR Doc. 2020–08124 Filed 4–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[EPA–HQ–OAR–2020–0211; FRL–10008–51–OAR]

RIN 2060–AU85

Continuous Emission Monitoring; Quality-Assurance Requirements During the COVID–19 National Emergency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is amending the emissions reporting regulations applicable to sources that monitor and report emissions under the Acid Rain Program, the Cross-State Air Pollution Rule (CSAPR), and/or the NO_X SIP Call. The amendments provide that if an affected unit fails to complete a required quality-assurance, certification or recertification, fuel analysis, or emission rate test by the applicable deadline under the regulations because of travel, plant access, or other safety restrictions implemented to address the current COVID–19 national emergency and if the unit's actual monitored data would be considered valid if not for the delayed test, the unit may temporarily continue to report actual monitored data instead of substitute data. Sources must maintain documentation, notify EPA when a test is delayed and later completed, and certify to EPA that they

meet the criteria for using the amended reporting procedures. Substitute data must be reported if those criteria are not met or if monitored data are missing or are invalid for any non-emergency-related reason. Units are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply, and the emergency period for which a unit can report valid data under the amendments is limited to the duration of the COVID–19 national emergency plus a grace period of 60 days to complete delayed tests, but no later than the date of expiration of the amendments. This action is necessary during the COVID–19 national emergency to protect on-site power plant operators and other essential personnel from unnecessary risk of exposure to the coronavirus. The amendments do not suspend emissions monitoring or reporting requirements or alter emissions standards under any program, and EPA expects the amendments not to cause any change in emissions levels. The rule therefore will not result in any harm to public health or the environment that might occur from increased emissions, and to the extent that the amendments facilitate plant operators' efforts to comply with travel and plant access restrictions imposed to protect public health during the COVID–19 emergency, the amendments will have a positive impact on public health by assisting efforts to slow the spread of the disease. EPA finds good cause to promulgate this rule without prior notice or opportunity for public comment and to make the rule effective immediately upon publication in the **Federal Register**. The amendments promulgated in this rule will expire in 180 days. EPA is also requesting comment on this rule.

DATES: This rule is effective April 22, 2020. EPA will consider comments on this rule received on or before May 22, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–HQ–OAR–2020–0211, at *https://regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* 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 generally will 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://epa.gov/dockets/commenting-epa-dockets.* Additional materials related to this action, including submitted comments, can be viewed online at *regulations.gov* under Docket No. EPA–HQ–OAR–2020–0211. While the EPA Docket Center Reading Room in Washington, DC is currently closed to public visitors in order to reduce the risk of COVID–19 transmission, materials related to this action may also be viewed in person at the Reading Room at such time as it reopens. Information on the location and hours of the Reading Room is available at *https://www.epa.gov/dockets.* Please call or email the contact listed in **FOR FURTHER INFORMATION CONTACT** if you need alternative access to material indexed but not electronically available in the docket at *regulations.gov.*

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I. Overview

A. Summary of the Action

The emissions monitoring, recordkeeping, and reporting regulations at 40 CFR part 75 (referred to here as the ''part 75 regulations'' or ''part 75 requirements'') require affected sources not only to continuously monitor emissions and other data for every operating hour in a control period, but also to conduct a variety of periodic or event-driven tests to ensure high quality of the reported data. Part 75 also requires sources to report substitute data instead of actual monitored data for operating hours when a required test has not been completed in a timely manner. The sources must continue reporting substitute data until the delayed test is successfully completed. The substitute data are intentionally conservative (*i.e.,* high-biased), causing the emissions reported for the source to be higher than if the delayed test had been completed on time. The data become increasingly high-biased over time and ultimately may be as high as a unit's maximum potential emissions. Most sources subject to part 75 participate in EPA trading programs that require surrender of sulfur dioxide (SO_2) or nitrogen oxides (NO_X) emission allowances for each ton of reported emissions, so the increase in reported emissions following a missed test deadline results in an increase in the quantity of allowances that must be surrendered, with a corresponding increase in the source's allowance costs. In ordinary circumstances, this regulatory approach appropriately provides operators with a strong incentive to conduct all required tests by the applicable deadlines.

While affected sources typically perform part 75 continuous monitoring activities using highly automated monitoring systems overseen by plant staff, most sources conduct certain required part 75 tests using outside contractor personnel. Some tests also require calibration gases to be obtained from outside facilities or require fuel samples to be analyzed at outside

laboratories. Consequently, current travel, plant access, and other safety restrictions related to the novel coronavirus disease (COVID–19) emergency, as well as shutdowns of external facilities that provide necessary supplies or services, may make compliance with part 75 testing requirements difficult for some sources. Moreover, because of uncertainty regarding the duration of the restrictions and because tests requiring outside contractor personnel often must be scheduled months in advance, operators missing test deadlines now face considerable uncertainty as to when they will be able to reschedule and complete any delayed tests. However, the existing part 75 regulations require sources to report substitute data following all missed test deadlines until the tests are successfully completed, regardless of the reason for missing the test and the possible inability to reschedule the test for multiple months because of restrictions related to the emergency. Based on the reported dates of previous tests, EPA believes that from April to June of this year, approximately 1,000 units will face deadlines for part 75 tests that typically require outside contractor personnel. In light of the current COVID–19 national emergency, EPA has decided that a temporary alternative is needed to the part 75 data substitution requirements following tests that are not completed in a timely manner because of travel, plant access, or other safety restrictions related to the emergency. EPA believes that establishment of a temporary alternative is necessary to reduce risks to power plant operators and other essential personnel from exposure to COVID–19 and is consistent with similar social distancing efforts being taken at this time by all levels of government and the private sector while ensuring that mission-essential functions can be performed.

In this action, EPA is amending the part 75 data substitution requirements to establish a limited, temporary exception that applies only under qualifying conditions related to the current COVID–19 national emergency. Specifically, in place of the existing requirements to report substitute data following any failure to complete a required test, the amendments instead allow actual monitored data to be reported after certain missed test deadlines, as long as the failure to complete the test is caused by travel, plant access, or other safety restrictions implemented to address the COVID–19 emergency and the monitored data would be considered valid if not for the delayed test. As a condition of applying the amended procedures, sources must document the reasons for delaying any required test and notify EPA when a test is delayed and when the delayed test is later completed. The notifications must include certifications that the source meets the criteria for using the amended procedures. EPA will post summaries of these notifications on a publicly accessible website. The amended requirements apply until the required test can be completed, but no longer than the duration of the COVID–19 national emergency plus a grace period of 60 days to complete delayed tests, and no later than the date of expiration of the amendments. This action does not suspend the existing part 75 requirements to continuously monitor and report emissions for every operating hour in a control period and does not alter any emissions limitations under any program. The amendments and EPA's rationale are described in greater detail in section II of this document.

This is a final rule. The amendments are effective immediately upon publication in the **Federal Register** and will expire after 180 days. EPA's findings of good cause for issuing the rule without prior notice and opportunity for comment and for making the rule effective immediately upon publication are contained in section III of this document. In section IV of this document, EPA requests comment on all aspects of the rule. Section V of this document addresses required statutory and executive order reviews.

B. Potentially Affected Entities

This action applies to any source that reports emissions to EPA under 40 CFR part 75. Generally, the types of sources that could be affected are fossil fuel-fired boilers and stationary combustion turbines serving electricity generators with capacities over 25 megawatts in the contiguous 48 states as well as other fossil fuel-fired boilers and stationary combustion turbines with heat input capacities over 250 million British thermal units per hour located in Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. Sources meeting these criteria operate in a variety of industries, including but not limited to the following:

NAICS * code	Industries with potentially affected sources
221112	Fossil fuel-fired electric power generation.
3112	Grain and oilseed milling.
3221	Pulp, paper, and paperboard mills.
3241	Petroleum and coal products manufacturing.
3251	Basic chemical manufacturing.
3311	Iron and steel mills and ferroalloy manufacturing.
6113	Colleges, universities, and professional schools.

* North American Industry Classification System.

C. Statutory Authority

Statutory authority to issue the amendments promulgated in this action is provided by Clean Air Act (CAA) section 412, 42 U.S.C. 7651k, which also provided authority for the initial promulgation of 40 CFR part 75, and CAA section 301, 42 U.S.C. 7601, which authorizes the Administrator to ''promulgate such regulations as are necessary to carry out his functions under [the CAA].'' Statutory authority for the rulemaking procedures followed in this action is provided by Administrative Procedure Act (APA) section 553, 5 U.S.C. 553.

II. Amendments to Quality-Assurance Requirements During the COVID–19 National Emergency

A. Background and Rationale

The part 75 regulations were originally promulgated to establish the emissions monitoring, recordkeeping, and reporting requirements under the Acid Rain Program, which covers over 3300 electricity generating units (EGUs) in the contiguous United States.[1] Subsequent rules including the Cross-State Air Pollution Rule (CSAPR)[2] and the CSAPR Update,[3] as well as state implementation plans adopted to meet the requirements of CSAPR, the CSAPR Update, and the NO_X SIP Call,[4] require over 600 additional EGUs and approximately 300 large non-EGU boilers and combustion turbines in eastern states to comply with the part 75 regulations. Affected units must follow specified procedures for determining and reporting hourly data for mass emissions of SO_2, NO_X, and carbon dioxide (CO_2), NO_X emission rate, and/or heat input using either continuous emission monitoring systems (CEMS) or,

[1] CAA title IV, 42 U.S.C. 7651–7651*o;* 40 CFR parts 72–78.

[2] 76 FR 48208 (August 8, 2011).

[3] 81 FR 74504 (October 26, 2016).

[4] 63 FR 57356 (October 27, 1998).

for qualifying units, several other monitoring methodologies.

The part 75 regulations require sources to report substitute data for their hourly emissions instead of actual monitored data in two general situations, only one of which may merit potentially different treatment during unusual circumstances such as the current COVID–19 emergency. The first general situation, which EPA sees no reason to address differently in emergency versus non-emergency circumstances, occurs when no data are obtained from a monitoring system (or when the data obtained are suspect). Because the part 75 regulations are designed to ensure a continuous record of each affected unit's hourly mass emissions (and other relevant data), the regulations require affected units to report substitute data for each operating hour when monitored data are missing.[5] To give operators a strong incentive to maintain high availability of their monitoring systems, the data substitution provisions of the regulations require units to report increasingly conservative (*i.e.,* high-biased) data as a missing data period grows longer.[6] For example, when a CEMS fails to provide data for only a few hours—for example, because of a problem that is discovered and repaired promptly—substitute data are generally determined from the data for nearby hours.[7] If a missing data period extends beyond a few hours, the unit must report data first approaching and then equaling the highest values recorded by the CEMS during a specified lookback period.[8] Eventually, when a missing data period extends long enough to cause the CEMS to lack valid data for 20 percent of the unit's previous 8760 operating hours, the unit must report substitute data reflecting the unit's maximum potential value for the monitored variable.[9] Thus, if a CEMS for a baseload unit had no previous missing data periods, after a single missing data period of about five weeks the unit would be required to report for every operating hour the highest hourly value recorded by the CEMS during the lookback period, and after a single missing data period of about ten weeks the unit would be required to report for every operating hour the maximum potential value for the parameter monitored by the CEMS. Because most affected units under part 75 participate in one or more EPA trading programs for SO_2 and/or NO_X emissions that require the units to surrender emission allowances equal to the amounts of their reported emissions, reporting higher-than-actual emissions causes the units to incur correspondingly increased costs for allowances under the trading programs. The additional allowance costs resulting from an extended period of missing data appropriately provide operators with incentives to maintain high availability of their emissions monitoring systems at all times when a unit is operating (including during periods of emergency).[10]

The second general situation when a source must report substitute data instead of actual monitored data, which EPA believes might be appropriate to address differently in certain emergency circumstances than in non-emergency circumstances, occurs when quality-assurance requirements are not met. The part 75 regulations are designed to achieve not only high availability of monitored data, but also high quality of those data. Accordingly, the regulations require various kinds of quality-assurance testing. Of particular relevance here, the regulations also require substitute data to be reported if the quality-assurance tests are not completed by applicable deadlines, following the same procedures described above for periods when data from a monitoring system are missing. The specific testing requirements depend on which of the permissible part 75 monitoring methodologies is being used and on the type of fuel or monitoring equipment. For units using gas concentration CEMS, the required quality-assurance tests include relative accuracy test audits (RATAs), which involve stack testing and generally must be performed every two or four calendar quarters, as well as quarterly linearity checks and daily calibration error tests.[11] For units using stack gas flow rate CEMS, the required tests include RATAs, which again involve stack testing and generally must be performed every two or four calendar quarters, as well as quarterly leak checks or other tests that depend on the particular technology employed.[12] For gas- and oil-fired units using fuel sampling and fuel flowmeters under appendix D to part 75, the required tests generally include either flowmeter accuracy tests which must be performed every four calendar quarters or else less frequent accuracy tests combined with certain otherwise optional tests performed on a quarterly basis.[13] In addition, the appendix D methodology requires periodic laboratory analyses of fuel samples to determine fuel sulfur content, density, and/or gross calorific value.[14] Under the regulations, a unit's failure to conduct and pass any required CEMS or fuel flowmeter quality-assurance test by the applicable deadline (or within a specified grace period) causes the monitoring system to be considered ''out of control'' just as an equipment failure would. Data obtained from such a monitoring system are considered invalid and the unit must report substitute data until the required test is conducted and passed.[15] The unit's operator must then bear the correspondingly higher allowance costs that are caused by the higher reported emissions.

In ordinary circumstances, requiring operators to report substitute data when quality-assurance testing deadlines are missed appropriately provides operators with a strong incentive to conduct the required tests in a timely manner, just as they are provided with a strong incentive to maintain high availability of their monitoring equipment. However, in circumstances where an operator may be unable to meet test deadlines because of the COVID–19 outbreak, and where it may not be possible to complete the delayed test for an extended period for reasons outside the operator's control, requiring data substitution cannot induce more timely compliance with quality-assurance requirements. Indeed, to the extent the desire to avoid an extended period of data substitution requirements incentivizes the operator to proceed with testing instead of more rigorously complying with travel, plant access, and other safety restrictions imposed to address the current COVID–19 emergency, the data substitution requirements may put plant operators and other personnel at risk and be in tension with immediate public health imperatives.

Conducting quality-assurance tests often requires resources from outside the plant being tested. RATAs and other stack tests are generally performed by contractor personnel who travel from plant to plant rather than by on-site

[5] *See generally* 40 CFR part 75, subpart D.

[6] *See* § 75.32(a)(2).

[7] See § 75.33(b)(1)(i), (b)(2)(i), (c)(1)(i), (c)(2)(i).

[8] *See, e.g.,* § 75.33(b)(1)(ii), (b)(2)(ii), (b)(3), (c)(1)(ii), (c)(2)(ii), (c)(3). The relevant lookback period is 720 operating hours for some reported variables and 2160 operating hours for others.

[9] *See, e.g.,* § 75.33(b)(4), (c)(4).

[10] In this action, EPA is not amending the existing requirements to report substitute data for operating hours when monitored data are missing or when data are invalid for reasons other than an emergency-related delay of quality-assurance activities.

[11] *See* 40 CFR part 75, appendix B, section 2.

[12] *See id.*

[13] *See* 40 CFR part 75, appendix D, sections 2.1.6.3 and 2.1.6.4(b).

[14] See 40 CFR part 75 appendix D, sections 2.2 and 2.3.

[15] *See, e.g.,* 40 CFR part 75, appendix B, section 2.3.1.1, and appendix D, sections 2.1.6 and 2.1.7.

plant personnel. State regulatory staff often attend as observers. Under emergency conditions when travel or plant access is restricted, it may be difficult or impossible for these outside personnel to perform or observe testing at the previously scheduled times. Further, such tests are often scheduled months in advance, and if a large number of units are delaying tests simultaneously, the average time until the tests can be rescheduled will be even longer than usual. Moreover, RATAs, linearity checks, and calibration error tests of gas concentration CEMS all require calibration gases that are delivered from specialized producers, and appendix D fuel sample analyses are often performed at outside laboratories. Travel, plant access, and other safety restrictions, such as emergency-related shutdowns of external facilities, may make it difficult for affected sources to restock their calibration gases if on-site supplies run out or to obtain analyses of fuel samples.

According to data reported to EPA, part 75 RATAs were performed at 1,033 monitoring locations in the second quarter of 2019.[16] Given the typical four-quarter interval between required RATAs, EPA therefore believes that approximately 1,000 units will have deadlines to perform RATAs in April, May, and June of 2020.[17] Since the beginning of March 2020, EPA has been contacted by nine power plant owners (who collectively operate over 300 units subject to part 75 requirements), an emissions data acquisition and handling system (DAHS) vendor, two consulting companies, and two state regulatory agencies indicating that stack testing requirements will be difficult or impossible to meet on a timely basis in locations where plant access has been limited or where local or state governments have imposed shelter-in-place or other restrictions for all but essential activities. More information on these communications is provided in the document entitled ''Stakeholder Communications Regarding the COVID–19 Emergency'' in the docket for this action.[18]

EPA believes the current national emergency related to COVID–19 has revealed a need for limited, temporary revisions to the quality-assurance requirements in the part 75 regulations. As discussed above, the regulations treat a missed quality-assurance test as equivalent to the failure of a monitoring system to provide any data at all, an approach that in ordinary circumstances appropriately provides operators with a strong incentive to conduct required quality-assurance and certification tests in a timely manner, just as they are provided with a strong incentive to maintain high availability of their monitoring equipment. However, the rationale for treating these two different sorts of failures as equivalent is no longer compelling in the circumstances of this declared national emergency related to COVID–19 that makes it difficult or impossible for some, or many, plant operators to conduct required quality-assurance tests on a timely basis for reasons outside their control and where efforts to conduct the tests may conflict with efforts to address the emergency and put plant operators and other essential personnel at risk. Travel, plant access, and other safety restrictions put in place to protect public health in light of the COVID–19 outbreak are highly likely to interfere with operators' ability to conduct some tests, both by limiting the availability of outside contractor personnel and state regulatory observers and by limiting plants' ability to restock depleted calibration gas supplies. Under the existing part 75 regulations, missing a test deadline could lead to an extended period for which an affected unit could be required to report increasingly conservative substitute data, with adverse cost consequences. Where the reason for missing a test is caused by the COVID–19 outbreak, EPA does not believe it is appropriate to impose this automatic consequence. The amendments promulgated in this action will ensure that the regulations do not inappropriately penalize plant operators.

The need to address the incentive features of the existing regulations is urgent in light of the actions being taken to address the current national emergency and the large number of units facing decisions in the near term on whether to proceed with tests scheduled for April and May. With each upcoming test, plant operators subject to restrictions because of the emergency must decide how to balance the potential regulatory consequences of delaying the test with the actions being implemented to protect the health of key plant and other personnel and public health under the emergency. The consequences to a source of missing a quality-assurance test are small initially, but grow rapidly as the period past the missed test deadline lengthens. Given uncertainty about the duration of the emergency-related restrictions, operators currently face uncertainty about when they might next be able to reschedule a delayed test, which leads to uncertainty regarding the magnitude of the automatic regulatory penalties that they risk incurring by deferring each test. As noted above, in April through June 2020, as many as 1,000 units will face decisions on whether or not to defer scheduled annual or semi-annual RATAs. EPA believes operators should have clear information now about the consequences of decisions regarding plant testing so that they can make the best immediate decisions about how to address the public health emergency and not put their employees at risk because of potential adverse regulatory consequences that can be avoided through a temporary rule amendment.

The primary set of part 75 tests giving rise to the concerns that EPA is addressing in this action comprises the quality-assurance tests discussed above, because of the very large number of those tests that under normal circumstances would be conducted in April and May 2020 and whose timing is therefore very much affected by the current COVID–19 national emergency. However, certain other types of part 75 testing requirements raise analogous concerns for smaller numbers of units, and because of the similarity of the issues, this action addresses the additional tests as well. First, initial certification of a monitoring system under the part 75 regulations likewise requires a variety of tests to be passed by specified deadlines before the monitoring system can be used to report valid data. Some of the same tests may

[16] *See* ''Part 75 RATAs Reported for 2019 Q2.xlsx,'' available in the docket for this action. Over 1500 RATAs were performed at the 1033 monitoring locations. *See id.* EPA notes that the number of monitoring locations is not identical to the number of affected units, because some monitoring locations are at common stacks serving multiple units, and emissions of some units are monitored at multiple monitoring locations.

[17] The normal four-quarter interval can be extended if a unit does not operate in a given quarter. *See* 40 CFR part 75, appendix B, section 2.3.1.1. Thus, deadlines for some of the approximately 1,000 units that conducted RATAs in the second quarter of 2019 will be extended beyond the second quarter of 2020, while other units whose most recent previous RATA was before the second quarter of 2019 will have an extended RATA deadline in the second quarter of 2020.

[18] *See also, e.g.,* ''Sequestered in power plants or at-home call centers: Consumers Energy in the age of COVID–19,'' *dailyenergyinsider.com* (April 9, 2020); ''PJM ramps up preparations as COVID–19 hotspots emerge in its footprint,'' *www.powermag.com* (April 8, 2020); ''Power industry pleads for priority COVID–19 testing, PPE for mission-essential workers,'' *www.powermag.com* (April 7, 2020); ''NYISO workers now living at grid control centers,'' *www.powermag.com* (March 30, 2020); ''Utilities plan to keep key staff housed at power plants,'' *www.powermag.com* (March 20, 2020); ''Utility workers prepare to sleep at work to keep the power flowing,'' *www.salon.com* (March 20, 2020); ''How power companies are keeping your lights on during the pandemic,'' *www.latimes.com* (March 19, 2020).

also be required in instances where a monitoring system needs to be recertified following an equipment change. The required certification tests include RATAs for both gas concentration CEMS and stack gas flow rate CEMS, linearity checks and calibration error tests for gas concentration CEMS, and accuracy tests for fuel flowmeters.[19] If certification testing for a monitoring system is not successfully completed by the applicable deadline, the unit must report substitute data in place of the data obtained from that monitoring system until all required tests have been passed.[20] In these instances, substitute data are generally based on the maximum potential values for the monitoring system starting in the first operating hour after the applicable test deadline. The regulations include provisions allowing a unit to report ''conditionally valid'' data following completion of the first required certification or recertification test until the timely and successful completion of the last required test. However, if all tests are not successfully completed by the applicable deadlines, the data that were previously considered conditionally valid are invalidated, and the unit must instead report substitute data for all operating hours until all required tests have been successfully completed.[21] For any unit whose certification testing schedule calls for testing during the current emergency situation, the considerations over how to balance the regulatory consequences of deferring the test with the public health emergency are the same as for an existing unit facing a near-term decision on a required quality-assurance test.

Second, units using part 75 monitoring methodologies other than CEMS-based methodologies may also be required to meet periodic fuel analysis or emission rate testing requirements. For example, under appendix D to part 75, a qualifying unit calculates reported hourly SO_2 mass emissions and heat input from its monitored hourly fuel usage in combination with unit-specific data on fuel sulfur content, density, and/or gross calorific value. In general, the data on fuel characteristics must be regularly updated through laboratory analyses of fuel samples. When fuel analyses are not updated in a timely manner, as could happen if outside laboratories close in an emergency, the unit must report substitute data that eventually reflect default maximum values for each fuel type.

Other non-CEMS based methodologies under part 75 require periodic NO_X emission rate testing. Under appendix E to part 75, a qualifying unit calculates reported hourly NO_X mass emissions from its monitored hourly fuel usage in combination with unit-specific historical test data correlating the unit's hourly NO_X emission rate to the unit's hourly fuel usage. The appendix E regulations require the unit-specific correlations to be updated based on new stack testing at least every twenty calendar quarters, and if updated appendix E tests are not completed by the deadline, the unit must report substitute data based on the unit's maximum potential NO_X emission rate.[22] Similarly, under the low mass emissions (LME) methodology in § 75.19, a qualifying unit may calculate its NO_X mass emissions using a fuel-and-unit-specific NO_X emission rate based on historical test data instead of using the default emission rates published in the regulations, and the fuel-and-unit-specific NO_X emission rate data must be updated based on new stack testing at least every twenty calendar quarters.[23] While the interval between required tests is long, for any unit for which the end of the interval—and therefore the unit's scheduled testing—falls in the emergency period, the considerations over whether to perform or defer the required NO_X emission rate testing are again the same as for a unit facing a near-term decision on a required quality-assurance test.

Finally, EPA notes that since its initial promulgation, part 75 has contained provisions at § 75.66 allowing EPA to make exceptions to individual regulatory requirements in appropriate circumstances. This authority is broad but requires exceptions to be made on a case-by-case basis: The designated representative for a unit (or group of units) must submit a petition to EPA for an alternative to a given regulatory requirement, describing the facts and the requested alternative, after which EPA considers the petition and provides a written response granting or denying the request.[24] Importantly, § 75.66 does not authorize EPA to grant exceptions to a given requirement or set of requirements for all affected units (or all affected units meeting specified conditions) simultaneously, even on a temporary basis, and for this reason the section is not well suited to addressing emergency situations that cause a particular regulatory requirement to have unintended consequences for a large number of affected units. Even if EPA ultimately were to grant some or even most of the petitions relating to the emergency, an owner or operator facing an immediate decision on whether to defer a test in light of public health concerns related to the COVID–19 emergency would be unable to predict that outcome at the time when the immediate decision must be made.

B. Description of Amendments

The amendments being finalized in this action are carefully targeted to address the regulatory provisions discussed in section II.A of this document while leaving other features of the regulations unchanged. Specifically, the amendments allow sources to continue to report monitored data as valid instead of requiring the sources to report substitute data in instances where data from a monitoring system would otherwise be considered invalid solely because of failure to complete a required test by the applicable deadline and where the failure to complete the test is attributable to travel, plant access, and other safety restrictions implemented to address the COVID–19 national emergency. The amendments cover each of the types of testing requirements described in section II.A of this document—quality-assurance tests, certification and recertification tests, appendix D fuel analyses, and appendix E and LME emission rate tests. Affected units will continue to be required to report emissions data for every operating hour of a control period, and no changes are made to any existing emissions limitations. Sources are required to complete any delayed tests as soon as practicable after relevant emergency-related restrictions no longer apply. The emergency period for which a source can report valid data under the amended provisions is limited to the duration of the COVID–19 national emergency plus a grace period of 60 days to complete delayed tests, but no later than the date of expiration of the amendments (*i.e.,* 180 days from publication in the **Federal Register**).

As discussed in section V.B of this document, the Office of Management and Budget (OMB) has approved an emergency information collection request (ICR) establishing certain new recordkeeping and reporting provisions that will apply to any use of the amended emissions data reporting requirements promulgated in this action. Sources will be required to

[19] *See* § 75.20(c) and (g).

[20] *See* § 75.4(j).

[21] *See* § 75.20(b)(3).

[22] *See* 40 CFR part 75, appendix E, sections 2.2 and 2.5.

[23] *See* § 75.19(c)(1)(iv)(D).

[24] EPA's responses are posted at *https://www.epa.gov/airmarkets/part-75-petition-responses.*

document the reasons for delaying any required test and to submit notifications to EPA when a test is delayed and when the delayed test is later completed. (In the case of tests that recur more often than quarterly, such as CEMS daily calibration error tests and certain appendix D fuel analyses, sources may treat a series of recurring tests as a single test for purposes of the required notifications.) Each notification of a delayed test must identify the affected unit, the test being delayed, the otherwise applicable deadline, and the emergency-related reasons why the test could not be completed by the deadline. Each notification of completion of a delayed test must identify the affected unit, the completed test, the date as of which emergency-related restrictions that formerly impaired testing for that unit no longer applied, and the date of test completion. In addition, both notifications must include certifications that the unit meets the criteria for using the amended procedures. Notifications may not contain Confidential Business Information (CBI) and must be submitted by email to *camdpetitions@epa.gov,* generally within five business days after the applicable test deadline or completion date. Notifications may be submitted by the designated representative or an agent with delegated authority to submit quality-assurance test data. EPA will prepare summaries of the submitted notifications identifying the units, the delayed tests and test deadlines, and the completed tests and completion dates and will post the summaries on a publicly accessible website.

In addition to the new recordkeeping and reporting requirements described above, EPA notes that under the existing part 75 regulations, reporting monitored data as valid following failure to complete a required test will require sources to assign a different method of determination code (MODC) to the data in an affected unit's data acquisition and handling system (DAHS), and further notes that the existing regulations at § 75.53 require sources to keep their monitoring plans up to date with respect to any change in a DAHS. In addition, the existing compliance certification requirements at § 75.64(c) require an affected unit's designated representative to ''indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this part . . .'' which now include the provisions promulgated in these amendments. EPA also notes that nothing in these amendments prevents a state from requiring sources to record and/or report additional documentation demonstrating that the reason for any failure to complete a required test by the applicable deadline was in fact caused by restrictions implemented to address COVID–19 national emergency conditions.

The amended provisions are located in new section 40 CFR 75.68 entitled ''Temporary modifications to otherwise applicable quality-assurance requirements during the COVID–19 national emergency.'' The introductory text of paragraph (a) provides that the provisions of the new section apply during the defined emergency period notwithstanding any other provisions of part 75. Paragraph (a)(1) defines the emergency period for purposes of the new section as the period of the COVID–19 national emergency with an additional 60 days for completion of delayed tests (but not beyond the expiration of the amendments), keying the start and end dates of the national emergency to actions taken by the President and Congress in accordance with the National Emergencies Act, 50 U.S.C. 1601–1651. The start date of the emergency is therefore March 13, 2020, the date on which the President declared the national emergency related to the COVID–19 outbreak.[25] Paragraph (a)(2) identifies the quality-assurance tests, certification or recertification tests, appendix D fuel analyses, and appendix E and LME NO_X emission rate tests with respect to which the temporary procedures apply. Paragraph (a)(3) permits sources to report data from monitoring systems as valid during emergency periods despite failure to complete required quality-assurance tests by the applicable deadlines, provided that (i) the data are otherwise valid; (ii) the failure to complete the tests is attributable to travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency; and (iii) the applicable recordkeeping and reporting requirements are met. Paragraph (a)(4) addresses failures to complete required certification or recertification tests in the same manner, except that the data may be reported as conditionally valid rather than valid, pending successful completion of the delayed certification tests. Paragraph (a)(5) addresses failures to complete required appendix D fuel analyses or appendix E or LME emission rate tests in the same manner and provides that the sources may continue to use the results of the most recent previously approved analyses or tests to determine reported emissions. Paragraph (a)(6) requires any delayed tests to be completed as soon as practicable after the relevant emergency-related restrictions are lifted but no later than 60 days after the end of the COVID–19 national emergency (and no later than the date of expiration of these amendments), requires reporting of substitute data if the delayed tests are not completed by these new deadlines, and provides that the completed tests are considered timely for purposes of identifying the deadlines for the next periodically scheduled tests. Paragraph (a)(7) sets out the new recordkeeping and reporting requirements that apply to use of the amended procedures.

The amendments are being promulgated as a final action and are effective immediately upon publication in the **Federal Register**. The amendments will expire after 180 days. Paragraph (b) of new § 75.68 provides the effective date and expiration date of the amendments.

C. Expected Impacts

The amendments finalized in this action do not suspend any existing requirements for any affected unit to report emissions for any hour of operation and do not alter any existing emissions limitations under any program. EPA consequently has no reason to expect the rule's amendments to the part 75 quality-assurance requirements to cause any change in affected units' emissions behavior. The rule therefore will not result in any harm to public health or the environment that might occur from increased emissions. To the extent that the amendments facilitate plant operators' efforts to comply with travel, plant access, and other safety restrictions imposed to protect public health during the COVID–19 emergency, the amendments will have a positive impact on public health by assisting efforts to slow the spread of the disease.

The actual monitored emissions data that will be reported under the amendments promulgated in this action will be the same data that would have been reported if the required part 75 tests were successfully completed by the applicable deadlines. There is of course a possibility that if the tests had been completed on schedule at all units, the tests would not have been passed at some units, leading to adjustments to those units' monitoring systems, a further round of testing, and improvements to the reported data. While the data reported in emergency situations under the amendments will lack these improvements, failures of

[25] *See* 85 FR 15337 (March 18, 2020).

RATAs are rare,[26] which EPA considers evidence that operators treat the obligation to maintain their monitoring systems seriously, due at least in part to the periodic RATA requirements. Thus, there is no reason to expect the absence of the data improvements to cause a bias toward understatement of emissions, and given the need to balance data quality considerations with public health and other considerations, EPA believes it is reasonable to treat the resulting data as adequate for purposes of an emergency period.

In the case of units that decide to defer quality-assurance tests that in the absence of the amendments they would have performed as scheduled, EPA generally does not expect a significant impact on the units' quality-assurance costs because the primary effect on their testing costs would simply be to delay the costs for some portion of the COVID–19 emergency period.[27] EPA notes that, because the amendments are limited to circumstances where failure to complete a quality-assurance test is attributable to the COVID–19 national emergency, and there is no suspension of data substitution requirements when data are missing or are invalid for a non-emergency-related reason, there would be no diminishment of operators' existing incentives to maintain their monitoring systems.

By allowing operators to report monitored data instead of substitute data, the amendments will also cause reported emissions levels, both at individual facilities and in aggregate, to track actual monitored emissions levels more closely than would be the case if units had to report the higher, intentionally conservative data required by the data substitution provisions for extended periods of time. The expected consequence of this impact on reported emissions levels is that plant operators will need to surrender fewer emission allowances to cover their reported emissions and will therefore incur lower total costs for emissions allowances. EPA estimates that up to 1,000 units may use the amended regulations to report actual monitored data instead of substitute data for some portion of the current emergency period, but has not attempted to estimate the magnitude of the impacts on either reported emission levels or allowance costs.

III. Rulemaking Procedures and Findings of Good Cause

EPA is promulgating this rule as a final action without prior notice or opportunity for public comment because the good cause exception under APA section 553(b)(B), 5 U.S.C. 553(b)(B), applies here. If APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures in CAA section 307(d).[28] However, CAA section 307(d) does not apply ''in the case of any rule or circumstance referred to in [APA section 553(b)(B)]'' [29]—*i.e.,* the good cause exception noted above—making this rule subject to the rulemaking procedures in APA section 553 instead, other than subsection 553(b).[30] APA section 553(b)(B) allows an agency to promulgate a rule without providing prior notice and opportunity for public comment ''when the 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.''

EPA finds that there is good cause for promulgating this final rule without providing prior notice and an opportunity for public comment because providing such notice and opportunity for comment, with respect to the amendments promulgated in this action, is impracticable and contrary to the public interest for the reasons further explained in this section. There is an urgent need for EPA to revise the part 75 regulations to adjust the near-term and cascading impacts on sources not meeting certain regulatory requirements during national emergencies, such that sources are better able to abide by the public health restrictions put in place to address the current national emergency concerning the COVID–19 outbreak. As noted above, EPA has been contacted by plant owners who collectively operate over 300 affected units, as well as stack-testing companies and state air agencies, regarding near-term problems in completing required part 75 quality-assurance tests because of travel and plant access restrictions imposed to protect public health in light of the COVID–19 outbreak.[31] Personnel who would not be on-site for normal plant operations are often required to conduct these quality-assurance tests. In light of the current health emergency, many plant operators have restricted plant access to reduce the risk to plant essential personnel as well as the general public. In addition, travel has been severely restricted. Compliance by plant operators and others with these efforts to address the COVID–19 emergency are in tension with the existing regulatory provisions that automatically penalize plant operators for failing to complete required tests even when completing the tests requires travel or plant access that would otherwise be restricted because of the emergency. It is a matter of urgency for EPA to address this issue now so that plant operators can make informed decisions regarding plant access and determine whether to perform or delay tests scheduled in April and May 2020. If EPA were to delay action, the potential consequences of failing to timely conduct quality assurance tests would either lead to a weakening of steps taken to address the COVID–19 emergency or penalize plant operators for enforcing travel and plant access restrictions. As explained in this document, EPA has determined that targeted, narrow revisions to the regulations to give plant operators additional flexibility regarding the timing of quality assurance tests can address this urgent problem without adversely impacting air quality or public health.

EPA has determined that there is good cause to forgo a public notice and comment process because such public process is impracticable, since notice and comment rulemaking would impair the agency's ability to timely address an urgent situation under our current regulations that has the potential to threaten public health and safety. In sum, the current regulations result in automatic penalties if certain requirements are not met but meeting those requirements could require sources to take actions contradictory to restrictions in place to address the COVID–19 emergency. Specifically, the flexibilities provided through this rule potentially impact over 1,000 units with upcoming test deadlines in April, May, and June of this year. Providing public notice and comment is impracticable, because plant operators must make decisions regarding whether to conduct

[26] For example, none of the 1500 RATAs reported for the second quarter of 2019 were failed.

[27] This expectation applies with respect to delayed RATAs, which typically account for the majority of quality-assurance and certification testing costs, and to delayed quarterly tests that can be rescheduled in the same quarter following the end of emergency-related restrictions. With respect to daily tests or other quarterly tests missed for reasons related to the national emergency, testing on normal schedules generally would resume without any rescheduling of tests missed because of the emergency.

[28] *See* CAA section 307(d)(1)(G), (T); 42 U.S.C. 7607(d)(1)(G), (T). *See also* CAA section 307(d)(3); 42 U.S.C. 7607(d)(3) (requiring publication of a proposed rule with an opportunity for public comment).

[29] *See* CAA section 307(d)(1); 42 U.S.C. 7607(d)(1).

[30] APA section 553(b) generally requires notice-and-comment rulemaking procedures unless, as here, an exception applies under section 553(b)(A) or (B). 5 U.S.C. 553(b).

[31] *See* ''Stakeholder Communications Regarding the COVID–19 Emergency,'' available in the docket.

tests in April and May 2020. Because of the limited amount of time between the declaration of the COVID–19 national emergency and the applicable testing deadlines, there was insufficient time to seek comment on the rule.

Taking the additional time required to allow for submission of comments and development of a response to comments is impracticable because, in this time of emergency, it would delay finalization of amendments needed to assure source operators that efforts to address the COVID–19 national emergency will not result in automatic adverse consequences for the many sources likely to be impacted. Although the costs to sources of reporting substitute data may be small initially, the costs grow substantially over time, and the operators need to make decisions in the near-term on whether to defer testing while facing considerable uncertainty as to when it will next be possible for them to conduct the testing (and, therefore, how large the costs may eventually become). It is therefore a matter of urgency to promulgate these amendments to address the tension between the existing regulations and travel and plant access restrictions imposed to address the public health emergency and protect essential plant and other personnel.[32] EPA has concluded that an immediate response—promulgating these final amendments—is needed to ensure that part 75 regulatory requirements do not impose unnecessary adverse consequences on affected sources due to travel restrictions and other limitations on movement and plant access in place to respond to the COVID–19 national emergency. Issuance of the amendments is needed to assure operators now that they will not, in fact, be penalized for deciding now to defer testing when proceeding with tests as scheduled would not be in accordance with such restrictions. As noted in section II.A of this document, by approximately five weeks after a missed quality-assurance test deadline, a baseload unit must report substitute data in all operating hours based on its highest hourly data value from a lookback period, and by approximately ten weeks after a missed test deadline, such a unit must report its maximum potential values. Notice-and-comment rulemakings (which in the case of this action, under CAA section 307(d), would involve providing an opportunity for a public hearing[33] and a comment period extending at least 30 days following the public hearing, and would also require time to evaluate and respond to all significant comments received) frequently take much longer than ten weeks.

EPA has also determined that there is good cause to forgo a public notice and comment process for this rule because such public process is contrary to the public interest. The delay associated with undertaking ordinary notice and comment procedures would, in fact, harm the public interest here. Such a delay would keep in place EPA regulations that incentivize actions counter to the restrictions necessary to protect public health and to address the COVID–19 emergency. Approximately 1,000 sources with upcoming test deadlines in April, May, and June of this year are potentially impacted by the automatic provisions in the part 75 monitoring regulations and must make personnel and other decisions regarding operation of the sources before their respective test deadlines, including decisions regarding access to perform quality-assurance tests and certification tests. It is imperative that EPA provide immediate assurance that adverse consequences (in the form of impacts that flow from not meeting certain required testing deadlines that affect allowance holding requirements for reasons not anticipated when establishing the current requirements) will not flow from measures taken to comply with directives to protect public health, and to better ensure that the existing requirements would not result in actions being taken during the national emergency that would run counter to the efforts and restrictions in place to address the public health in light of the COVID–19 outbreak.[34] At the same time, the amendments are carefully targeted to avoid collateral adverse impacts. Specifically, the amendments stop the automatic penalties discussed above in national emergency circumstances but not in non-national emergency circumstances, they leave other monitoring-related requirements and reporting requirements in place, and they do not alter any emissions limitations. In addition, the regulatory revisions promulgated in this document will expire in 180 days absent further action by EPA.

Thus, EPA finds good cause under APA section 553(b)(B) to take this final action without prior notice or opportunity for comment both because providing notice and an opportunity for comment would be impracticable and because it would be contrary to the public interest.

The amendments promulgated in this final rule will expire in 180 days. In deciding that the amendments should expire in 180 days, EPA considered the importance of providing regulatory certainty to the regulated community discussed above and the time-frame needed to conduct a full notice-and-comment rulemaking. Given the current uncertainty concerning the spread of COVID–19, EPA believes it is reasonable to provide regulatory certainty to sources that the amendments in this action will be in effect for at least 180 days. At the same time, given the narrow scope of the amendments, some stakeholders might challenge the reasonableness of keeping the amendments in effect on a temporary basis for longer than 180 days on the grounds that the Agency might have been able to make the temporary amendments effective beyond 180 days through notice-and-comment rulemaking within such a time period. For these reasons, EPA is providing that the amendments will expire in 180 days.

EPA is also making this final rule effective immediately upon publication in the **Federal Register**. As discussed in the first paragraph of this section, if the good cause exception in APA section 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures in CAA section 307(d). Instead, because CAA section 307(d) does not apply, the rule is subject to the rulemaking procedures in APA section 553 other than subsection 553(b).[35] APA section 553(d), which therefore applies to this rule, generally requires that actions covered by the section become effective not less than 30 days after publication but also provides several exceptions.

Under APA section 553(d)(1), rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.''[36] However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule grants or recognizes an exemption or relieves a restriction because the nature of the rule change being approved is to allow

[32] *See supra* note 18.

[33] Adequate prior notice must be provided for any such hearing.

[34] *See supra* note 18.

[35] *See supra* note 30.

[36] *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

sources to report their actual monitored data values instead of being required to report substitute data values—a change which is virtually always advantageous to the source—in circumstances where the source fails to complete a required test by the applicable deadline for reasons caused by this COVID–19 national emergency.

Additionally, APA section 553(d)(3) allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, the purpose of the 30-day waiting period generally prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' [37] In the case of this rule, EPA has determined that there is good cause for making this final rule effective immediately. Regarding urgency, EPA finds the that the reasons supporting EPA's finding of good cause under APA section 553(b)(B) for making this action final without prior notice or opportunity for comment also support an immediate effective date. Primarily, it is urgent for EPA to revise the part 75 regulations to adjust the near-term and cascading impacts of sources not meeting certain regulatory requirements during national emergencies, such that sources are better able to abide with restrictions in place to address the current national emergency concerning the COVID–19 outbreak without facing unintended adverse regulatory consequences. Further, this rule raises no material concerns regarding the fairness of imposing new requirements without additional notice because it does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this action simply allows sources to report actual monitored data values instead of substitute data values in specified circumstances, which is both advantageous to the sources and readily accomplished using their existing monitoring equipment and reporting software. For these reasons, EPA finds good cause exists for this action to become effective on the date of publication in the **Federal Register**.

[37] *Gavrilovic,* 551 F.2d at 1105.

IV. Request for Comment

As explained above, EPA finds good cause to take this final action without prior notice or opportunity for public comment and to make this action effective immediately upon publication in the **Federal Register**. However, EPA is also implementing this action on a temporary basis only and is providing notice and an opportunity for comment on the content of the temporary amendments. EPA requests comment on all aspects of this rule. EPA is not reopening for comment any provisions of 40 CFR part 75 other than the specific provisions added by this rule.

V. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to OMB for review because it may raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be subject to Executive Order 13771 because it is not expected to result in more than *de minimus* costs on net.

C. Paperwork Reduction Act

The information collection activities in this rule have been submitted for approval to OMB under the PRA as an emergency information collection request (ICR). You can find a copy of the ICR document in the docket for this rule at *regulations.gov* (Docket No. EPA–HQ–OAR–2020–0211), and it is briefly summarized here.

The collection of information is necessary in order to ensure that the amended procedures that allow sources to report actual monitored data instead of substitute data when a test cannot be completed by the applicable deadline because of travel, plant access, and other safety restrictions implemented to address the COVID–19 national emergency are used only in accordance with the regulations. Sources are required to maintain records demonstrating that the reasons they were unable to complete delayed tests by the applicable deadlines were related to travel, plant access, or other safety restrictions put in place to address the COVID–19 national emergency. Sources are also required to submit notifications to EPA following the delay or completion of a test for which the amended procedures are used. The notification for a delayed test includes information identifying the unit and test, the applicable deadline, and the emergency-related reasons why the test could not be completed by the deadline. The notification for a completed test includes information identifying the unit and test, the date when restrictions related to the COVID–19 national emergency ceased to apply for that unit, and the test completion date. Each notification must include a certification of accuracy in order to ensure that the unit qualifies to use the amended procedures. To provide transparency regarding the use of the amended procedures, EPA will prepare summaries of the units and states, the delayed tests and test deadlines, and the completed tests and completion dates and will post the summaries on a publicly accessible website.

OMB has approved an emergency ICR that will be in effect for 180 days while these temporary amendments are in effect.

Respondents/affected entities: Approximately 4,300 units that monitor and report emissions under 40 CFR part 75 to meet requirements of the Acid Rain Program, a CSAPR trading program, or the NO_X SIP Call.

Respondents' obligation to respond: Required to obtain a benefit (40 CFR 75.68).

Frequency of response: Occasional.

Total estimated burden: 3,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $273,300 (per year); includes $0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Regulatory Flexibility Act

This action is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the

Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard. This action simply allows some sources to report actual monitored data values instead of substitute data values for certain required information in specified circumstances related to the COVID–19 national emergency.

L. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule as discussed in section III of this document, including the basis for that finding.

M. Determination Under CAA Section 307(b)

CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), indicates which United States Courts of Appeals have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) if (i) the Agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator,'' or (ii) the action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' This action amends existing regulations that apply to sources in 48 states and the District of Columbia, and thus the action applies to sources in the same jurisdictions. For this reason, the Administrator determines that this final action is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b), any petitions for review of this final action must be filed in the D.C. Circuit within 60 days from the date this final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Carbon dioxide, Continuous emission monitoring, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Andrew Wheeler,

Administrator.

For the reasons stated in the preamble, part 75 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651K, and 7651K note.

Subpart G—Reporting Requirements

■ 2. Add § 75.68 to read as follows:

§ 75.68 Temporary modifications to otherwise applicable quality-assurance requirements during the COVID–19 national emergency.

(a) Notwithstanding any other provision of this part, during and following the emergency period defined in paragraph (a)(1) of this section, the provisions of this section shall apply for purposes of reporting the data that are required to be reported under this part and completing the tests that are required to be completed under this part.

(1) For purposes of this section, the emergency period begins on March 13, 2020, the date of the declaration of a

national emergency concerning the novel coronavirus disease (COVID–19) outbreak by the President of the United States in accordance with 50 U.S.C. 1621, and concludes 60 days after the date of termination of the national emergency by Congress or the President in accordance with 50 U.S.C. 1622, provided that the emergency period under this section shall not extend past the expiration of the effectiveness of this section.

(2) The provisions of this section shall apply with respect to the following tests that are required to be completed under this part:

(i) Any quality-assurance test of a continuous emission monitoring system required under appendix B to this part or § 75.74(c).

(ii) Any quality-assurance test of a fuel flowmeter required under section 2.1.6 of appendix D to this part or § 75.74(c).

(iii) Any certification or recertification test of a continuous emission monitoring system required under § 75.20 or § 75.70(d).

(iv) Any certification test of a fuel flowmeter required under section 2.1.5 of appendix D to this part or § 75.70(d).

(v) Any periodic analysis of fuel sulfur content, density, or gross calorific value required under section 2.2 or 2.3 of appendix D to this part, provided that there have been no changes in the fuel supply since the most recent previous fuel analysis that would reasonably be expected to cause a change in such fuel characteristics.

(vi) Any periodic retest of NO_X emission rates required under section 2.2 of appendix E to this part.

(vii) Any periodic retest of fuel-and-unit-specific NO_X emission rates required under § 75.19(c)(4)(i)(D) that is required only because of the passage of time and not because of changes in the fuel supply, physical changes to the unit, changes in the manner of unit operation, or changes to the emission controls.

(3) Following a failure to complete by the applicable deadline (or by the end of any grace period following the deadline) any required quality-assurance test or tests described in paragraph (a)(2)(i) or (ii) of this section for any continuous emission monitoring system or fuel flowmeter under this part, for any subsequent operating hour in the emergency period prior to completion of the test or tests in accordance with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit may continue to report data determined using measurements obtained from the continuous emission monitoring system or fuel flowmeter as valid, provided that the following conditions are met:

(i) But for the failure to complete the quality-assurance test or tests, the data obtained from the monitoring system would be considered valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such quality-assurance test is travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(4) Following a failure to complete by the applicable deadline any required certification or recertification test or tests described in paragraph (a)(2)(iii) or (iv) of this section for any continuous emission monitoring system or fuel flowmeter under this part, for any subsequent operating hour in an emergency period prior to completion of the test or tests in accordance with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit may continue to report data determined using measurements obtained from the continuous emission monitoring system or fuel flowmeter as conditionally valid provided that the following conditions are met:

(i) But for the failure to complete the certification or recertification test or tests, the data obtained from the monitoring system would be considered conditionally valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such certification or recertification test is travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(5) Following a failure to complete by the applicable deadline any required periodic analysis of fuel characteristics under appendix D to this part described in paragraph (a)(2)(v) of this section or any required periodic NO_X emission rate testing under appendix E to this part or § 75.19 described in paragraph (a)(2)(vi) or (vii) of this section, for any subsequent operating hour during the emergency period prior to completion of the analysis or testing in accordance with paragraph (a)(6)(i) of this section, the owner or operator of an affected unit using the methodology in appendix D may continue to report data determined using the fuel characteristics authorized for use under the regulations following the most recent previous analysis for that fuel, the owner or operator of an affected unit using the methodology in appendix E may continue to report data determined using the correlation curve developed from the most recent previous appendix E NO_X emission rate testing, and the owner or operator of an affected unit using a fuel-and-unit-specific emission rate under the LME methodology in § 75.19(c)(1)(iv) may continue to report data determined using the fuel-and-unit-specific emission rate developed from the most recent previous LME NO_X emission rate testing, provided that the following conditions are met:

(i) But for the failure to complete the appendix D fuel analysis or the appendix E or LME NO_X emission rate testing, the data obtained from the appendix D, appendix E, or LME monitoring methodology would be considered valid without the benefit of the provisions of this section;

(ii) The reason for failure to complete each such appendix D fuel analysis or appendix E or LME NO_X emission rate test is travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency; and

(iii) The owner or operator creates and maintains the records specified in paragraph (a)(7)(i) of this section and the designated representative submits the notifications required under paragraphs (a)(7)(ii) and (iii) of this section.

(6)(i) Each quality-assurance test, certification or recertification test, appendix D fuel analysis, and appendix E or LME NO_X emission rate test required under this part that was not completed for a unit by the applicable deadline (or by the end of any grace period following the deadline) must be completed as soon as practicable following the end of travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency that affect that unit or the personnel or supplies required to complete the analysis or testing for that unit, but in no event later than the conclusion of the emergency period as defined in paragraph (a)(1) of this section.

(ii) If a test or analysis for which a deadline is established under paragraph (a)(6)(i) of this section is not completed by that deadline, the test or analysis shall be completed as soon as practicable thereafter, and for each

operating hour following that deadline until completion of the test or analysis, the owner or operator shall report substitute data as if the originally applicable deadline for the test or analysis were the deadline under paragraph (a)(6)(i) of this section.

(iii) For purposes of determining the applicable deadline for the next quality-assurance test, appendix D fuel analysis, or appendix E or LME NO_X emission rate test required under this part after a delayed quality-assurance test, appendix D fuel analysis, or appendix E or LME NO_X emission rate test is completed or due to be completed in accordance with paragraph (a)(6)(i) of this section, the delayed test or analysis shall be considered to have been completed in a timely manner as of the date on which such delayed test or analysis was actually completed or, if earlier, the deadline for completion of the delayed test or analysis under paragraph (a)(6)(i) of this section.

(7) The following recordkeeping and reporting requirements shall apply to any use of the procedures under paragraphs (a)(3) through (6) of this section:

(i) The owner or operator of an affected unit reporting data under paragraph (a)(3), (4), or (5) of this section shall maintain records documenting the reasons for failure to complete by the applicable deadline each test or analysis referenced in such paragraph and demonstrating that such failure is caused by travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency. The owner or operator shall also maintain records documenting when any such travel, plant access, or other safety restrictions impairing the ability to complete testing or analyses for that unit ceased to apply. The records shall be maintained on site at the source in a form suitable for inspection for a period of three years from the date of each record.

(ii) By five business days after the applicable deadline for a test or analysis referenced in paragraph (a)(3), (4), or (5) of this section, the designated representative shall submit to the Administrator, by email transmitted to *camdpetitions@epa.gov,* a notification containing the following information:

(A) Facility ID (ORIS);

(B) Facility name;

(C) Monitoring location ID and/or unit ID;

(D) Identification of the quality-assurance test, certification or recertification test, appendix D fuel analysis, or appendix E or LME NO_X emission rate test for which the notification is being submitted;

(E) Identification of the applicable deadline for the test or analysis under part 75 (not including any applicable grace period);

(F) A detailed explanation of the reason for failure to complete the test or analysis by the applicable deadline under part 75, including an explanation of how such failure is caused by travel, plant access, or other safety restrictions implemented to address the COVID–19 national emergency;

(G) The certification statements in § 72.21(b)(1) and (2) of this chapter.

(iii) By five business days after the completion in accordance with paragraph (a)(6)(i) or (ii) of this section of a delayed test or analysis referenced in paragraph (a)(3), (4), or (5) of this section, the designated representative shall submit to the Administrator, by email transmitted to *camdpetitions@epa.gov,* a notification containing the following information:

(A) Facility ID (ORIS);

(B) Facility name;

(C) Monitoring location ID and/or unit ID;

(D) Identification of the quality-assurance test, certification or recertification test, appendix D fuel analysis, or appendix E or LME NO_X emission rate test for which the notification is being submitted;

(E) Identification of the date as of which travel, plant access, or other safety restrictions previously impairing the ability to complete the delayed test or analysis for the unit no longer applied;

(F) Identification of the date as of which the test or analysis was completed in accordance with paragraph (a)(6)(i) or (ii) of this section; and

(G) The certification statements in § 72.21(b)(1) and (2) of this chapter.

(iv) With respect to any test or analysis of a type that is required to be performed more frequently than once per unit operating quarter, a series of such required tests or analyses may be treated as a single test or analysis for purposes of a notification submitted under paragraph (a)(7)(ii) or (iii) of this section, with the notification under paragraph (a)(7)(ii) to be submitted by five business days after the first failure to perform such a test or analysis by the applicable deadline and the notification under paragraph (a)(7)(iii) to be submitted by five business days after the first completion of such a test or analysis in accordance with paragraph (a)(6)(i) or (ii) of this section.

(v) A notification submitted under paragraph (a)(7)(ii) or (iii) of this section may include information for more than one required test for a given unit or monitoring location, provided that each item of information required to be included in such notification pursuant to paragraphs (a)(7)(ii)(D) through (F) of this section or paragraphs (a)(7)(iii)(D) through (F) of this section is provided separately for each required test included in the notification.

(vi) No claim of confidentiality may be asserted with respect to any information included in a notification submitted under paragraph (a)(7)(ii) or (iii) of this section.

(vii) Notwithstanding the deadlines for submission of notifications in paragraphs (a)(7)(ii), (iii), and (iv) of this section, no such notification from any owner or operator shall be due less than 30 days after the effective date of this section.

(b) The requirements of this section are effective from April 22, 2020 and, except for those in paragraphs (a)(6)(ii) and (iii) and (a)(7)(i) of this section, shall cease to have effect October 19, 2020.

[FR Doc. 2020–08581 Filed 4–21–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181203999–9503–02; RTID 0648–XX050]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Northeast Multispecies Measures for Fishing Year 2020

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

ACTION: Temporary rule; possession and trip limit implementation.

SUMMARY: This action implements measures for the Northeast multispecies fishery for the 2020 fishing year. This action is necessary to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent inseason closures or quota overages. These measures include possession and trip limits, the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder, and the closure of the Regular B Days-at-Sea Program.

DATES: Effective at 0001 hours on May 1, 2020, through April 30, 2021.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) regulations give the Regional Administrator the authority to implement certain types of management measures for the common pool fishery, the U.S. Canada Management Area, and Special Management Programs. This action implements a number of these management measures for the 2020 fishing year, effective May 1, 2020.

Common Pool Trip Limits

The regulations at § 648.86(o) give the Regional Administrator the authority to implement or adjust a per-Day-at-Sea (DAS) possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-Annual Catch Limit (sub-ACL) in that fishing year. The possession and trip limits implemented for the start of the 2020 fishing year are included in Tables 1 and 2 below. These possession and trip limits were developed based on the common pool sub-ACLs set by Framework Adjustment 58 to the Northeast Multispecies FMP that will be in effect on May 1, 2020. We also considered preliminary 2020 sector rosters, expected common pool participation, and common pool fishing activity in previous fishing years. Based on that information, we project that these adjustments will facilitate optimized harvest of the common pool quotas, while preventing early trimester closures, and preventing catch from exceeding the 2020 fishing year sub-ACLs.

For Handgear A and Handgear B vessels, possession and trip limits for Georges Bank (GB) and Gulf of Maine (GOM) cod are tied to the possession and trip limits for groundfish DAS vessels. The default cod trip limit is 300 lb (136 kg) for Handgear A vessels and 75 lb (34 kg) for Handgear B vessels. If the GOM or GB cod limit for vessels fishing on a groundfish DAS drops below 300 lb (136 kg), then the respective Handgear A cod trip limit must be reduced to the same limit. Similarly, the Handgear B trip limit must be adjusted proportionally to the DAS limit (rounded up to the nearest 25 lb (11 kg)). In accordance with this process, the Handgear A and Handgear B possession and trip limits for GB and GOM cod are as listed below in Table 2.

Vessels with a Small Vessel category permit can possess up to 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined, per trip. Additionally, for these vessels, the trip limit for all stocks is equal to the landing limits per DAS applicable to multispecies DAS vessels. This is necessary to ensure that the trip limit applicable to the Small Vessel category permit is consistent with the trip limits for other common pool vessels, as described above.

Weekly quota monitoring reports for the common pool fishery can be found on our website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

TABLE 1—2020 FISHING YEAR COMMON POOL POSSESSION AND TRIP LIMITS

Stock	2020 trip limit *
GB Cod (outside Eastern U.S./Canada Area)	250 lb (113 kg) per DAS, up to 500 lb (227 kg) per trip.
GB Cod (inside Eastern U.S./Canada Area).	
GB Cod [Closed Area II Yellowtail Flounder/Haddock SAP (for targeting haddock)].	500 lb (227 kg) per trip.
GOM Cod	50 lb (23 kg) per DAS, up to 100 lb (45 kg) per trip.
GB Haddock	100,000 lb (45,359 kg) per trip.
GOM Haddock	1,000 lb (454 kg) per DAS, up to 2,000 lb (907 kg) per trip.
GB Yellowtail Flounder	100 lb (45 kg) per trip.
Southern New England (SNE)/Mid-Atlantic (MA) Yellowtail Flounder	100 lb (45 kg) per DAS, up to 200 lb (91 kg) per trip.
Cape Cod (CC)/GOM Yellowtail Flounder	1,000 lb (340 kg) per DAS, up to 2,000 lb (680 kg) per trip.
American Plaice	1,000 lb (340 kg) per DAS, up to 2,000 lb (680 kg) per trip.
Witch Flounder	750 lb (272 kg) per trip.
GB Winter Flounder	250 lb (113 kg) per trip.
GOM Winter Flounder	1,000 lb (454 kg) per trip.
SNE/MA Winter Flounder	2,000 lb (907 kg) per DAS, up to 4,000 lb (1,814 kg) per trip.
Redfish	Unlimited.
White Hake	1,500 lb (680 kg) per trip.
Pollock	Unlimited.
Atlantic Halibut	1 fish per trip.
Windowpane Flounder	Possession Prohibited.
Ocean Pout.	
Atlantic Wolffish.	

* Minimum fish sizes apply for many groundfish species, but are not included in this rule. Please see 50 CFR 648.83 for applicable minimum fish sizes.

TABLE 2—2020 FISHING YEAR COD TRIP LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS

Permit	Initial 2020 trip limit
Handgear A GOM Cod	50 lb (23 kg) per trip.
Handgear A GB Cod	250 lb (113 kg) per trip.
Handgear B GOM Cod	25 lb (11 kg) per trip.
Handgear B GB Cod	25 lb (11 kg) per trip.

TABLE 2—2020 FISHING YEAR COD TRIP LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS—Continued

Permit	Initial 2020 trip limit
Small Vessel Category	300 lb (136 kg) of cod, haddock, and yellowtail flounder combined; additionally, vessels are limited to the common pool DAS limit for all stocks.

Table 3 includes the initial common pool trimester Total Allowable Catches (TACs) for fishing year 2020. These trimester TACs are based on preliminary sector rosters. However, individual permit holders have until the end of the 2019 fishing year (April 30, 2020) to drop out of a sector and fish in the common pool fishery for the 2020 fishing year. Therefore, it is possible that the sector and common pool catch limits, including the trimester TACs, may change due to changes in sector rosters. If changes to sector rosters occur, updated catch limits and/or possession and trip limits will be announced as soon as possible in the 2020 fishing year to reflect the final sector rosters as of May 1, 2020. We are working to publish a proposed rule to request comment on updated 2020 specifications as recommended by the New England Fishery Management Council in Framework Adjustment 59 to the Northeast Multispecies FMP. If approved, that rule would make additional changes to common pool sub-ACLs. There could be additional changes to common pool possession and trip limits as a result.

TABLE 3—INITIAL COMMON POOL TRIMESTER TOTAL ALLOWABLE CATCHES FOR FISHING YEAR 2020

[mt, live weight]

Stock	Trimester total allowable catches (mt)		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	18.9	22.9	25.6
GOM Cod	5.5	3.7	2.0
GB Haddock	286.8	350.5	424.9
GOM Haddock	21.2	20.4	36.8
GB Yellowtail Flounder	0.7	1.1	1.9
SNE/MA Yellowtail Flounder	1.3	1.7	3.2
CC/GOM Yellowtail Flounder	12.2	5.6	3.6
American Plaice	21.6	2.3	5.2
Witch Flounder	12.7	4.6	5.8
GB Winter Flounder	2.5	7.6	21.6
GOM Winter Flounder	6.7	6.9	4.5
Redfish	14.5	18.0	25.5
White Hake	8.0	6.6	6.6
Pollock	69.5	86.8	91.8

Closed Area II Yellowtail Flounder/Haddock Special Access Program

The regulations at § 648.85(b)(3)(vii) provide the Regional Administrator with authority to determine the total number of common pool trips that may be declared into the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to target yellowtail flounder. This action allocates zero trips for common pool vessels to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for fishing year 2020. As a result, this SAP is only open to target haddock, from August 1, 2020, through January 31, 2021. Northeast multispecies vessels fishing in the SAP must fish with a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels may not fish in this SAP using flounder trawl nets.

The Regional Administrator has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. Allocating trips to target yellowtail flounder in the Closed Area II Yellowtail Flounder/Haddock SAP is discretionary if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit, for a total catch of 2,250,000 lb (1,020,600 kg). This calculation considers projected catch from all vessels from the area outside the SAP. Based on the fishing year 2020 GB yellowtail flounder groundfish sub-ACL implemented by Framework Adjustment 58 of 295,419 lb (134,000 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP. Further, given the low GB yellowtail flounder catch limit, catch rates outside of this SAP are more than adequate to fully harvest the 2020 GB yellowtail flounder allocation.

We are working to publish a proposed rule to request comments on Framework 59 measures. If approved, Framework 59 would implement a 2020 GB yellowtail flounder sub-ACL that is reduced compared to the Framework 58 sub-ACL. A reduction in the GB yellowtail flounder sub-ACL would reduce the number of potential trips in the Closed Area II yellowtail Flounder/Haddock SAP. As a result, we do not expect that the final rule implementing Framework 59 would allocate trips to the SAP to target yellowtail flounder.

Regular B DAS Program

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast

Multispecies FMP or the Regular B DAS Program. One reason for terminating the program is an inability to constrain common pool catches to the Incidental Catch TACs.

Framework Adjustment 58 to the Northeast Multispecies FMP (84 FR 34799, July 19, 2019) implemented Common Pool Incidental Catch TACs for the Regular B DAS Program for the 2020 fishing year (Table 1). These TACs are further divided into Quarterly Incidental Catch TACs to be monitored and managed during each calendar quarter.

Given that the Incidental Catch TACs allocated to the Regular B DAS Program for several stocks are very small, inseason management of the Regular B DAS Program is likely to be extremely difficult and impractical. Implementation of an inseason action to close the Regular B DAS Program once a Quarterly Incidental Catch TAC for a stock has been reached would not be possible to complete quickly enough to prevent further catch of that stock.

As a result, it is unlikely that we can effectively limit catch to the Incidental Catch TACs during fishing year 2020, and project that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP and the Regular B DAS Program. The Regular B DAS Program will be closed and use of Regular B DAS is prohibited for the 2020 fishing year, through April 30, 2021. This applies to all vessels issued a limited access Northeast multispecies permit.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be contrary to the public interest.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool quotas. This action sets the initial common pool possession and trip limits on May 1, 2020, for the 2020 fishing year. The possession and trip limits implemented through this action help to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent inseason closures or quota overages. Delay of this action would leave the common pool fishery with the possession and trip limits found in § 648.86, which are too high to control catch. This would likely lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute the fishery across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of this stock.

The regulations at § 648.85(b)(3)(vii) require that the Regional Administrator announce the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP on or about June 1. We have included the announcement in this inseason action to meet this regulatory requirement. Doing so ensures that the fishing industry has sufficient notice in order to plan their activities in the new fishing year. This action is formulaic and is expected by industry. Given the low quota for GB yellowtail flounder in recent years, no trips have been allocated to this SAP from fishing year 2010 to fishing year 2019.

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. The Regular B DAS program closure implemented through this action will prevent an overage of the Incidental Catch TACs. Delay of this action would provide vessel owners an opportunity to participate in the Regular B DAS Program, but participation and catch in the program may cause the allocation to be exceeded.

For the reasons above, delay of this action for prior notice and the opportunity for public comment and the 30-day delayed effectiveness period would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

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

Dated: April 16, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–08510 Filed 4–21–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 78

Wednesday, April 22, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[EPA–R05–OAR–2020–0055; FRL–10008–28–Region 5]

Air Plan Approval; Ohio; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published March 23, 2020. On March 23, 2020, EPA proposed to remove the air pollution nuisance rule from the Ohio State Implementation Plan using the Clean Air Act error correction provision. In response to a request from a member of the public, EPA is extending the comment period for 30 days.

DATES: The comment period is extended to May 22, 2020.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–R05–OAR–2020–0055, to: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, *aburano.douglas@epa.gov.* Additional instructions to comment can be found in the notice of proposed rulemaking published March 23, 2020 (85 FR 16309).

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@epa.gov.*

Dated: April 14, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–08148 Filed 4–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2019–0400; FRL–10007–36–Region 7]

Air Plan Approval; Missouri; Removal of Control of Emissions From Bakery Ovens

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on December 3, 2018, and supplemented by letter on May 22, 2019. Missouri requests that the EPA remove from its SIP a rule related to control of emissions from bakery ovens in the Kansas City, Missouri area. This rescission does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before May 22, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2019–0400 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will 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 ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7714; email address *stone.william@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2019–0400 at *https://www.regulations.gov.* 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. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve the removal of 10 Code of State Regulation (CSR) 10–2.360, *Control of Emissions from Bakery Ovens,* from the Missouri SIP.

According to the May 22, 2019, letter from the Missouri Department of Natural Resources, available in the docket for this proposed action, Missouri rescinded 10 CSR 10–2.360, *Control of Emissions from Bakery Ovens* because the only source subject to the

rule ceased operations in 2001. The state asserts in their submission to the Agency that this rule is no longer necessary for attainment and maintenance of the 1979, 1997, or 2008 National Ambient Air Quality Standards (NAAQS) for Ozone.

III. Background

The EPA established a 1-hour ozone NAAQS in 1971. 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Clay, Platte and Jackson counties (hereinafter referred to in this document as the ''Kansas City Area'') in nonattainment of the 1971 1-hour ozone NAAQS,[1] as required by the CAA Amendments of 1977. 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. 44 FR 8202 (February 8, 1979). On February 20, 1985, the EPA notified Missouri that the SIP was substantially inadequate (hereinafter referred to as the ''SIP Call'') to attain the 1-hour ozone NAAQS in the Kansas City Area. *See* 50 FR 26198 (July 25, 1985).

To address the SIP Call, Missouri submitted an attainment demonstration on May 21, 1986, and volatile organic compound (VOC) control regulations on December 18, 1987. *See* 54 FR 10322 (March 13, 1989) and 54 FR 46232 (November 2, 1989). The EPA subsequently approved the revised control strategy for the Kansas City Area. *Id.* The EPA redesignated the Kansas City Area to attainment of the 1979 1-hour ozone standard on July 23, 1992. 57 FR 27939 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

Following the 1992 redesignation, a large uncontrolled commercial bakery located in Kansas City was identified by the state of Missouri. Since bakery operations emit significant amounts of ethanol, which is a VOC, Missouri developed a regulation based on EPA's Alternative Control Technology (ACT)[2] document which is designed to provide states with background information to assist them in developing RACT rules for this source category. Unlike a control technique guideline (CTG) document, however, the Bakery Oven ACT does not identify a presumptive norm for RACT. An achievable control level is identified, and states are given the flexibility to select control strategies. 10 Code of State Regulation (CSR) 10–2.360, *Control of Emissions from Bakery Ovens* was proposed June 6, 1995, and became effective in Missouri on November 30, 1995. The State submitted the rule as a SIP revision March 6, 1996. The EPA proposed to approve the SIP revision. 61 FR 40591 (August 5, 1996). As required by CAA section 172(b)(2), the rule was approved into the Missouri SIP. 63 FR 38755 (July 20, 1998).

As noted, 10 CSR 10–2.360, *Control of Emissions from Bakery Ovens,* was approved into the Missouri SIP as a RACT rule on July 20, 1998. 63 FR 38755 (July 20, 1998). At the time that the rule was approved into the SIP, 10 CSR 10–2.360 applied to new or modified or existing commercial bakeries whose potential emissions of VOCs are greater than one hundred (100) tons per year (tpy) in Clay, Jackson and Platte Counties in Missouri.

By letter dated December 3, 2018, Missouri requested that the EPA remove 10 CSR 10–2.360 from the SIP. Section 110(l) of the CAA prohibits EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. On May 22, 2019, the state supplemented its SIP revision with a letter in order to address the requirements of section 110(l) of the CAA.

IV. What is the EPA's analysis of Missouri's SIP revision request?

In its May 22, 2019 letter, Missouri states that it intended its RACT rules, such as 10 CSR 10–2.360, to solely apply to existing sources in accordance with section 172(c)(1) of the CAA[3]. Missouri clarified that although the applicability section of 10 CSR 10–2.360 states that the rule applies to new and existing installations (located within the Clay, Jackson and Platte Counties), the rule applied to a single existing source, the Wonder Bread factory in Kansas City, Missouri. This assertion is confirmed in the State Implementation Plan record in which the EPA approved this rule into the SIP in 1998.[4]

Missouri, in its May 22, 2019 letter, indicates that the Wonder Bread factory in Kansas City, Missouri ceased operations in 2001 and the emitting equipment was subsequently decommissioned. The EPA has confirmed that the facility was completely dismantled and is no longer operating.

As stated above, Missouri clarified that 10 CSR 10–2.360 may be removed from the SIP because section 172(c)(1) of the CAA requires RACT for existing sources, and because 10 CSR 10–2.360 was applicable to a single source that has permanently ceased operations and therefore the rule no longer reduces VOC emissions. Because the Wonder Bread factory in Kansas City, Missouri was the only source that was subject to the rule, and because the facility has been shut-down and dismantled and since 2001 no new bakery oven facilities have commenced operation in the area since Missouri developed this rule, the EPA is proposing to find that the rule no longer provides an emission reduction benefit to the Kansas City Area and is proposing to remove it from the SIP.

Missouri's May 22, 2019 letter states that any new sources or major modifications of existing sources are subject to new source review (NSR) permitting. Under NSR, a new major source or major modification of an existing source with a (potential to emit) PTE of 250 tons per year (tpy) or more of any NAAQS pollutant is required to obtain a Prevention of Significant Deterioration (PSD) permit when the area is in attainment or unclassifiable, which requires an analysis of Best Available Control Technology (BACT) in addition to an air quality analysis and an additional impacts analysis. Sources with a PTE greater than 100 tpy, but less than 250 tpy, are required to obtain a minor permit in accordance with Missouri's New Source Review permitting program, which is approved into the SIP.[5] The EPA agrees with this analysis.

Missouri's May 22, 2019, letter also includes information concerning ozone air quality in the Kansas City area from 1996 through 2018 that indicates a downward trend in monitored ozone design values. Missouri states that despite promulgation of more stringent ozone NAAQS in 1997, 2008 and 2015, the Kansas City area continues to monitor attainment. The EPA has confirmed that certified ambient air quality data for Kansas City Area as monitored at the Rocky Creek, Clay County State and local air monitoring station is compliant with the most recent ozone standard—the 2015 ozone

[1] Missouri's May 22, 2019 letter incorrectly states that the Kansas City area was designated as a nonattainment area for the 1979 ozone NAAQS in 1978.

[2] *https://www3.epa.gov/airquality/ctg_act/199212_voc_epa453_r-92-017_bakery_ovens.pdf.*

[3] The EPA agrees with Missouri's interpretation of CAA Section 172(c)(1) in regards to whether RACT is required for existing sources, but also notes that the State regulation establishing RACT may apply to new sources as well, dependent upon the State regulation's language.

[4] *https://www.govinfo.gov/content/pkg/FR-1998-07-20/html/98-19134.htm.*

[5] EPA's latest approval of Missouri's NSR permitting program rule was published in the **Federal Register** on October 11, 2016. 81 FR 70025.

NAAQS.[6] The 2016–2018 design value for that monitor is 70 parts per million.[7]

Because Missouri has demonstrated that removal of 10 CSR 10–2.360 will not interfere with attainment of the NAAQS, Reasonable Further Progress (RRF)[8] or any other applicable requirement of the CAA because the single source subject to the rule has permanently ceased operations and removal of the rule will not cause VOC emissions to increase, and any new source would be required to go through the appropriate permitting process that is protective of the NAAQS, the EPA proposes to approve removal of 10 CSR 10–2.360 from the SIP.

V. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 28, 2018, to April 5, 2018 and held a public hearing on March 29, 2018. Missouri received five comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(l) of the CAA. Missouri's May 22, 2019 letter addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to rescind 10 CSR 2.360 from the SIP because the rule applied to a single source that has permanently ceased operations. Any new sources or major modifications of existing sources in the Kansas City Area are subject to NSR permitting. Additionally, the maintenance period for the 1979 ozone NAAQS for the Kansas City Area ended in 2014 and the area continues to monitor attainment of the 2015 Ozone NAAQS. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VIII. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: April 3, 2020.

Edward Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

§ 52.1320 [Amended]

■ 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry ''10–2.360'' under the heading ''Chapter 2-Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area''.

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BILLING CODE 6560–50–P

[6] In accordance 40 CFR part 50.19(b), the 2015 8-hour primary O_3 NAAQS is met at an ambient air quality monitoring site when 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.070 ppm, as determined in accordance with appendix U to 40 CFR part 50.

[7] The monitoring data was reported, quality assured, and certified in accordance with the requirements set forth in 40 CFR part 58.

[8] RFP is not applicable to the Kansas City Area because the area is in attainment of all applicable ozone standards.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0042; FRL–10007–90–Region 3]

Air Plan Disapproval; Maryland; Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove part of a Maryland state implementation plan (SIP) submission as inadequate to meet certain Clean Air Act (CAA) interstate transport requirements for the 2010 primary sulfur dioxide National Ambient Air Quality Standard (SO_2 NAAQS). Specifically, EPA proposes to find that the Maryland SIP submission does not contain adequate provisions prohibiting emissions from Maryland sources which will contribute significantly to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

DATES: Written comments must be received on or before May 22, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0042 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at *goold.megan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1), states must submit ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' a plan that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. This SIP submission is generally referred to as an ''infrastructure SIP.'' The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address to meet the infrastructure requirements. Among the section 110(a)(2) requirements are the requirements under section 110(a)(2)(D)(i)(I) for states to include adequate provisions in their SIPs that prohibit emissions within the state which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to a NAAQS. This infrastructure element related to interstate transport of SO_2 is the subject of this proposed rulemaking action.

II. Relevant Factors To Evaluate 2010 SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources, interstate transport of SO_2 is unlike the transport of fine particulate matter ($PM_{2.5}$) or ozone, in that SO_2 is not a regional pollutant and does not commonly contribute to widespread nonattainment over a large (and often multi-state) area. The transport of SO_2 is more analogous to the transport of lead (Pb) because its physical properties result in localized pollutant impacts very near the emissions source. However, ambient concentrations of SO_2 do not decrease as quickly with distance from the source as Pb because of the physical properties and typical release heights of SO_2. Emissions of SO_2 travel farther and have wider ranging impacts than emissions of Pb but do not travel far enough to be treated in a manner similar to ozone or $PM_{2.5}$. The approaches that the EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused and the approach for Pb transport is too tightly circumscribed to the source to serve as a model for SO_2 transport. SO_2 transport is therefore a unique case and requires a different approach.

In this proposed rulemaking, as in prior SO_2 transport analyses, EPA focuses on a 50 kilometer-wide zone around large stationary sources of SO_2 because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that diminish with distance. Given the physical properties of SO_2, EPA selected the ''urban scale''—a spatial scale with dimensions from 4 to 50 kilometers (km) from point sources—given the usefulness of that range in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources.[1] As such, EPA utilized an assessment up to 50 km from point sources in order to assess trends in area-wide air quality that might impact downwind states.

III. Summary of State SIP Revision

On August 17, 2016, Maryland, through the Maryland Department of the Environment (MDE), submitted a SIP revision, consistent with EPA guidance, to satisfy most of the infrastructure requirements of CAA section 110(a)(2) for the 2010 SO_2 NAAQS.[2]

On May 8, 2019 (84 FR 20070), EPA proposed approval of Maryland's infrastructure SIP submittal for the 2010

[1] For the definition of spatial scales for SO_2, see 40 CFR part 58, appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how EPA is applying these definitions with respect to interstate transport of SO_2, see EPA's proposal on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[2] Consistent with ''Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013. The Maryland SIP submission addressed all of the infrastructure requirements of section 110(a)(2) except for requirements concerning nonattainment new source review permit programs under 110(a)(2)(C) and the nonattainment planning requirements under part D, title I of the CAA found at 110(a)(2)(I). These elements are not subject to the same three-year deadline for adoption as the other 110(a)(2) requirements.

1-hour SO_2 NAAQS for all of the submitted applicable elements of section 110(a)(2) with the exception of 110(a)(2)(D)(i)(I), which are the interstate transport elements. In that action, EPA stated that it would act on the interstate transport elements in a future action. This proposed rulemaking action addresses those interstate transport elements.

In Maryland's August 17, 2016 SIP submittal, MDE discusses various State and Federal measures which it asserts prohibit Maryland sources from emitting SO_2 at levels which would contribute significantly to nonattainment or interfere with maintenance of the SO_2 NAAQS in another state, including: (1) The Healthy Air Act (HAA), which was enacted in 2006, as well as its implementing regulations at Code of Maryland Regulations (COMAR) 26.11.27 (adopted into the SIP in 2017 (73 FR 51599)), which require reductions in total emissions of SO_2 from electric generating units (EGUs); (2) a July 11, 2013 consent decree between Holcim, Incorporated and the U.S. government which requires Holcim to replace units at its Hagerstown, Maryland facility and install controls with significant SO_2 reductions; and (3) the State's Regional Haze SIP, approved by EPA on July 6, 2012 (77 FR 39938), which reduces SO_2 from Maryland sources subject to Best Available Retrofit Technology (BART) requirements.

Maryland also considered four existing SO_2 nonattainment areas in Pennsylvania, West Virginia, and Ohio, as well as one area in Ohio that was not yet characterized at the time of Maryland's August 17, 2016 submittal but that Maryland considered a potential nonattainment area. Maryland determined that the distance from Maryland state borders to the existing nonattainment areas or to the potential nonattainment area was beyond the range of concern for transported SO_2 emissions.[3] Likewise, Maryland considered a potential nonattainment area in the State that had not yet been characterized and determined that the distance (39 miles or approximately 63 km) from the large SO_2 sources in that uncharacterized area to a neighboring state was also beyond the range of concern for SO_2 transport.

IV. EPA's Analysis of Maryland's Submittal

The EPA generally agrees that the Federally enforceable measures described in Maryland's August 17, 2016 SIP submittal have contributed to reductions of SO_2 emissions at specific sources throughout the State. However, the submittal does not address SO_2 emissions from the Luke Paper Mill (Luke) that current ambient monitoring data demonstrate as contributing significantly to nonattainment of the 2010 SO_2 NAAQS in West Virginia.

On August 21, 2015 (80 FR 51052), EPA promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR requires state and local air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO_2 NAAQS, including designations of the remaining undesignated areas that must be completed by December 31, 2020 (''round 4''), as well as for other CAA programs. New source-oriented monitors were required to be operational by January 1, 2017.

Luke, in Allegany County, Maryland, is a source of SO_2 emissions located on the West Virginia state border. Luke emitted greater than 2,000 tons of SO_2 in 2014 and was therefore required to be characterized pursuant to the DRR. Maryland elected to install new source-oriented monitors to capture the maximum impacts from Luke.[4] Two monitors were installed in Allegany County, Maryland, and one monitor was installed in Mineral County, West Virginia. These three monitors were installed in accordance with EPA's Source-Oriented Monitoring Technical Assistance Document[5] as described in Maryland's Annual Monitoring Network Plan (AMNP) for Calendar Year 2017 and the accompanying Addendum, which were both approved by EPA on November 10, 2016.[6]

The three source-oriented monitors around the Luke facility began operating after this SIP was submitted in 2016. The two Maryland monitors began operating on January 11, 2017 and the West Virginia monitor began operating on February 24, 2017.

Table 1 shows the certified 99th percentile of daily maximum 1-hour concentrations at the three new monitors for 2017 and 2018, as well as the preliminary 99th percentile concentration for 2019.[7] The 2019 data is preliminary because it has not yet been quality assured and certified. Maryland is required to certify the 2019 data for all three monitors by May 1, 2020.

TABLE 1—MONITORED SO_2 CONCENTRATIONS, IN ppb, AROUND LUKE[8]

County, state	Monitor ID	2017 99th percentile	2018 99th percentile	Preliminary 2019 99th percentile	Preliminary 2017–19 average (design value)
Mineral, WV	54–057–8883	186.8	203.3	134.9	175
Allegany, MD	24–001–8881	88.8	105.7	71.7	89
Allegany, MD	24–001–8882	152.3	172.5	144	156

[3] The distance from Maryland's nearest border to the Allegheny County, Pennsylvania SO_2 nonattainment area is 49 miles (approximately 79 km), to the Indiana, Pennsylvania SO_2 nonattainment area is 59 miles (approximately 95 km), to the Marshall, West Virginia SO_2 nonattainment area is 69 miles (approximately 111 km) and to the Weirton-Steubenville, Ohio-West Virginia SO_2 nonattainment area is 78 miles (approximately 126 km). The distance from Maryland's state border to Ohio's potential nonattainment area is 142 miles (approximately 229 km).

[4] Maryland's 2016 Annual Monitoring Network Plan details the modeling used to site the three new monitors around the Luke Paper facility. Through that plan, EPA approved the new monitor locations.

[5] See EPA's SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document (TAD), February 2016, at *https://www3.epa.gov/airquality/so2implementation/SO2MonitoringTAD.pdf.*

[6] As required by 40 CFR 58.10, Maryland submits an AMNP annually to EPA that details any modifications to the monitoring network. The AMNPs for calendar years 2017–2019 are provided in the docket for this rulemaking. EPA's approval of each AMNP is included in the subsequent year's AMNP in the docket.

[7] To certify monitoring data, state or local air agencies upload their data to the EPA Air Quality System (AQS) for the year, review their data, correct it as needed, and ''certify'' their data in the system.

[8] Data source: EPA AQS, *https://www.epa.gov/aqs.*

A monitoring site in an area is determined to be meeting the 2010 primary 1-hour SO_2 NAAQS when the 99th percentile of the daily maximum 1-hour average concentrations, averaged over three years, does not exceed 75 ppb (40 CFR 50.17(b)). Two years of certified data shows the 2017 and 2018 99th percentile concentrations at the Mineral County, West Virginia monitor as 186.8 ppb and 203.3 ppb, respectively. The preliminary 2019 99th percentile 1-hour maximum concentration and the projected design value using the preliminary 2019 99th percentile 1-hour maximum concentration are also shown in the table. The preliminary 2017–2019 design value at the Mineral County, West Virginia monitor is 175 ppb, using certified 2017–2018 data and preliminary 2019 data. This monitor would not show levels meeting the standard regardless of the certified 99th percentile value for 2019 because even if the 99th percentile value for 2019 was zero, the 3-year design value would still violate the NAAQS ((186.8 ppb + 203.3 ppb + 0 ppb)/3 = 130.03 ppb). This means it is mathematically impossible for this monitor to show attainment with the 2010 SO_2 NAAQS.

Luke is the only source [9] that emits greater than 100 tpy of SO_2 in the area near the Mineral County, West Virginia monitor.[10] Based on the information contained in this notice, EPA proposes to conclude that Luke is impacting a violation of the NAAQS in the neighboring state of West Virginia. Therefore, EPA proposes that Luke significantly contributes to projected nonattainment in West Virginia. EPA is aware that Luke has ceased operations as of June 2019, however, as of the date of this action, Luke has not surrendered its permit(s) and there are no Federally enforceable measures in Maryland's SIP to prevent Luke from restarting operations and emitting SO_2 at levels that contribute significantly to nonattainment or interfere with the maintenance of the 2010 SO_2 NAAQS in West Virginia.

V. Proposed Action

EPA is proposing to determine that the portion of the August 17, 2016 Maryland SO_2 infrastructure SIP submittal addressing CAA section 110(a)(2)(D)(i)(I) (the interstate transport of pollution) is not approvable because it does not include measures addressing the SO_2 emissions from the Luke Paper Mill in Maryland that, based on the available information described herein, EPA believes will contribute significantly to the projected nonattainment in West Virginia or will interfere with maintenance of the 2010 SO_2 NAAQS.

VI. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211. (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of

[9] While there are other SO_2 emissions sources near the primary Luke facility and its associated source-oriented monitors, these smaller sources are either also owned by Luke, have low SO_2 emissions compared to the primary Luke facility, or are located a far enough distance away that they are likely not significant contributors to the violating monitors given the nature of SO_2 dispersion described in section II.

[10] There is a SO_2 source about 35 km away in neighboring Grant County, West Virginia, that was required to be characterized pursuant the DRR. In Round 3 of SO_2 designations, EPA designated the area around Dominion Resources, Mt. Storm Power Station as Attainment/Unclassifiable based on modeling performed by the State of West Virginia. This modeling projected the peak impacts from the Mt. Storm plant to be south of the facility, away from the area around the Luke facility. See ''Technical Support Document: Chapter 43 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for West Virginia'' at *https://www.epa.gov/sites/production/files/2017-08/documents/43_wv_so2_rd3-final.pdf.* See also ''Technical Support Document: Chapter 43 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for West Virginia'' at *https://www.epa.gov/sites/production/files/2017-12/documents/43-wv-so2-rd3-final.pdf.*

the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: April 13, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–08240 Filed 4–21–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2020–0088; FRL–10007–55–Region 9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, Federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is inappropriate and potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. The intended effect of this proposal is to delete these rules to make the SIP consistent with the Clean Air Act (CAA or ''Act''). The EPA is also proposing to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.

DATE: Comments must be received on or before May 22, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0088 at *http://www.regulations.gov,* or via email to Kevin Gong, at *gong.kevin@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Kevin Gong, Rules Office (AIR–3–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3073, or by email at *gong.kevin@epa.gov.*

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

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I. Background

In this rulemaking, we address certain errors made over the years in connection with EPA actions on SIP revisions for the various air pollution control districts in California. In the first rule, published at 84 FR 45422 (August 29, 2019), we addressed errors associated with EPA actions on SIP revisions for the districts with names beginning with the letter A through the letter O. This proposed action follows the first action and addresses errors associated with EPA actions for the rest of the districts, *i.e.,* those with names beginning with the letter P through the letter Z.

II. Why is the EPA proposing to correct the SIP?

The Clean Air Act was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to the EPA for incorporation into the SIP to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, the EPA's review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review. We now recognize that many of these elements

were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

A. Rules that prohibit emissions causing general nuisance or annoyance in the community.[1] Such rules address local issues but have essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). *See* CAA section 110(a)(1).

B. Local adoption of federal NSPS or NESHAP requirements either by reference or by adopting text identical to or modified from the requirements found in 40 CFR part 60 (''Standards of Performances for New Stationary Sources'') or 61 (''National Emission Standards for Hazardous Air Pollutants''). Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

C. Rules that govern local hearing board procedures and other administrative requirements such as fees, frequency of meetings, salaries paid to board members, and procedures for petitioning for a local hearing.

D. Variance provisions that provide for modification of the requirements of the applicable SIP. State- or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a state or local rule under certain conditions. Pursuant to Federal law, specifically section 110(i) of the CAA, 42 U.S.C. 7410(i), neither the EPA nor a state may revise a SIP by issuing an ''order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan'' without a plan promulgation or revision. The EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent the EPA from enforcing the underlying SIP provisions unless and until the EPA approves that variance as a SIP revision. The variance provisions included in today's action are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on federal enforceability unless the variance is submitted to and approved by the EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval to modify the substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association* v. *Browner,* No. 97–71117 (9th Cir., May 26, 2000).

E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

III. What is the EPA's authority to correct erors in SIP rulemakings?

Section 110(k)(6) of the CAA, as amended in 1990, provides that, whenever the EPA determines that the EPA's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. *See* 57 FR 56762, at 56763 (November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

IV. Which rules are proposed for deletion?

The EPA has determined that the rules listed in table 1 below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the state and approved by the EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under CAA section 110(k)(6) as inconsistent with the requirements of CAA section 110.[2] A brief discussion of the proposed deletions is provided in the following paragraphs.

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION

Rule or regulation	Title	Submittal date	EPA approval
Placer County Air Pollution Control District (APCD)			
Section 51	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Sacramento Metropolitan Air Quality Management District (AQMD)			
Rule 112	New Source Performance Standards.	November 3, 1975	42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977).

[1] An example of such a rule is as follows: A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

[2] The EPA has coordinated with the California Air Resources Board (CARB) to identify district rules appropriate for deletion from the California SIP. CARB has agreed that the deletion of the rules in table 1 pursuant to CAA section 110(k)(6) is appropriate. See letter from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, January 31, 2020.

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION—Continued

Rule or regulation	Title	Submittal date	EPA approval
Rule 113	National Emission Standards for Hazardous Air Pollutants.	November 3, 1975	42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977).
San Diego County APCD			
Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
San Joaquin Valley Unified APCD			
Fresno County APCD Rule 111	Arrests and Notices to Appear	October 23, 1974	42 FR 42219 (August 22, 1977).
Fresno County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Fresno County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Kings County APCD Rule 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Kings County APCD Rule 420	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Madera County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Madera County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Madera County APCD Rule 511	Notice of Hearing	October 15, 1979	46 FR 60202 (December 9, 1981).
Merced County APCD Rule 418	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Merced County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Merced County APCD Rule 511	Notice of Hearing	August 2, 1976	43 FR 25689 (June 14, 1978).
San Joaquin County APCD Rule 418.	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
San Joaquin County APCD Rule 419.	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Stanislaus County APCD Rule 418	Emissions in General	July 19, 1974	42 FR 25501 (May 18, 1977); corrected at 42 FR 42219 (August 22, 1977).
Stanislaus County APCD Rule 419	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Stanislaus County APCD Rule 505	Petitions for Variances	July 19, 1974	42 FR 25501 (May 18, 1977); corrected at 42 FR 42219 (August 22, 1977).
Tulare County APCD Section 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Tulare County APCD Section 420	Exception	October 23, 1974	42 FR 42219 (August 22, 1977).
Tulare County APCD Section 507	Supplemental Information	February 21, 1972	37 FR 10842 (May 31, 1972).
Tulare County APCD Section 508	Matters Initiated by Control Officer or Hearing Board.	February 21, 1972	37 FR 10842 (May 31, 1972).
Tulare County APCD Section 515	Record of Proceedings	February 21, 1972	37 FR 10842 (May 31, 1972).
San Luis Obispo County APCD			
Rule 111	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Santa Barbara County APCD			
Rule 17	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Shasta County AQMD			
Rule 4:2	General	November 21, 1986	54 FR 14648 (April 12, 1989).
Siskiyou County APCD			
Rule 4.2	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 4.2–1	Exceptions	March 23, 1988	54 FR 43174 (October 23, 1989).
South Coast AQMD			
Orange County APCD Rule 45	Permit Fees—Open Burning	June 30, 1972	37 FR 19812 (September 22, 1972).

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION—Continued

Rule or regulation	Title	Submittal date	EPA approval
San Bernardino County APCD Rule 120.	Fees	February 21, 1972	37 FR 10842 (May 31, 1972).
Tehama County APCD			
Rule 4:4	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Tuolumne County APCD			
Rule 205	Nuisance	July 22, 1975	42 FR 42219 (August 22, 1977).
Rule 703	Contents of Petitions	October 23, 1981	47 FR 23159 (May 27, 1982).
Rule 710	Notice of Public Hearing	October 23, 1981	47 FR 23159 (May 27, 1982).
Ventura County APCD			
Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Yolo-Solano AQMD			
Rule 2.5	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 2.6	Additional Exception	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 5.1	Applicable Articles of the Health and Safety Code.	June 22, 1978	44 FR 5662 (January 29, 1979).

Placer County Air Pollution Control District (APCD)

Placer County APCD Section 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Section 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Section 51 from the Placer County APCD portion of the California SIP.

Sacramento Metropolitan Air Quality Management District (AQMD)

Sacramento Metropolitan AQMD Rules 112 (New Source Performance Standards) and 113 (National Emission Standards for Hazardous Air Pollutants) require sources to comply with the applicable provisions of the NSPS and NESHAPS promulgated in 40 CFR parts 60 and 61. Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it was not appropriate to make parallel local authorities federally enforceable by approving Rules 112 and 113 into the Sacramento Metropolitan AQMD portion of the California SIP. In this action, we are proposing to delete Rules 112 and 113 from the Sacramento Metropolitan AQMD portion of the California SIP.

San Diego County APCD

San Diego County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 51 from the San Diego County APCD portion of the California SIP.

San Joaquin Valley Unified APCD

Established in 1991, the San Joaquin Valley Unified APCD unified Fresno County APCD, Kern County APCD (San Joaquin Valley portion of Kern County), Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD into a single unified APCD. The San Joaquin Valley Unified APCD portion of the applicable California SIP continues to include certain rules originally adopted by the individual county APCDs and approved by the EPA prior to the establishment of the unified APCD. The following individual county rules are general-nuisance type of prohibitory rules, and were inappropriate for inclusion in the SIP and, thus, were approved by the EPA in error: Fresno County APCD Rule 418 (Nuisance), Kings County APCD Rule 419 (Nuisance), Madera County ACPD Rule 418 (Nuisance), Merced County APCD Rule 418 (Nuisance), San Joaquin County APCD Rule 418 (Nuisance), Stanislaus County APCD Rule 418 (Emissions in General) and Tulare County APCD Section 419 (Nuisance). The following individual county rules provide an exception to the general nuisance rules cited above, and should be deleted if the general nuisance rules are deleted: Fresno County APCD Rule 419 (Exception), Kings County APCD Rule 420 (Exception), Madera County ACPD Rule 419 (Exception), Merced County APCD Rule 419 (Exception), San Joaquin County APCD Rule 419 (Exception), Stanislaus County APCD Rule 419 (Exception) and Tulare County APCD Section 420 (Exception).

In addition, Madera County APCD Rule 511 (Notice of Hearing), Merced County APCD Rule 511 (Notice of Hearing), Stanislaus County APCD Rule 505 (Petitions for Variances) and Tulare County APCD Sections 507 (Supplemental Information), 508 (Matters Initiated by Control Officer or Hearing Board) and 515 (Record of Proceedings) relate to hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete the above county rules from the San Joaquin Valley Unified APCD portion of the California SIP.

Lastly, at 66 FR 47603, at 47608–47609 (September 13, 2001), the EPA proposed to delete Fresno County APCD Rule 111 (Arrests and Notices to Appear), submitted on June 4, 1986, along with all the other county rules titled ''Arrests and Notices to Appear.'' At 67 FR 2573 (January 18, 2002), the EPA finalized the deletion of the other county rules titled ''Arrests and Notices to Appear'' but did not finalize the deletion of Fresno County Rule 111 because we realized that the June 4, 1986 version of Rule 111 was not approved into the SIP. *See* 67 FR 2573, at 2575 (January 18, 2002). In this action, we are proposing to delete the version of Fresno County Rule 111

(Arrests and Notices to Appear) that is part of the applicable California SIP, *i.e.,* the version of Fresno County APCD Rule 111 that was submitted on October 23, 1974, and approved at 42 FR 42219 (August 22, 1977), to be consistent with our action on the other corresponding county rules.

San Luis Obispo County APCD

San Luis Obispo County APCD Rule 111 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 111 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 111 from the San Luis Obispo County APCD portion of the California SIP.

Santa Barbara County APCD

Santa Barbara County APCD Rule 17 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 17 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 17 from the Santa Barbara County APCD portion of the California SIP.

Shasta County AQMD

Shasta County AQMD Rule 4:2 (General) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rule 4:2 from the Shasta County AQMD portion of the California SIP.

Siskiyou County APCD

Siskiyou County APCD Rule 4.2 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4.2 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Siskiyou County APCD Rule 4.2–1 (Exceptions) provides an exception to Rule 4.2 and should be deleted if Rule 4.2 is deleted. In this action, we are proposing to delete Rules 4.2 and 4.2–1 from the Siskiyou County APCD portion of the California SIP.

South Coast AQMD

The South Coast AQMD includes all of Orange County, the non-desert portions of Los Angeles and San Bernardino counties, and all of Riverside County (except for the Palo Verde Valley in far eastern Riverside County). In 1972, when the original California SIP was submitted and approved by EPA, the Los Angeles County APCD, Orange County APCD, Riverside County APCD and San Bernardino County APCD each had jurisdiction over stationary sources within their respective counties. On July 16, 1975, the Los Angeles County APCD, Orange County APCD, Riverside County APCD, and San Bernardino County APCD were unified into the Southern California APCD. On February 1, 1977, the State of California split the Southern California APCD into the South Coast AQMD in the western coastal area (including Orange County, and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties, referred to as the ''South Coast Air Basin'') and three separate APCDs (*i.e.,* Los Angeles County APCD, San Bernardino County APCD, and Riverside County APCD, included within the ''Southeast Desert Air Basin''), formed out of the remaining parts of three counties in the eastern desert area. See 43 FR 25684 (June 14, 1978). The Southeast Desert portion of Riverside County was added to the South Coast AQMD on December 1, 1977. On July 1, 1994, the Palo Verde Valley area of Riverside County left the South Coast AQMD and joined the Mojave Desert AQMD.

Certain rules adopted by the original county-based APCDs remain part of the applicable SIP for the South Coast AQMD (*i.e.,* have not been deleted or superseded by EPA-approved rules adopted by the Southern California APCD or South Coast AQMD), including Orange County APCD Rule 45 (Permit Fees—Open Burning) and San Bernardino County APCD Rule 120 (Fees). Orange County APCD Rule 45 and San Bernardino County APCD Rule 120 are local fee provisions that were not appropriate for inclusion in the SIP, and thus, were approved by the EPA in error. In this action, we are proposing to delete Orange County APCD Rule 45 and San Bernardino County APCD Rule 120 from the South Coast AQMD portion of the California SIP.

Tehama County APCD

Tehama County APCD Rule 4:4 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4:4 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 4:4 from the Tehama County APCD portion of the California SIP.

Tuolumne County APCD

Tuolumne County APCD Rule 205 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Tuolumne County APCD Rules 703 (Contents of Petitions) and 710 (Notice of Public Hearing) relate to hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 205, 703 and 710 from the Tuolumne County APCD portion of the California SIP.

Ventura County APCD

Ventura County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 51 from the Ventura County APCD portion of the California SIP.

Yolo-Solano AQMD

Yolo Solano AQMD Rule 2.5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 2.5 was inappropriate for inclusion in the SIP, and thus, was approved by the EPA in error. Yolo-Solano AQMD Rule 2.6 (Additional Exception) provides an exception to Rule 2.5 and should be deleted if Rule 2.5 is deleted. Yolo-Solano AQMD Rule 5.1 (Applicable Articles of the Health and Safety Code) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 2.5, 2.6 and 5.1 from the Yolo-Solano AQMD portion of the California SIP.

V. What other corrections is the EPA proposing to make?

The EPA is also proposing certain error corrections not because the rules were originally approved into the SIP in error but because of other types of errors made in the course of the SIP rulemaking action. Each such proposal is described in the following paragraphs.

Placer County APCD

Publisher's Error in Connection with Approval of Rule 243 (Polyester Resin Operations): On October 3, 2011 (76 FR 61057), the EPA approved Placer County Rule 243 (Polyester Resin Operations), as submitted on December 7, 2010, and the amendatory instructions listed the approval of Rule 243 correctly at 40 CFR 52.220(c)(389)(i)(B)(1). However, due to a publisher's error, the approval of Placer County APCD Rule 243 is listed at 40 CFR 52.220(c)(390)(i)(B)(1). We are proposing to correct this error by amending the two paragraphs in 40 CFR 52.220(c) accordingly.

San Diego County APCD

Erroneous Listing of Certain Rules as San Diego County APCD Rules: On June

2, 1977 (42 FR 28122), the EPA took final action to approve Rules 112 and 113 adopted by the Sacramento Metropolitan AQMD and codified the approval at 40 CFR 52.220(c)(29)(v)(B). On August 22, 1977 (42 FR 42219), the EPA redesignated the paragraph listing the approval of Sacramento Metropolitan AQMD Rules 112 and 113 to 40 CFR 52.220(c)(29)(ii)(B) but failed to delete 40 CFR 52.220(c)(29)(v)(B). *See* 42 FR 42219, at 42225 (August 22, 1977). Paragraph 40 CFR 52.220(c)(29)(v) lists EPA-approved rules adopted by the San Diego County APCD, and the failure to delete 40 CFR 52.220(c)(29)(v)(B) makes it appear that Rules 112 and 113 are part of the San Diego County APCD portion of the applicable SIP but, as explained herein, they are not. Today, we are proposing to delete 40 CFR 52.220(c)(29)(v)(B).

Failure to Codify Approval of Amendments to San Diego County APCD Rule 20.1: On July 6, 1982 (47 FR 29231), the EPA took final action to approve certain rules adopted by the San Diego County APCD, including amendments to Rule 20.1 (Definitions, Emission Calculations, Emission Offsets and Banking, Exemptions, and Other Requirements), submitted on January 28, 1981. However, we failed to codify the approval of Rule 20.1 at 40 CFR 52.220(c)(98)(xi), the subsection listing San Diego County APCD rules submitted on January 28, 1981 and approved by the EPA. We propose to do so in today's action. We note that the amendments to Rule 20.1 that were approved on July 6, 1982, were recently superseded in the applicable San Diego County APCD portion of the California SIP by approval of a further amended version of Rule 20.1 (New Source Review—General Provisions) at 83 FR 50007 (October 4, 2018).

Publisher's Error Deleting Codification of Approval of San Diego County APCD Rule 67.0: On June 30, 1993 (58 FR 34904), the EPA took final action to approve San Diego County Rule 67.0 (Architectural Coatings), adopted on December 4, 1990, as a revision to the California SIP. We codified the approval at 40 CFR 52.220(c)(184)(i)(D)(1) but failed to include introductory text identifying the San Diego County APCD as the relevant air pollution control agency associated with Rule 67.0. On August 4, 2000 (65 FR 47862), we added introductory text identifying San Diego County APCD at 40 CFR 52.220(c)(184)(i)(D) but, due to a publisher's error, the regulatory text listing the approval of Rule 67.0 was erroneously deleted. While the December 4, 1990 version of San Diego County APCD Rule 67.0 has since been superseded in the applicable California SIP, we propose to re-instate 40 CFR 52.220(c)(184)(i)(D)(1) to maintain an accurate accounting of the version of Rule 67.0 that applied for federal enforcement purposes at different times in the past.

Erroneous Codification of Approval of San Diego County APCD Rule 67.11: On April 11, 2013 (78 FR 21537), the EPA took final action to approve San Diego County APCD Rule 67.11 (Wood Products Coating Operations), submitted on September 21, 2012. We erroneously codified the approval of Rule 67.11 at 40 CFR 52.220(c)(307), which lists approved rules submitted on November 19, 2002. We propose to redesignate the paragraph listing the approval of Rule 67.11 from 40 CFR 52.220(c)(307) to 40 CFR 52.220(c)(423), which lists approved rules submitted on September 21, 2012.

San Joaquin Valley Unified APCD

Failure to Include Introductory Text for Approval of Rules Submitted on May 13, 1980, including Fresno County APCD Rules 410, 411.1 and 416.1: On May 13, 1980, the California Air Resources Board (CARB) submitted certain amended rules to the EPA as a revision to the California SIP, including Fresno County Rules 410 (Storage of Organic Liquids), 411.1 (Transfer of Gasoline into Vehicle Fuel Tanks—Phase II) and 416.1 (Agricultural Burning). We codified our approval of the rules submitted on May 13, 1980, at 40 CFR 52.220(c)(83), *see, e.g.,* 47 FR 29668 (July 8, 1982) (Approval of Fresno County APCD Rule 410) and 46 FR 60202 (December 9, 1981) (Approval of Fresno County APCD Rules 411.1 and 416.1), but inadvertently failed to identify the submittal date and, in two instances, failed to identify the applicable air pollution control district for the approved rules as the Bay Area AQMD and the Fresno County APCD, respectively. In this action, we propose to add introductory text to 40 CFR 52.220(c)(83) specifying a submittal date of May 13, 1980, and to properly designate subparagraph (i) as the Bay Area AQMD and subparagraph (iii) as the Fresno County APCD.

Publisher's Error in Connection with Supersession of San Joaquin County APCD Rules 413.2 and 413.3: On September 23, 2010 (75 FR 57862), the EPA approved San Joaquin Valley Unified APCD Rules 4453 (Refinery Vacuum Producing Devices or Systems) and 4454 (Refinery Process Unit Turnaround) and codified the supersession of the relevant county-level APCD SIP rules, including San Joaquin County APCD Rules 413.2 (Refinery Vacuum Producing Devices) and 413.3 (Refinery Process Unit Turnaround) in the existing SIP. The codification of the supersession of San Joaquin County APCD Rules 413.2 and 413.3 was intended to be published at paragraph 40 CFR 52.220(c)(52)(vii), which lists San Joaquin County APCD rules, but, due to a publisher's error, it was published instead at paragraph 40 CFR 52.220(c)(52)(vi), which lists rules adopted by Merced County APCD. In this action, we propose to redesignate paragraph 40 CFR 52.220(c)(52)(vi)(D) as paragraph 40 CFR 52.220(c)(52)(vii)(D) to correct this error.

Erroneous Amendatory Instruction Related to Approval of San Joaquin County APCD Rules 409.7 and 409.8: On June 18, 1982 (47 FR 26384), the EPA took final action to approve certain regulations adopted by the San Joaquin County APCD, including Rules 409.7 (Graphic Arts) and 409.8 (Perchloroethylene Dry Cleaning Systems), submitted on July 14, 1981. Due to erroneous amendatory instructions, the approval of San Joaquin County APCD Rules 409.7 and 409.8 was published as subparagraph (B) under paragraph 40 CFR 52.220(c)(102)(ii), which lists rules adopted by the Stanislaus County APCD, instead of subparagraph (B) under paragraph 40 CFR 52.220(c)(102)(i), which lists rules adopted by the San Joaquin County APCD. In this action, we propose to redesignate paragraph 40 CFR 52.220(c)(102)(ii)(B) as 40 CFR 52.220(c)(102)(i)(B) to correct this error.

Santa Barbara County APCD

Erroneous Codification of Approval of Santa Barbara County APCD Rule 337: On April 11, 2013 (78 FR 21537), the EPA took final action to approve Santa Barbara County APCD Rule 337 (Surface Coating of Aerospace Vehicles and Components), submitted on September 21, 2012. We erroneously codified the approval of Rule 337 at 40 CFR 52.220(c)(214), which lists approved rules submitted on January 24, 1995. We propose to redesignate the paragraph listing the approval of Rule 337 from 40 CFR 52.220(c)(214) to 40 CFR 52.220(c)(423), which lists approved rules submitted on September 21, 2012.

Inadvertent Failure to Add Introductory Text in Connection with Approval of Santa Barbara County APCD Rule 316: On August 30, 1993 (58 FR 45442), the EPA took final action to approve Santa Barbara County APCD Rule 316 (Storage and Transfer of Gasoline), submitted on April 5, 1991, and codified the approval at 40 CFR 52.220(c)(183)(i)(E)(2) but inadvertently

failed to add introductory text identifying Santa Barbara County APCD as the applicable air district for approved rules listed under paragraph (E). In this action, we propose to revise 40 CFR 52.220(c)(i)(E) to add ''Santa Barbara County Air Pollution Control District'' to clarify the applicability of Rule 316 listed in subparagraph (E)(2).

Shasta County AQMD

Typographical Error in Connection with Deletion of Shasta County AQMD Rule 2:19: On January 22, 2004 (69 FR 3045, at 3053), the EPA proposed to delete various local rules from the California SIP, including a Shasta County AQMD rule titled ''Change in Multi-Component System.'' However, due to a typographical error, the rule titled ''Change in Multi-Component System'' was identified as Rule 2:22. The correct rule number is Rule 2:19. On November 16, 2004 (69 FR 67062), the EPA took final action to delete the rule and carried forward the typographical error in regulatory text found at 40 CFR 52.220(c)(6)(xxiii)(A). We are proposing in this action to correct the regulatory text at 40 CFR 52.220(c)(6)(xxiii)(A) to indicate that Shasta County AQMD Rule 2:19, rather than Rule 2:22, has been deleted without replacement.

Siskiyou County APCD

Typographical Error in Connection with Approval of Siskiyou County APCD Rules Submitted on March 18, 1987: On April 12, 1989 (54 FR 14648), the EPA took final action to approve certain Siskiyou County APCD rules submitted on March 18, 1987. We codified the approval at 40 CFR 52.220(c)(172) but, due to a typographical error, listed the submittal date as ''March 11, 1987,'' instead of the correct date of March 18, 1987. We are proposing in this action to correct the regulatory text at 40 CFR 52.220(c)(172) to identify ''March 18, 1987'' as the submittal date for the rules listed under that paragraph.

South Coast AQMD

Rescission of Orange County APCD Regulation VI (Orchard or Citrus Grove Heaters): Orange County APCD Regulation VI includes the following rules: Rule 100 (Definitions), Rule 101 (Use and Sale of Orchard Heaters), Rule 102 (Permit Required), Rule 103 (Transfer of Permits), Rule 105 (Application for Permits), Rule 106 (Action on Applications), Rule 107 (Standards for Granting Permits), Rule 108 (Conditional Approval), Rule 109 (Denial of Applications), Rule 110 (Appeals), Rule 120 (Fees), Rule 122 (Classification of Orchard Heaters), Rule 123 (Class I Heaters Designated—Permits), Rule 124 (Class II Heaters Designated—Permits), Rule 126 (Identification of Heaters), Rule 127 (Maintenance of Heaters), Rule 128 (Classification of Undesignated Heaters) and Rule 130 (Prohibitions). California submitted Orange County APCD Regulation VI on February 21, 1972, and the EPA approved the regulation on May 31, 1972 (37 FR 10842). On June 30, 1972, California submitted an amended definition in Rule 100 and submitted amended versions of Rules 101 and 102, and the EPA approved the amendments on September 22, 1972 (37 FR 19812). Rule 120 was deleted without replacement at 67 FR 2573 (January 18, 2002), but the other Regulation VI rules remain in the SIP.

In an action affecting the South Coast AQMD published at 43 FR 25684 (June 14, 1978), the EPA indicated: ''The changes to Regulation VI, Orchard Grove Heaters, contained in the above mentioned submittals and being acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.'' 43 FR at 25685. However, the regulatory text deleting Regulation VI without replacement was not included in the final rule, and thus, Orange County APCD Regulation VI remains part of the applicable SIP.[3] In this action, we are proposing to add regulatory text deleting Orange County Regulation VI, as approved on May 31, 1972 and September 22, 1972, consistent with our action as described in the preamble to the June 14, 1978 final rule.

Tehama County APCD

Publisher's Error in Connection with Deletion without Replacement of San Diego County APCD Rule 41: On June 27, 1997 (62 FR 34641), the EPA took final action to delete without replacement certain district rules that had been approved in error, including San Diego County APCD Rule 41 (Annual Permit Renewal Fees), which was submitted on July 25, 1973 and approved on May 11, 1977. The amendatory instructions in the June 27, 1997 final rule called for publishing the corresponding regulatory text at 40 CFR 52.220(c)(21)(vi)(B), which relates to San Diego County APCD rules; however, due to a publisher's error, the corresponding regulatory text was published at 40 CFR 52.220(c)(21)(vii)(B), which sets forth regulatory text for Tehama County APCD rules. On March 23, 1999 (64 FR 13916), the missing paragraph (40 CFR 52.220(c)(21)(vi)(B)) was added but the erroneous publication at 40 CFR 52.220(c)(21)(vii)(B) was left in place. In this action, we propose to remove 40 CFR 52.220(c)(21)(vii)(B) from the CFR.

Tuolumne County APCD

Reinstatement of Tuolumne County APCD Rule 516 (Excluding Paragraph (C)): On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to a rule that was adopted by the Tuolumne County APCD, submitted by California on October 23, 1981, and approved by the EPA on May 27, 1982 (47 FR 23159), we added a paragraph, *i.e.,* (c)(103)(xvii)(B), to 40 CFR 52.220 (Identification of plan) that states: ''Previously approved on May 27, 1982 and now deleted without replacement Rule 516.'' 62 FR at 34647. However, in our proposed error correction, 61 FR 38664, at 38680 (July 25, 1996), we indicated that the rule we intended to delete was Rule 516 (''Emergency Variance Procedures''), but the correct title of Rule 516 is ''Upset and Breakdown Conditions,'' and ''Emergency Variance Procedures'' is the title of one of the paragraphs, *i.e.,* paragraph (C), of Rule 516. Thus, we intended to delete only paragraph (C) of Rule 516 but erroneously indicated in the final rule that we were deleting without replacement the entire rule. Accordingly, we propose to amend paragraph (c)(103)(xvii)(B) to refer only to paragraph (C) of Rule 516.

Ventura County APCD

Erroneous Regulatory Text for Approval of Rescission of Ventura County APCD Rule 18: On December 7, 2000 (65 FR 76567), the EPA took final action approving certain rules and rule rescissions adopted by the Ventura County APCD establishing procedures and criteria for issuing permits to new or modified stationary sources, including the rescission of Rule 18 (Permit to Operate—Application Required for Existing Equipment). The specific version of Rule 18 for which we approved rescission was submitted on June 30, 1972 and approved on September 22, 1972 (37 FR 19812); however, we erroneously added the corresponding regulatory text to 40 CFR 52.220(b), which lists rules submitted on February 21, 1972 and approved on

[3] In contrast, in a September 8, 1978 final rule, the EPA included similar preamble text concerning an analogous Regulation VI adopted by Los Angeles County APCD and Riverside County APCD, but added specific regulatory text to delete Regulation VI in the Southeast Desert portions of Los Angeles County and Riverside County. See 43 FR 40011, at 40012 and 40014 (September 8, 1978).

May 31, 1972 (37 FR 10842). The regulatory text belongs under 40 CFR 52.220(c)(6)(xxiv). In this action, we propose to redesignate the regulatory text accordingly.

Inadvertent Failure to Include Introductory Text for Approval of Ventura County APCD Rule 74.6: On July 1, 1982 (47 FR 28617), the EPA took final action to approve Ventura County APCD Rule 74.6 (Surface Cleaning and Degreasing). In our final rule, we codified our approval of Rule 74.6 at 40 CFR 52.220(c)(82)(i)(A) but inadvertently failed to add introductory text specifying the date of submittal. In this action, we propose to add introductory text to 40 CFR 52.220(c)(82) specifying a submittal date of May 1, 1980.

Inadvertent Failure to Remove Listing of Sacramento Metropolitan AQMD Rules 70, 73, 96 and 111 from Paragraph Listing Ventura County APCD Rules: Rules 70, 73, 96 and 111 are among a set of Sacramento Metropolitan AQMD rules that were approved at 42 FR 28122 (June 2, 1977); corrected at 42 FR 42219 (August 22, 1977). In the June 2, 1977 action, the EPA codified the Sacramento Metropolitan AQMD rules on which the Agency was taking action at 40 CFR 52.220(c)(24)(x)(A)–(E). The August 22, 1977 action corrected the list of Sacramento Metropolitan AQMD rules for which the EPA had taken action and recodified the action at 40 CFR 52.220(c)(24)(viii)(A). The August 22, 1977 inadvertently failed to delete the original codification of the action on the Sacramento Metropolitan AQMD rules at 40 CFR 52.220(c)(24)(x). Since then, the EPA has taken action on certain Ventura County APCD rules and codified those actions at 40 CFR 52.220(c)(24)(x)(A) and (B), but subparagraphs (C)–(E) remain in the CFR and now appear as if they are Ventura County APCD rules. In this action, we are proposing to remove and reserve subparagraphs (C)–(E) under 40 CFR 52.220(c)(24)(x).

Inadvertent Failure to Codify Approval of Rescission of Ventura County APCD Rule 74.6.3: The EPA approved certain rules adopted by the Ventura County APCD, including Rule 74.6.3 (Conveyorized Degreasers) at 65 FR 45294 (July 21, 2000). We codified our approval of these rules at 40 CFR 52.220(c)(241)(i)(C). On October 25, 2005 (70 FR 61561), we approved revisions to certain Ventura County APCD rules, including the rescission of Rule 74.6.3. In the October 25, 2005 direct final rule, we explained that Rule 74.6.3 was being rescinded because there are currently no conveyorized degreasers operating in Ventura County. 70 FR 61561, at 61562. However, we inadvertently failed to codify the rescission of Rule 74.6.3 in the regulatory portion of the final rule. In this action, we are proposing to add regulatory text to codify our approval of the rescission of Rule 74.6.3 by adding a paragraph to that effect at 40 CFR 52.220(c)(241)(i)(C).

Yolo-Solano AQMD

Publisher's Error in Connection with Approval of Yolo-Solano AQMD Rules Submitted on February 25, 1980: On June 18, 1982 (47 FR 26379), the EPA took direct final action to approve certain revisions to the Yolo-Solano AQMD portion of the California SIP. In the direct final rule, we approved Yolo-Solano AQMD Rules 3.4.1 (Standards for Granting Applications), 3.4.2 (Conditional Approval), and 3.13 (Public Review and Comment for Application for Authority to Construct) and codified the approval at 40 CFR 52.220(c)(54)(iv)(C). However, due to a publisher's error, the codification of the approval of the three rules was repeated at 40 CFR 52.220(c)(54)(v)(C) as if they were rules adopted by the Sacramento Metropolitan AQMD. We are proposing to delete the erroneous regulatory text now found at 40 CFR 52.220(c)(54)(v)(C).

Inadvertent Failure to Codify Approval of Yolo-Solano AQMD Rules 3.4.1 and 3.4.2: On June 18, 1982 (47 FR 26379), the EPA took direct final action to approve certain revisions to the Yolo-Solano AQMD portion of the California SIP. In the direct final rule, we approved Yolo-Solano AQMD Rules 3.4.1 (Standards for Granting Applications), 3.4.2 (Conditional Approval), and 3.13 (Public Review and Comment for Application for Authority to Construct) and codified the approval at 40 CFR 52.220(c)(54)(iv)(C). However, in response to the direct final rule, we received adverse comment concerning our approval of Rules 3.4.1 and 3.4.2, and on June 24, 1983 (48 FR 28988), we withdrew their approval. Later than year, we took final action to approve Rules 3.4.1 and 3.4.2 after consideration of public comment, 48 FR 52712 (November 22, 1983), but failed to add corresponding regulatory text in 40 CFR 52.220(c)(54)(iv). In this action, we propose to add a new paragraph, 40 CFR 52.220(c)(54)(iv)(E), codifying our 1983 approval of Yolo-Solano AQMD Rules 3.4.1 and 3.4.2.

Publisher's Error in Connection with Yolo-Solano AQMD Rules Submitted on October 15, 1979: On December 9, 1981 (46 FR 60202), the EPA took final action to approve certain revisions to the Fresno County APCD portion of the California SIP that had been submitted on October 15, 1979, including Rules 301 (Permit Fees), 302 (Permit Fee Schedules) and 305 (Hearing Board Fees). We codified the approval of these Fresno County APCD rules at 40 CFR 52.220(c)(52)(xv)(B). However, due to a publisher's error, the codification of the approval of the three rules was repeated at 40 CFR 52.220(c)(52)(xix)(B) as if they were rules adopted by the Yolo-Solano AQMD. We are proposing to delete the erroneous regulatory text now found at 40 CFR 52.220(c)(52)(xix)(B).

VI. Proposed Action and Request for Public Comment

The EPA has reviewed the rules listed in table 1 above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, under section 110(k)(6) of the CAA, the EPA is proposing to delete the rules listed in table 1 above and any earlier versions of these rules from the individual air pollution control district portions of the California SIP. These rules include general nuisance provisions, Federal NSPS or NESHAP requirements, hearing board procedures, variance provisions, and local fee provisions. We are also proposing to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in section V above. We will accept comments from the public on this proposal until May 22, 2020.

VII. Incorporation by Reference

In this action, for the most part, the EPA is proposing to delete rules that were previously incorporated by reference from the applicable California SIP. However, we are also proposing to include in a final EPA rule regulatory text that includes incorporation by reference of rules not previously incorporated. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain San Diego County APCD and Yolo-Solano AQMD rules, as described in section V of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 30, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–07531 Filed 4–21–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 85, No. 78
Wednesday, April 22, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 16, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by May 22, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Generic Information Collection to Conduct Survey Improvement Projects.

OMB Control Number: 0596–NEW.

Summary of Collection: The primary function of the USDA Forest Service is to manage the national forests and grasslands, and to provide assistance and science-based information to land managers across the urban to rural to wilderness continuum. Forests and natural areas provide a wide range of benefits and services to all Americans. Understanding these many issues is critical to managing forests and other natural areas to meet the needs of Americans and to achieving the mission of the USDA Forest Service ''to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations.'' In the last decade, state-of-the art techniques have been instituted by the FS and other Federal agencies and are now routinely used to improve the quality and timeliness of surveys and related methods of data collection and analyses, while simultaneously reducing respondents' cognitive workload and burden. The purpose of this generic clearance is to allow the FS to evaluate, adopt, and use these state-of-the art techniques to improve current data collection efforts of forest and for natural land management practices.

Collection of data to support the broad-ranging mission of the USDA Forest Service is supported by a number of federal laws, regulations, and executive orders. The Multiple-Use Sustained-Yield Act of 1960, the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 and 1978, and the 2012 Planning Rule all specifically require or support the lines of research proposed in this information collection.

Need and Use of the Information: The information obtained from these efforts will be used to develop new Forest Service surveys and related data collection protocols and improve current ones. Specifically, the information will be used to reduce respondent burden while simultaneously improving the quality of the data collected in these surveys. These objectives are met when respondents are presented with plain, coherent, and unambiguous questions in surveys and related data collection instruments that ask for data compatible with respondents' memory and/or current reporting and record keeping practices. The purpose of the survey improvement projects will be to ensure that Forest Service surveys continuously attempt to meet these standards of excellence. Without adequate testing, data collected may be of poor quality, resulting in additional resources required to process data or negative impacts on survey estimates.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 7,500.

Frequency of Responses: On occasion.

Total Burden Hours: 2,700.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–08450 Filed 4–21–20; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2020–0005]

Notice of Availability of the Mississippi Trustee Implementation Group Draft Restoration Plan II Environmental Assessment: Wetlands, Coastal, and Nearshore Habitats and Oysters

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), the Deepwater Horizon Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP PEIS), Record of Decision, and Consent Decree, the Federal and State natural resource trustee agencies for the Mississippi Trustee Implementation Group (Mississippi TIG) have prepared a Draft Restoration Plan II Environmental Assessment: Wetlands, Coastal, and

Nearshore Habitats and Oysters (Draft RP II EA). MS TIG identified two Restoration Types—Wetlands, Coastal, and Nearshore Habitats (WCNH) and Oysters—that it considered appropriate for the Draft RP II EA. The purpose of this notice is to inform the public of the availability of the Draft RP II EA and to request public comments on the document.

DATES: We will consider comments that we receive by May 22, 2020.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. Comments may be submitted by any of the following methods:

- *The web: https://www.gulfspill restoration.noaa.gov/restoration-areas/ mississippi;* or
- *Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, Georgia 30345. Please note that mailed comments must be postmarked on or before the comment deadline of May 22, 2020 to be considered.

MS TIG will host a public webinar on May 13, 2020, at 2:00 p.m. CDT. The public may register for the webinar at: *https://attendee.gotowebinar.com/ register/5487688858601614861.* Comments will be accepted during the public webinar.

After registering, participants will receive a confirmation email with instructions for joining the webinar.

FOR FURTHER INFORMATION CONTACT: Ron Howard, Senior Technical Advisor, Natural Resource Specialist, at *ron.howard@ms.usda.gov;* and Valerie Alley, NRDA Coordinator, at *mississippiTIG@mdeq.ms.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was being used to drill a well for BP Exploration and Production Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), exploded, caught fire, and subsequently sank in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The Deepwater Horizon oil spill is the largest maritime oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area to disperse the spilled oil. An undetermined amount of natural gas was also released to the environment as a result of the spill.

The Deepwater Horizon State and Federal natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the Deepwater Horizon oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701–2720) and the implementing NRDA regulations (15 CFR part 990). In accordance with OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and to implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM);
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce (DOC);
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas, Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Upon completion of NRDA, the DWH Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree [1] approved by the United States District Court for the Eastern District of Louisiana. In accordance with that Consent Decree, restoration projects in the Mississippi Restoration Area are now chosen and managed by the MS TIG.

The MS TIG is composed of the following Trustees:

- Mississippi Department of Environmental Quality;
- U.S. Department of the Interior (DOI), as represented by the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM);
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce (DOC);
- U.S. Department of Agriculture (USDA); and
- U.S. Environmental Protection Agency (EPA).

The restoration planning activity is proceeding in accordance with the Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan (PDARP) and Final Programmatic Environmental Impact Statement (PEIS). Information on the restoration types being considered in the Draft RP II EA, as well as a general overview of the OPA criteria against which project ideas are being evaluated, can be found in the Final PDARP/PEIS (*http://www.gulfspill restoration.noaa.gov/restoration-planning/gulf-plan*) and in the Overview section of the PDARP PEIS (*http://www.gulfspill restoration.noaa.gov/restoration-planning/gulf-plan*).

MS TIG posted a Notice of Solicitation calling for project ideas on June 11, 2018 [2] (June 11, 2018, Notice). Project ideas requested included the following restoration types: Wetlands, Coastal, and Nearshore Habitats (WCNH); Nutrient Reduction; Oysters; Sea Turtles; and Marine Mammals. MS TIG notified the public that it would consider new, revised, and previously submitted project ideas received by August 10, 2018. On October 10, 2018, MS TIG published a notice of Initiation of Restoration Planning in Mississippi.[3] During the planning process MS TIG decided to focus only on WCNH and Oyster Restoration Types in RP II.

In developing the Draft RP II EA, MS TIG considered projects previously submitted to the MDEQ Restoration Project Idea portal [4] and the Trustee

[1] *https://www.justice.gov/enrd/file/838066/ download.*

[2] *https://www.gulfspillrestoration.noaa.gov/2018/ 06/mississippi-trustee-implementation-group-welcomes-publics-project-ideas.*

[3] *https://www.gulfspillrestoration.noaa.gov/2018/ 10/notice-initiation-restoration-planning-mississippi.*

[4] *https://www.mdeq.ms.gov/restoration/project-portal/.*

Council Project Submission Portal,[5] as well as those proposed in response to the June 11, 2018, Notice.

In total, MS TIG evaluated seven alternatives and a No Action Alternative for WCNH and for Oysters. The proposed action of the Draft RP II EA is the selection of four alternatives (projects) for implementation:

(1) Wolf River Coastal Preserve Habitat Management—Dupont and Bell's Ferry Tracts—WCNH;

(2) Hancock County Coastal Preserve Habitat Management—Wachovia Tract—WCNH;

(3) Oyster Spawning Reefs in Mississippi—Oysters; and

(4) Mississippi Oyster Gardening Program—Oysters.

The proposed action is consistent with the restoration alternatives selected in the Final PDARP PEIS and would be funded by $4,887,500 from the WCNH Restoration Type and $10,500,000 from the Oysters Restoration Type.

Overview of the Draft RP II EA

The Draft RP II EA is being released in accordance with the OPA NRDA regulations in 15 CFR part 990, NEPA (42 U.S.C. 4321–4347), and 40 CFR 1500.

For the Draft RP II EA, MS TIG proposes moving forward with the four preferred alternatives:

- Wolf River Coastal Preserve Habitat Management—Dupont and Bell's Ferry Tracts (WCNH);
- Hancock County Coastal Preserve Habitat Management—Wachovia Tract (WCNH);
- Oyster Spawning Reefs in Mississippi (Oysters), and
- Mississippi Oyster Gardening Program (Oysters).

The total cost of the four preferred alternatives is approximately $15 million.

The MS TIG has examined and assessed the extent of injury and the restoration alternatives. In the Draft RP II EA, MS TIG presents to the public its draft plan for providing partial compensation to the public for injured natural resources and ecological services in the Mississippi Restoration Area. The proposed alternatives are intended to continue the process of restoring natural resources and ecological services injured or lost as a result of the Deepwater Horizon oil spill. Additional restoration planning for the Mississippi Restoration Area will continue.

Matthew Lohr,

Chief, Natural Resources Conservation Service.

[FR Doc. 2020–08419 Filed 4–21–20; 8:45 am]

BILLING CODE 3410–16–P

[5] *http://www.gulfspillrestoration.noaa.gov/restoration/give-us-your-ideas/suggest-a-restoration-project/.*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Vermont Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Vermont Advisory Committee to the Commission will convene by conference call at 11:00 a.m. (EDT) on Tuesday, April 28, 2020. The purpose of the meeting is to discuss next steps regarding the release of its report on school discipline. The Committee will also consider other possible work products to conclude its appointment term, which ends in June 2020.

DATES: Tuesday, April 28, 2020, at 11:00 a.m. (EDT).

Public Call-In Information: Conference call-in number: 1–888–208–1711 and conference call 5689268.

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: 1–888–208–1711 and conference call 5689268. 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: 1–888–208–1711 and conference call 5689268.

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 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmXAAQ,* click the ''Meeting Details'' and ''Documents'' links.Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda: Tuesday, April 28, 2020 at 11:00 a.m. (EDT).

- Rollcall
- Next Steps for Report Release
- Other Business
- Open Comment
- Adjourn

Dated: April 16, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08436 Filed 4–21–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated

investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/8/2020 through 4/14/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Technology For Humankind, LLC d/b/a Filimin.	3913 North Rushwood Street, Wichita, KS 67226.	4/10/2020	The firm manufactures lamps.
Zip Products, Inc	565 Blossom Road, Rochester, NY 14610.	4/10/2020	The firm manufactures metal parts.
International Cordage East, Ltd	226 Upton Road, Colchester, CT 06415	4/14/2020	The firm manufactures nets and rope.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2020–08514 Filed 4–21–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that certain producers and exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) did not make sales of subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable April 22, 2020.

FOR FURTHER INFORMATION CONTACT: Toni Page, 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) 482–1398.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2019, the Department of Commerce (Commerce) published its Preliminary Results of the administrative review of the antidumping duty order on passenger tires from the China.[1] The petitioners in this case are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, the petitioners). The mandatory respondents in this administrative review are Shandong New Continent Tire Co., Ltd. (New Continent) and Qingdao Odyking Tyre Co., Ltd. (Odyking).

We invited interested parties to comment on the *Preliminary Results.* Subsequent to the *Preliminary Results,* the petitioners; New Continent (mandatory respondent); and various separate rate entities submitted case and rebuttal briefs.[2]

A complete summary of the events that occurred since publication of the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, may be found in the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by the order are certain passenger vehicle and light truck tires from China. A full description of

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission, in Part; 2017–2018,* 84 FR 55909 (October 18, 2019), and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

[2] *See* Shandong Hengyu's Letter, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Ministerial Error,'' dated October 16, 2019; Petitioners' Case Brief, ''Case Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC,'' dated December 2, 2019); Shandong New Continent Tire Co., Ltd.'s Case Brief, ''Shandong New Continent Tire Co., Ltd. Case Brief in the Third Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China,'' dated December 2, 2019; Pirelli Tyre Co., Ltd. and Pirelli's Case Brief, ''Pirelli's Case Brief Certain Passenger Vehicle and Light Truck Tires from China,'' dated December 3, 2019; Petitioners' Rebuttal Brief, ''Rebuttal Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC,'' dated December 9, 2019; New Continent's Rebuttal Brief, ''Shandong New Continent Tire Co., Ltd. Rebuttal Brief in the Third Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China,'' dated December 9, 2019; and Haohua's Comments in Lieu of Rebuttal Brief, ''Passenger Vehicle and Light Truck Tires from China- Comments in Lieu of Rebuttal Case Brief,'' dated December 9, 2019.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Rescission, in part; 2017 2018,'' issued concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

the scope of the order is contained in the Issues and Decision Memorandum.[4]

Separate Rates

In the *Preliminary Results,* we found that evidence provided by New Continent and other separate rate candidates supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.[5] We received no information since the issuance of the *Preliminary Result*s that provides a basis for reconsidering these determinations with respect to New Continent and to the other separate rate candidates.

Subsequent to the *Preliminary Results,* Shandong Hengyu Science & Technology Co., Ltd. (Shandong Hengyu), informed Commerce that it did not withdraw its request for self-examination during the instant administrative review. Therefore, for these final results, we will not rescind the administrative review with respect to Shandong Hengyu. In addition, based on our examination of Shandong Hengyu's Separate Rate Certification, we determine that it demonstrated the absence of both *de jure* and *de facto* control over its operations by the government and/or governmental agencies of China.

Therefore, for the final results, we continue to find that New Continent and the other exporters listed below under ''Final Results of Review'' are eligible for separate rates.

In addition, Commerce continues to find that certain companies have not demonstrated their entitlement to separate rate status because: (1) They withdrew their participation from the administrative review; (2) they did not rebut the presumption of *de jure* or *de facto* government control of their operations; or (3) did not timely file their separate rate application and/or certification.[6] *See* Appendix II of this **Federal Register** notice for a complete list of companies not receiving a separate rate.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice.

Adjustments for Export Subsidies

Commerce continues to adjust New Continent's U.S. price for export subsidies, pursuant to 772(c)(1)(C) of the Act for the final results.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes for these final results. Specifically, we have made adjustments to the calculation of the antidumping margin for New Continent,[7] and granted separate rate status to Shandong Hengyu.[8]

Final Results of Review

Commerce finds that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Shandong New Continent Tire Co., Ltd	0.00
Anhui Jichi Tire Co., Ltd	0.00
Crown International Corporation	0.00
Hankook Tire China Co., Ltd	0.00
Jingsu Hankook Tire Co., Ltd	0.00
Kenda Rubber (China) Co., Ltd	0.00
Kinforest Tyre Co., Ltd	0.00
Mayrun Tyre (Hong Kong) Limited	0.00
Qingdao Fullrun Tyre Corp., Ltd	0.00
Qingdao Sunfulcess Tyre Co., Ltd	0.00
Qingdao Transamerica Tire Industrial Co., Ltd	0.00
Shandong Anchi Tyres Co., Ltd	0.00
Shandong Duratti Rubber Corporation Co., Ltd	0.00
Shandong Haohua Tire Co., Ltd	0.00
Shandong Hengyu Science & Technology Co., Ltd	0.00
Shandong Hongsheng Rubber Technology Co., Ltd	0.00
Shandong Longyue Rubber Co., Ltd	0.00
Shandong Province Sanli Tire Manufactured Co., Ltd	0.00
Winrun Tyre Co., Ltd	0.00

[4] *See* Issues and Decision Memorandum at ''Scope of the Order.''

[5] *See Preliminary Results* 84 FR 55909 at 55911.

[6] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Separate Rate Status,'' dated concurrently with the instant notice.

[7] *See* Issues and Decision Memorandum at comments 1 and 5; and Memorandum, ''Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Analysis Memorandum for Shandong New Continent Tire Co., Ltd.,'' dated concurrently with the instant memorandum.

[8] *See* Issues and Decision Memorandum at comment 9.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[9] Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer, and dividing this amount by the total entered value of the sales to the importer.[10] Where the importer did not report entered values, Commerce intends to calculate an importer-specific assessment rate by dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[11]

Pursuant to Commerce practice, for entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[12] Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the China-wide entity.

For the companies for which this review is rescinded, antidumping duties will be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce will issue appropriate assessment instructions with respect to the companies for which this review is rescinded to CBP 15 days after the publication of this notice.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on POR entries, and for future deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which NV exceeds U.S. price. The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except that, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all China exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 76.46 percent);[13] and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

This notice serves as the only reminder to 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(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 15, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
- Comment 1: Whether Russia Should be the Primary Surrogate Country
- Comment 2: Whether to Grant a Separate Rate to Haohua
- Comment 3: Whether to Grant Pirelli China a Separate Rate
- Comment 4: Whether Commerce has the Authority to Establish a China-Wide Entity Rate
- Comment 5: Whether to Correct Alleged Errors in New Continent's Margin Calculations
- Comment 6: Whether to Correct Certain ''Importer or Customer'' names in New Continent's Draft Liquidation Instructions
- Comment 7: Whether to Continue to Deduct Irrecoverable VAT from New Continent's Gross Unit Price
- Comment 8: Whether to Grant a Double Remedy Adjustment to New Continent

[9] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[10] *See* 19 CFR 351.212(b)(1).

[11] *See Final Modification,* 77 FR at 8103.

[12] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

[13] *See AD Order,* 80 FR at 47904.

Comment 9: Whether to Rescind the Administrative Review of Shandong Hengyu Science & Technology Co., Ltd.
V. Recommendation

Appendix II

List of Companies Not Receiving Separate Rate Status

1. Pirelli Tyre Co., Ltd.
2. Qingdao Odyking Tyre Co., Ltd.
3. Tianjin Wanda Tyre Group Co., Ltd.

[FR Doc. 2020–08540 Filed 4–21–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain steel nails (nails) from the People's Republic of China (China) were sold in the United States at less than normal value (NV) during the period of review (POR) August 1, 2017 through July 31, 2018.

DATES: Applicable April 22, 2020.

FOR FURTHER INFORMATION CONTACT: Annathea Cook or Benito Ballesteros, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0250 or (202) 482–7425, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2019, Commerce published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on nails from China.[1]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results.* On November 25, 2019, Shanxi Pioneer Hardware Industrial Co., Ltd. (Pioneer), Shanxi Hairui Trade Co., Ltd., SDC International Aust. Pty. Ltd., and S-Mart (Tianjin) Technology Development Co., Ltd. (collectively, Pioneer *et al.*),[2] Mid Continent Steel & Wire, Inc. (the petitioner),[3] The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (Stanley B&D) (collectively, Stanley),[4] and Building Material Distributors, Inc., Qingdao D&L Group Ltd., Shandong Qingyun Hongyi Hardware Products Co., Ltd., Dezhou Hualude Hardware Products Co., Ltd., and Mingguang Ruifeng Hardware Products Co., Ltd. (collectively Building Material Distributors *et al.*),[5] submitted timely-filed case briefs. On December 9, 2019, Pioneer,[6] the petitioner,[7] and Stanley,[8] submitted timely-filed rebuttal briefs.

Scope of the Order

The merchandise covered by the order is nails from China. For a complete description of the scope of this order, *see* the Issues and Decision Memorandum.[9]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs filed by interested parties in the Issues and Decision Memorandum. Attached to this notice, in Appendix II, is a list of the issues which parties raised. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (CRU), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, and for the reasons explained in the Issues and Decision Memorandum, we are revising the margin calculations for Stanley and Pioneer. Accordingly, for these final results, Commerce updated the rate assigned to the non-selected companies, which is based on an average of the rates for the three mandatory respondents, Stanley, Pioneer, and Tianjin Universal Machinery Imp. & Exp. Corporation (Universal), as discussed in the Issues and Decision Memorandum. For a discussion of these changes, *see* the ''Changes Since the Preliminary Results'' section of the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that eleven companies did not have any reviewable transactions during the POR: Astrotech Steels Pvt. Ltd.; Geeky Wires Limited; Hebei Minmetals Co., Ltd.; Jinhai Hardware Co., Ltd.; Nanjing Yuechang Hardware Co., Ltd.; Region Industries Co., Ltd.; Region System Sdn. Bhd.; Shandong Oriental Cherry Hardware Group Co., Ltd.; Shandong Oriental Cherry Hardware Import & Export Co., Ltd.; Shanghai Jade Shuttle Hardware Tools Co., Ltd.; and Zhangjiagang Lianfeng Metals Products Co., Ltd. Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding these companies, nor has any party submitted record evidence which would call our preliminary determination into question. Therefore, for these final results, we continue to find that these eleven companies did not have any reviewable transactions during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

[1] *See Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 55906 (October 18, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Pioneer *et al.'s* Letter, ''Certain Steel Nails from the People's Republic of China: Case Brief,'' dated November 25, 2019.

[3] *See* Petitioner's Letter, ''Certain Steel Nails from the People's Republic of China: Case Brief, dated November 25, 2019.

[4] *See* Stanley's Letter, ''Certain Steel Nails from the People's Republic of China; Tenth Administrative Review; Case Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.,'' dated November 25, 2019 .

[5] *See* Building Material Distributors *et al.'s* Letter, ''Certain Steel Nails from the People's Republic of China, 10th Administrative Review; Administrative Case Brief,'' dated November 25, 2019.

[6] *See* Pioneer's Letter, ''Certain Steel Nails from the People's Republic of China: Rebuttal Case Brief,'' dated December 9, 2019 (Pioneer Rebuttal).

[7] *See* Petitioner's Letter, ''Certain Steel Nails from the People's Republic of China: Rebuttal Brief,'' dated December 9, 2019 (Petitioner Rebuttal).

[8] *See* Stanley's Letter, ''Certain Steel Nails from the People's Republic of China; Tenth Administrative Review; Rebuttal Brief of The Stanley Works (Langfang) Fastening Systems Co., Ltd and Stanley Black & Decker, Inc.,'' dated December 9, 2019 (Stanley Rebuttal).

[9] *See* Memorandum, ''Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2017–18 Antidumping Duty Administrative Review,'' dated April 15, 2020 (Issues and Decision Memorandum) which is hereby adopted by this notice.

Separate Rates

In the *Preliminary Results,* we determined that 20 companies, including the three mandatory respondents, met the criteria for separate rate status. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, Commerce continues to find that these companies meet the criteria for a separate rate for the final results.

Rate for Non-Selected Companies

As noted above, for the final results, the dumping margins for two of the mandatory respondents have changed from the *Preliminary Results.* Accordingly, for the final results, Commerce has updated the rate assigned to the non-selected companies, which is based on an average of the rates of the three mandatory respondents, as discussed in the Issues and Decision Memorandum.

China-Wide Entity

In the *Preliminary Results,* we found that 182 companies for which a review was requested had not established eligibility for a separate rate and, thus, we considered them to be part of the China-wide entity.[10] With one exception discussed in the Issues and Decision Memorandum (related to Stanley B&D),[11] we have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, Commerce continues to find that these companies are part of the China-wide entity.[12]

Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

Exporter/producer	Weighted-average dumping margin
Shanxi Pioneer Hardware Industrial Co., Ltd	118.04
The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc	2.11
Tianjin Universal Machinery Imp. & Exp. Corporation	118.04
Dezhou Hualude Hardware Products Co., Ltd	41.75
Hebei Cangzhou New Century Foreign Trade Co., Ltd	41.75
Mingguang Ruifeng Hardware Products Co., Ltd	41.75
Nanjing Caiqing Hardware Co., Ltd	41.75
Qingdao D&L Group Ltd	41.75
SDC International Aust. Pty. Ltd	41.75
Shandong Qingyun Hongyi Hardware Products Co., Ltd	41.75
Shanghai Curvet Hardware Products Co., Ltd	41.75
Shanghai Yueda Nails Industry Co., Ltd. a.k.a Shanghai Yueda Nails Co., Ltd	41.75
Shanxi Hairui Trade Co., Ltd	41.75
Shanxi Tianli Industries Co., Ltd	41.75
S-Mart (Tianjin) Technology Development Co., Ltd	41.75
Suntec Industries Co., Ltd	41.75
Tianjin Jinchi Metal Products Co., Ltd	41.75
Tianjin Jinghai County Hongli Industry & Business Co., Ltd	41.75
Tianjin Zhonglian Metals Ware Co., Ltd	41.75
Xi'an Metals and Minerals Import & Export Co., Ltd	41.75

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Stanley reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales. If an importer-specific assessment rate calculated in the final results is not zero or *de minimis,* Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For Pioneer, Universal, and the non-examined companies granted separate rates, the *ad valorem* assessment rate will be equal to cash deposit rate assigned above in the final results of administrative review. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the China-wide entity at the China-wide rate.

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by Stanley during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the

[10] *See Preliminary Results* at Appendix I.

[11] *See* Issues and Decision Memorandum at Comment 6.

[12] *See* Appendix I.

[13] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

final results of review; (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the China-Wide rate of 118.04 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the China exporters that supplied that non-China exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 15, 2020.

Joseph Laroski,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

China-Wide Entity

1. Air It on Inc.
2. A-Jax Enterprises Ltd.
3. A-Jax International Co. Ltd.
4. Anhui Amigo Imp.& Exp. Co. Ltd.
5. Anhui Tea Imp. & Exp. Co. Ltd.
6. Asiahan Industrial Trading Ltd.
7. Baoding Jieboshun Trading Co., Ltd.
8. Beijing Catic Industry Ltd.
9. Beijing Jinheung Co., Ltd.
10. Beijing Qin-Li Jeff Trading Co., Ltd.
11. Beijing Qin-Li Metal Industries Co., Ltd.
12. Bodi Corporation.
13. Cana (Rizhou) Hardward Co. Ltd.
14. Cangzhou Nandagang Guotai Hardware Products Co., Ltd.
15. Cangzhou Xinqiao Int'l Trade Co. Ltd.
16. Certified Products Taiwan Inc.
17. Changzhou Kya Trading Co. Ltd.
18. Chanse Mechatronics Scientech Development (Jiangsu) Inc.
19. Chia Pao Metal Co. Ltd.
20. China Dinghao Co. Ltd.
21. China Staple Enterprise Co. Ltd.
22. Chinapack Ningbo Imp. & Exp. Co. Ltd.
23. Chite Enterprise Co. Ltd.
24. Chonyi International Co. Ltd.
25. Crelux Int'l Co. Ltd.
26. Daejin Steel Co. Ltd.
27. Dingzhou Baota Metal Products Co. Ltd.
28. Dong E Fuqiang Metal Products Co. Ltd.
29. Dream Rising Co., Ltd.
30. Eco-Friendly Floor Ltd.
31. Ejen Brother Limited.
32. Everglow Inc.
33. Everleading International Inc.
34. Faithful Engineering Products Co. Ltd.
35. Fastening Care.
36. Fastgrow International Co. Inc.
37. Foshan Hosontool Development Hardware Co. Ltd.
38. GD CP International Ltd.
39. GDCP International Co., Ltd.
40. Glori-Industry Hong Kong Inc.
41. Guangdong Meite Mechanical Co. Ltd.
42. Guangdong TC Meite Intelligent Tools Co., Ltd.
43. Hangzhou Orient Industry Co., Ltd.
44. Hebei Jindun Trade Co., Ltd.
45. Hebei Minghao Imp. & Exp. Co. Ltd.
46. Hengtuo Metal Products Co. Ltd.
47. Home Value Co., Ltd.
48. Hongkong Shengshi Metal Products Co., Ltd.
49. Hongyi (HK) Hardware Products Co. Ltd.
50. Huaiyang County Yinfeng Plastic Factory.
51. Hualude International Development Co. Ltd.
52. Huanghua Haixin Hardware Products Co., Ltd.
53. Huanghua Yingjin Hardware Products.
54. Inmax Industries Sdn. Bhd.
55. ITW Construction Products.
56. Jade Shuttle Enterprise Co. Ltd.
57. Jiang Men City Yu Xing Furniture Limited Company.
58. Jiangsu General Science Technology Co. Ltd.
59. Jiangsu Holly Corporation.
60. Jiangsu Huaiyin Guex Tools.
61. Jiangsu Inter-China Group Corp.
62. Jiangu Soho Honry Imp. and Exp. Co. Ltd.
63. Jiaxing TSR Hardware Inc.
64. Jinsco International Corp.
65. Jinsheung Steel Corporation.
66. Koram Inc.
67. Korea Wire Co. Ltd.
68. Liang's Ind. Corp.
69. Liaocheng Minghui Hardware Products.
70. Linyi FlyingArrow Imp. & Exp. Co Ltd.
71. M&M Industries Co., Ltd.
72. Maanshan Lilai International Trade Co. Ltd.
73. Max Co., Ltd.
74. Milkway Chemical Supply Chain Service Co., Ltd.
75. Mingguang Abundant Hardware Products Co. Ltd.
76. Modern Factory For Metal Products.
77. Nailtech Co. Ltd.
78. Nanjing Nuochun Hardware Co. Ltd.
79. Nanjing Tianxingtong Electronic Technology Co. Ltd.
80. Nanjing Tianyu International Co. Ltd.
81. Nanjing Toua Hardware & Tools Co. Ltd.
82. Nanjing Zeejoe International Trade.
83. Nantong Intlevel Trade Co., Ltd.
84. Natuzzi China Limited.
85. Nielsen Bainbridge LLC.
86. Ningbo Adv. Tools Co. Ltd.
87. Ningbo Angelar Trading Co., Ltd.
88. Ningbo Fine Hardware Production Co. Ltd.
89. Ningbo Freewill Imp. & Exp Co., Ltd.
90. Ningbo Langyi Metal Products Co., Ltd.
91. Ningbo Sunrise International Ltd.
92. Ningbo WePartner Imp. & Exp. Co., Ltd.
93. Overseas Distribution Services Inc.
94. Overseas International Steel Industry.
95. Paslode Fasteners Co. Ltd.
96. Patek Tool Co. Ltd.
97. President Industrial Inc.
98. Promising Way (Hong Kong) Ltd.
99. Qingda Jisco Co. Ltd.
100. Qingdao Ant Hardware Manufacturing Co. Ltd.
101. Qingdao D&L Hardware Co. Ltd.
102. Qingdao Gold Dragon Co. Ltd.
103. Qingdao Hongyuan Nail Industry Co. Ltd.
104. Qingdao JCD Machinery Co., Ltd.
105. Qingdao Meijialucky Industry and Co.
106. Qingdao MST Industry and Commerce Co. Ltd.
107. Qingdao Powerful Machinery Co., Ltd.
108. Qingdao Top Metal Industrial Co., Ltd.
109. Qingdao Top Steel Industrial Co. Ltd.
110. Qingdao Uni-Trend International.
111. Quzhou Monsoon Hardware Co. Ltd.
112. Rise Time Industrial Ltd.
113. Romp Coil Nail Industries Inc.
114. R-Time Group Inc.
115. Ruifeng Hardware Products Co., Ltd.
116. Senco Asia Manufacturing Ltd.
117. Shandong Dinglong Imp. & Exp. Co., Ltd.
118. Shandong Liaocheng Minghua Metal Pvt. Ltd.
119. Shanghai Cedargreen Imp. & Exp. Co., Ltd.
120. Shanghai Curvet Hardware, Co., Ltd.
121. Shanghai Haoray International Trade Co. Ltd.
122. Shanghai Seti Enterprise Int'l Co. Ltd.
123. Shanghai Sutek Industries Co., Ltd.

124. Shanghai Yiren Machinery Co., Ltd.
125. Shanghai Yueda Fasteners Co., Ltd.
126. Shanghai Yueda Nails Co. Ltd.
127. Shanghai Zoonlion Industrial Co., Ltd.
128. Shanxi Easyfix Trade Co. Ltd.
129. Shanxi Xinjintai Hardware Co., Ltd.
130. Shaoxing Chengye Metal Producing Co. Ltd.
131. Shenzhen Xinjintai Hardware Co. Ltd.
132. Sueyi International Ltd.
133. Sumec Machinery and Electric Co., Ltd.
134. Suzhou Xingya Nail Co. Ltd.
135. Taizhou Dajiang Ind. Co. Ltd.
136. Test-Rite International Co., Ltd.
137. Theps International.
138. Tianji Hweschun Fasteners Manufacturing Co. Ltd.
139. Tianjin Baisheng Metal Products Co. Ltd.
140. Tianjin Bluekin Indusries Ltd.
141. Tianjin Coways Metal Products Co. Ltd.
142. Tianjin Dagang Jingang Nail Factory.
143. Tianjin Evangel Imp. & Exp. Co. Ltd.
144. Tianjin Fulida Supply Co. Ltd.
145. Tianjin Huixingshangmao Co. Ltd.
146. Tianjin Jin Xin Sheng Long Metal Products Co. Ltd.
147. Tianjin Jinghai Yicheng Metal Pvt.
148. Tianjin Jinlin Pharmaceutical Factory.
149. Tianjin Jinmao Imp. & Exp. Corp. Ltd.
150. Tianjin Lianda Group Co. Ltd.
151. Tianjin Liweitian Metal Technology
152. Tianjin Tianhua Environmental Plastics Co. Ltd.
153. Tianjin Yong Sheng Towel Mill.
154. Tianjin Yongye Furniture Co. Ltd.
155. Tianjin Zhonglian Times Technology.
156. Tianjin Zhongsheng Garment Co. Ltd.
157. Tinjin Tiaolai Import & Export Company Ltd.
158. Tsugaru Enterprise Co., Ltd.
159. Unicorn Fasteners Co. Ltd.
160. Verko Incorporated.
161. Win Fasteners Manufactory (Thailand) Co. Ltd.
162. Wire Products Manufacturing Co., Ltd.
163. Wulian Zhanpeng Metals Co. Ltd.
164. Xiamen Zhaotai Industrial Corp.
165. Yongchang Metal Product Co.
166. Youngwoo Fasteners Co., Ltd.
167. Yuyao Dingfeng Engineering Co. Ltd.
168. Zhanghaiding Hardware Co., Ltd.
169. Zhangjiagang Longxiang Industries Co. Ltd.
170. Zhaoqing Harvest Nails Co. Ltd.
171. Zhejiang Best Nail Industry Co. Ltd.
172. Zhejiang Jihengkang (JHK) Door Ind. Co. Ltd.
173. Zhejiang Saiteng New Building Materials Co., Ltd.
174. Zhejiang Yiwu Yongzhou Imp. & Exp. Co. Ltd.
175. Zhong Shan Daheng Metal Products Co. Ltd.
176. Zhong Shan Shen Neng Metals Products Co. Ltd.
177. Zhucheng Jinming Metal Products Co. Ltd.
178. Zhucheng Runfang Paper Co. Ltd.
179. Beijing Camzone Industry & Trading Co., Ltd.
180. Qingdao YuanYuan Metal Products LLC
181. Shanxi Fastener & Hardware Products

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment 1: Sample Rate Calculation Methodology
Comment 2: Surrogate Financial Ratio Calculations
Comment 3: U.S. Selling Price and ''Irrecoverable'' Value Added Taxes
Comment 4: Stanley's Factors of Production (FOP) Database Error
Comment 5: Whether to Adjust Certain Movement Expenses
Comment 6: Whether Stanley B&D is Part of the China-Wide Entity
Comment 7: Application of Facts Available with Adverse Inferences
V. Recommendation

[FR Doc. 2020–08526 Filed 4–21–20; 8:45 a.m.]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–126]

Certain Non-Refillable Steel Cylinders 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 16, 2020.

FOR FURTHER INFORMATION CONTACT: Kate Sliney or Peter Zukowski, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2437 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 27, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China), filed in proper form on behalf of Worthington Industries (the petitioner).[1] The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of non-refillable cylinders from China.

On March 31, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition,[2] to which the petitioner filed its response on April 3, 2020.[3] On April 7, 2020, Commerce held a phone call with the petitioner concerning the scope of the investigations.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of non-refillable cylinders 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 non-refillable cylinders 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.[5]

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 27, 2020, the period of investigation (POI) is July 1, 2019 through December 31, 2019.

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[1] *See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties on Certain Non-Refillable Steel Cylinders from the People's Republic of China,'' dated March 27, 2020 (the Petition).

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on imports of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions Concerning Volume II,'' dated March 31, 2020; *see also* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions,'' dated March 31, 2020 (Supplemental General Issues Questionnaire).

[3] *See* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China: Petitioner's Amendment to Volume II Relating to the People's Republic of China Antidumping Duties,'' dated April 3, 2020 (AD Supplement); *see also* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China: Petitioner's Amendment to Volume I Relating to General and Injury Information,'' dated April 3, 2020,'' dated January 22, 2020 (General Issues Supplement).

[4] *See* Memorandum, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitions for the Imposition of Antidumping and Countervailing Duties: Phone Call Regarding Scope of the Petitions,'' dated April 10, 2020 (Scope Phone Call Memo).

[5] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

Scope of the Investigation

The merchandise covered by this investigation is non-refillable cylinders from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[6] Specifically, the petitioner's proposed scope included both unfilled/empty and filled cylinders. Filled cylinders are properly classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading for the contents of the cylinder, not the HTSUS subheading for the cylinder itself. This could create challenges related to administrability because: (1) There are many substances these cylinders can contain; (2) the cylinders could be filled in a third country before being exported to the United States, thereby complicating the identification of the country of origin for these cylinders; and (3) it could be difficult, without time-consuming physical examination, to determine whether filled cylinders are subject to duties. In addition, there are legal issues surrounding the inclusion of imports of filled cylinders given that such cylinders are non-refillable. For these reasons, Commerce is removing the following substantive provisions which were in the scope the petitioner provided:

. . . may be filled or . . .

Also excluded from the scope of this investigation are non-refillable steel cylinders filled at the time of importation whose content is subject to another antidumping and/or countervailing duty order. At the time of filing this petition, there are existing antidumping duty orders on Hydrofluorocarbon Blends from the People's Republic of China and 1,1,1,2-Tetrafluoroethane (R–134A) from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016); *1,1,1,2 Tetrafluoroethane (R–134a) from the People's Republic of China: Antidumping Duty Order,* 82 FR 18422 (April 19, 2017). In the case of non-refillable steel cylinders entering the United States filled with merchandise covered by the scope of these investigations or future antidumping and/or countervailing duty orders covering the gas or material content of the non-refillable steel cylinders, such other orders control. In the case of non-refillable steel cylinders entering the United States filled with merchandise not covered by the scope of any other antidumping and/or countervailing duty order, the scope of this investigation controls.

Commerce has not adopted these provisions for purposes of initiation. We are interested, however, in further comment on this issue from parties to this proceeding.[7] Consequently, Commerce is initiating this investigation with respect to unfilled non-refillable cylinders only, subject to further clarification, as warranted.

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).[8] 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,[9] 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 May 6, 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 18, 2020, which is 10 calendar days from the initial comment deadline.[10]

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.[11] 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 non-refillable cylinders 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 May 6, 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 18, 2020, which is 10 calendar days from the initial comment deadline.[12] 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)

[6] *See* Supplemental General Issues Questionnaire and General Issues Supplement; *see also* Scope Phone Call Memo.

[7] Commerce is responsible for clarifying, where necessary, the scope of an order. *See Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 887 (CIT 1983).

[8] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[9] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[10] *See* 19 CFR 351.303(b).

[11] *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_on_Electronic_Filing_Procedures.pdf.*

[12] *See* 19 CFR 351.303(b).

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,[13] 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.[14]

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.[15] Based on our analysis of the information submitted on the record, we have determined that non-refillable cylinders, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

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 own production of the domestic like product in 2019.[17] The petitioner states that there are no other known producers of non-refillable cylinders in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[18] We relied on data provided by the petitioner for purposes of measuring industry support.[19]

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.[20] 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).[21] 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.[22] 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.[23] 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.[24]

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.[25]

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; decreased U.S. production and capacity utilization rates; and a decline in the domestic industry's financial performance and profitability.[26] 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.[27]

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 non-refillable cylinders 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 customers in the United States for the sale of non-refillable cylinders produced in and exported from China.[28] In order to

[13] *See* section 771(10) of the Act.

[14] *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)).

[15] *See* Volume I of the Petition at 12–15; *see also* General Issues Supplement at 8.

[16] 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 Non-Refillable Steel Cylinders from the People's Republic of China (AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from the People's Republic of China (Attachment II), dated concurrently with this notice and on file electronically via ACCESS.

[17] *See* Volume I of the Petition at 2–3 and Exhibit GEN–2.

[18] *Id.*

[19] *Id.*

[20] *See* AD Initiation Checklist at Attachment II.

[21] *See* section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist at Attachment II.

[22] *See* AD Initiation Checklist at Attachment II.

[23] *Id.*

[24] *Id.*

[25] *See* Volume I of the Petition, at 16–17.

[26] *See* Volume I of the Petition, at 17–26 and Exhibits GEN–8 and GEN–10 through GEN–13; *see also* GEN–SUPP–3 and GEN–SUPP–5.

[27] *See* AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Non-Refillable Steel Cylinders from the People's Republic of China (Attachment III).

[28] *See* Volume II of the Petition at 3 and Exhibit AD–1; *see also* AD Supplement at Exhibit AD–SUPP–8.

calculate ex-factory U.S. prices, where appropriate, the petitioner made deductions from U.S. prices for foreign inland freight, foreign brokerage and handling, international freight and insurance, U.S. entry fees, U.S. brokerage and handling, U.S. inland freight, and unrebated value added tax expenses.[29]

Normal Value

Commerce considers China to be an NME country.[30] 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.[31]

The petitioner claims that Mexico 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.[32] The petitioner valued direct material inputs, packing materials, natural gas, and argon by using data from the Global Trade Atlas; data from the National Water Commission of Mexico to value water usage; the electricity rate for businesses in Mexico, as reported by the World Bank's *Doing Business 2020: Mexico;* and data from the National Institute of Statistics, Geography, and Informatics Labor Organization, an agency of the Mexican government, to value labor.[33] Based on the information provided by the petitioner, we determine that it is appropriate to use Mexico as a surrogate country for purposes of initiation.[34]

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 were not reasonably available, the petitioner relied on its own experience to estimate the factor usage rates for Chinese producers.[35] The petitioner valued the estimated FOPs using surrogate values from Mexico.[36] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Mexican producer of comparable merchandise (*i.e.,* a producer of auto parts, construction equipment, and home products).[37]

Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of non-refillable cylinders 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 margin for non-refillable cylinders from China is 53.76 percent.[38]

Initiation of LTFV Investigation

Based upon our examination of the Petition on non-refillable cylinders from China and supplemental responses, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of non-refillable cylinders 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 15 companies in China as producers/exporters of non-refillable cylinders.[39] Commerce will issue quantity and value (Q&V) questionnaires to all 15 identified producers and exporters. 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.* In accordance with our standard practice for respondent selection in AD investigations involving NME countries, in the event we determine that respondent selection is warranted, we intend to base respondent selection on the responses to the Q&V questionnaires that we receive.

Producers/exporters of non-refillable cylinders from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from E&C's website, as provided above. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on May 4, 2020. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be 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, producers/exporters must submit a separate-rate application.[40] 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.[41] Producers/exporters 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

[29] *See* Volume II of the Petition at 3–4 and Exhibit AD–1; *see also* AD Supplement at Exhibit AD-SUPP–8.

[30] *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).

[31] *See* AD Initiation Checklist.

[32] *See* Volume II of the Petition at 4–7 and Exhibit AD–3.

[33] *Id.; see also* AD Supplement at Exhibit AD–SUPP–8.

[34] *See* AD Initiation Checklist.

[35] *See* Volume II of the Petition at 6.

[36] *Id.* at 6–7 and Exhibit AD–3.

[37] *See* Volume II of the Petition at 7 Exhibit AD–3 Attachment 9; *see also* AD Supplement at 5–7 and Exhibits AD–SUPP–5 to AD–SUPP–8.

[38] *See* AD supplement at Exhibit AD–SUPP–8; *see also* AD Initiation Checklist.

[39] *See* Volume I of the Petition at Exhibit GEN–7.

[40] *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).

[41] 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.

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.[42]

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 non-refillable cylinders from China are materially injuring, or threatening material injury to, a U.S. industry.[43] A negative ITC determination will result in the investigation being terminated.[44] 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[45] 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.[46] 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.[47] 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.[48] Parties must use the certification formats provided in 19 CFR 351.303(g).[49] 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 administrative protective order (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 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.[50]

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 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard

[42] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

[47] *See* 19 CFR 351.302.

[48] *See* section 782(b) of the Act.

[49] *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.*

[50] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2020–08539 Filed 4–21–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–127]

Certain Non-Refillable Steel Cylinders 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 16, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION:

The Petition

On March 27, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China) filed in proper form on behalf of Worthington Industries (the petitioner).[1] The Petition was accompanied by an antidumping duty (AD) petition concerning imports of non-refillable cylinders from China.

On March 31, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition,[2] to which the petitioner filed responses on April 3, 2020.[3] On April 7, 2020, Commerce held a phone call with the petitioner concerning the scope of the investigations.[4]

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 non-refillable cylinders in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing non-refillable cylinders 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 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 CVD investigation.[5]

Period of Investigation

Because the Petition was filed on March 27, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[6]

Scope of the Investigation

The merchandise covered by this investigation is non-refillable cylinders from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[7] Specifically, the petitioner's proposed scope included both unfilled/empty and filled cylinders. Filled cylinders are properly classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading for the contents of the cylinder, not the HTSUS subheading for the cylinder itself. This could create challenges related to administrability because: (1) There are many substances these cylinders can contain; (2) the cylinders could be filled in a third country before being exported to the United States, thereby complicating the identification of the country of origin for these cylinders; and (3) it could be difficult, without time-consuming physical examination, to determine whether filled cylinders are subject to duties. In addition, there are legal issues surrounding the inclusion of imports of filled cylinders given that such cylinders are non-refillable. For these reasons, Commerce is removing the following substantive provisions which were in the scope the petitioner provided:

. . . may be filled or . . .

Also excluded from the scope of this investigation are non-refillable steel cylinders filled at the time of importation whose content is subject to another antidumping and/or countervailing duty order. At the time of filing this petition, there are existing antidumping duty orders on Hydrofluorocarbon Blends from the People's Republic of China and 1,1,1,2-Tetrafluoroethane (R–134A) from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016); *1,1,1,2 Tetrafluoroethane (R–134a) from the People's Republic of China: Antidumping Duty Order,* 82 FR 18422 (April 19, 2017). In the case of non-refillable steel cylinders entering the United States filled with merchandise covered by the scope of these investigations or future antidumping and/or countervailing duty orders covering the gas or material content of the non-refillable steel cylinders,

[1] *See* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated March 27, 2020 (the Petition).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions,'' and, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions Concerning Volume III,'' both dated March 31, 2020.

[3] *See* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitioner's Amendment to Volume I Relating to General and Injury Information,'' dated April 3, 2020 (General Issues Supplement); *see also* Petitioner's Letter, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitioner's Amendment to Volume III Relating to the People's Republic of China Countervailing Duties,'' dated April 3, 2020.

[4] *See* Memorandum, ''Certain Non-Refillable Steel Cylinders from the People's Republic of China—Petitions for the Imposition of Antidumping and Countervailing Duties: Phone Call Regarding Scope of the Petitions,'' dated April 10, 2020 (Scope Phone Call Memo).

[5] *See* Countervailing Duty Investigation Initiation Checklist: Certain Non-Refillable Steel Cylinders (CVD Initiation Checklist), dated concurrently with this notice and on file electronically via ACCESS.

[6] *See* 19 CFR 351.204(b)(2).

[7] *See* Supplemental General Issues Questionnaire and General Issues Supplement; *see also* Scope Phone Call Memo.

such other orders control. In the case of non-refillable steel cylinders entering the United States filled with merchandise not covered by the scope of any other antidumping and/or countervailing duty order, the scope of this investigation controls.

Commerce has not adopted these provisions for purposes of initiation. We are interested, however, in further comment on this issue from parties to this proceeding.[8] Consequently, Commerce is initiating this investigation with respect to unfilled non-refillable cylinders only, subject to further clarification, as warranted.

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).[9] 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,[10] 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 May 6, 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 18, 2020, which is 10 calendar days from the initial comment deadline.[11]

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.[12] 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.[13] 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,[14] 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.[15]

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.[16] Based on our analysis of the information submitted on the record, we have determined that non-refillable cylinders, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

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 own production of the domestic like product in 2019.[18] The petitioner states that there are no other known producers of non-refillable cylinders in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[19] We relied on data provided

[8] Commerce is responsible for clarifying, where necessary, the scope of an order. *See Diversified Products Corp.* v. *United States,* 572 F. Supp. 883, 887 (CIT 1983).

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See* 19 CFR 351.303(b).

[12] *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_on_Electronic_Filing_Procedures.pdf.*

[13] *See* Commerce's Letter, ''Certain Non-Refillable Steel Cylinders the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition,'' dated April 2, 2020.

[14] *See* section 771(10) of the Act.

[15] *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)).

[16] *See* Volume I of the Petition at 12–15; *see also* General Issues Supplement at 8.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* CVD Initiation Checklist at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from the People's Republic of China (Attachment II).

[18] *See* Volume I of the Petition at 2–3 and Exhibit GEN–2.

[19] *Id.*

by the petitioner for purposes of measuring industry support.[20]

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.[21] 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).[22] 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.[23] 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.[24] 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.[25]

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.

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 that are benefitting from countervailable subsidies. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

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; decreased U.S. production and capacity utilization rates; and a decline in the domestic industry's financial performance and profitability.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

Initiation of CVD Investigation

Based upon our examination of the Petition on non-refillable cylinders 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 non-refillable cylinders 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 the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* 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 15 companies in China as producers/exporters of non-refillable cylinders.[29] 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 quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigation. However, for this investigation, the HTSUS numbers under which the subject merchandise would enter (*i.e.,* 7311.00.0060 and 7311.00.0090, 7310.29.0025 and 7310.29.0050) are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We intend instead to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Producers/exporters of non-refillable cylinders from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C's website at *http://trade.gov/enforcement/news.asp.* Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on May 4, 2020. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be 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.

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 non-refillable cylinders from China are

[20] *Id.*

[21] *See* CVD Initiation Checklist at Attachment II.

[22] *See* section 702(c)(4)(D) of the Act; *see also* CVD Initiation Checklist at Attachment II.

[23] *See* CVD Initiation Checklist at Attachment II.

[24] *Id.*

[25] *Id.*

[26] *See* Volume I of the Petition at 16–17.

[27] *See* Volume I of the Petition at 17–26 and Exhibits GEN–8, and GEN–10 through GEN–13; *see also* General Issues Supplement at Exhibits GEN–SUPP–3 and GEN–SUPP–5.

[28] *See* CVD Initiation Checklist at Attachment III.

[29] *See* Volume I of the Petition at Exhibit GEN–7.

materially injuring, or threatening material injury to, a U.S. industry.[30] A negative ITC determination will result in the investigation being terminated.[31] 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) information 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 [32] 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.[33] 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.[34] 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.[35] Parties must use the certification formats provided in 19 CFR 351.303(g).[36] 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 administrative protective order (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.[37]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2020–08538 Filed 4–21–20; 8:45 am]

BILLING CODE 3510–DS–P

[30] *See* section 703(a)(1) of the Act.

[31] *Id.*

[32] *See* 19 CFR 351.301(b).

[33] *See* 19 CFR 351.301(b)(2).

[34] *See* 19 CFR 351.302.

[35] *See* section 782(b) of the Act.

[36] *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.*

[37] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Early Engagement Opportunity: Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD announces an early engagement opportunity regarding implementation of the Coronavirus Aid, Relief, and Economic Security Act within the acquisition regulations.

DATES: Early inputs should be submitted in writing via the Defense Acquisition Regulations System (DARS) website shown in the **ADDRESSES** section. The website will be updated when early inputs will no longer be accepted.

ADDRESSES: Submit early inputs via the DARS website at *https://*

www.acq.osd.mil/dpap/dars/early_engagement.html.

FOR FURTHER INFORMATION CONTACT: Send early inputs via email to *osd.dfars@mail.mil* and reference ''Early Engagement Opportunity: CARES Act'' in the subject line. For further information contact Ms. Carrie Moore at (703) 717–3483.

SUPPLEMENTARY INFORMATION: DoD is providing an opportunity for the public to provide early inputs on implementation of Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) within the acquisition regulations. The public is invited to submit early inputs on sections of the CARES Act via the DARS website at *https://www.acq.osd.mil/dpap/dars/early_engagement.html.* The website will be updated when early inputs will no longer be accepted. Please note, this venue does not replace or circumvent the rulemaking process; DARS will engage in formal rulemaking, in accordance with 41 U.S.C. 1707, when it has been determined that rulemaking is required to implement a section of the CARES Act within the acquisition regulations.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–08056 Filed 4–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2020–0011]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: April 10, 2020.

FOR FURTHER INFORMATION CONTACT: Sonji A. Epps, telephone 703–695–9774.

SUPPLEMENTARY INFORMATION:

On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602–70.

The Acting Principal Director, Defense Pricing and Contracting (DPC), issued a memorandum dated March 11, 2020, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent based on fiscal year 2019 data from the Federal Procurement Data System. The product categories to be competed effective April 10, 2020, are the following:

- 7110 (Office Furniture)
- 7125 (Cabinets, Lockers, Bins, and Shelving)
- 7210 (Household Furnishings)
- 8405 (Outerwear, Men's)
- 8415 (Clothing, Special Purpose)
- 8420 (Underwear and Nightwear, Mend's)

The DPC memorandum with the current list of product categories for which FPI has a significant market share is posted at: *https://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.*

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items. A timely offer from FPI must be considered and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2020–08061 Filed 4–21–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the DoD Military Family Readiness Council (MFRC) will take place.

DATES: Open to the public Wednesday, April 29, 2020, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The address of this open meeting will be online. The phone number for the remote access is 800–309–1256, and the participant code is 305538. This information will also be posted on the DoD MFRC website at: *http://www.militaryonesource.mil/those-who-support-mfrc.*

FOR FURTHER INFORMATION CONTACT: William Story, (571) 372–5345 (Voice), (571) 372–0884 (Facsimile), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address is Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), Office of Family Readiness Policy, 4800 Mark Center Drive, Alexandria, VA 22350–2300, Room 3G15. Website: *http://www.militaryonesource.mil/those-who-support-mfrc.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Department of Defense Military Family Readiness Council was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting for April 29, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: This is the first meeting of the Council for Fiscal Year 2020 (FY2020). During this meeting the Director, Defense Health Agency, will present information to the Council including changes in dependent health care systems and implications for military family readiness.

Agenda: Opening Remarks; Administrative Items; Review of Written Submissions; Ethics Briefing; Focus Area Presentation: The Transformation of the Military Health System: Readiness, Reform, and the Priorities of the Defense Health Agency; Questions and Answers; Council Discussion; Closing Remarks. Note: Exact order may vary.

Meeting Accessibility: Members of the public who are interested in hearing the MFRC meeting may call in using the remote access number 800–309–1256 and participant code 305538.

Written Statements: Persons interested in providing a written statement for review and consideration by Council members attending the April 29 meeting must do so no later than close of business Wednesday, April 22, 2020, through the Council mailbox (*osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*). Written statements received after this date will be provided to Council members in preparation for the next MFRC meeting. The Designated Federal Officer (DFO) will review all submitted written statements and provide copies to all MFRC members. Written statements should not include personally identifiable information such as names of adults and children, phone numbers, addresses, social security numbers, and other contact information within the body of the written statement.

Dated: April 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–08550 Filed 4–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Ocean Research Advisory Panel (''the Panel'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Panel's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(a). The charter and contact information for the Panel's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.* The Panel shall provide the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Navy, with independent advice and recommendations on matters relating to national oceanographic data requirements. The Panel shall: (a) Provide advice on policies and procedures to implement the National Oceanographic Partnership Program; (b) provide advice on selection of partnership projects and allocation of funds for partnership projects for implementation under the program; (c) provide advice on matters relating to national oceanographic data requirements and fulfill any additional responsibilities that the Committee considers appropriate.

The Panel shall be composed of no more than 18 members appointed in accordance with DoD policies and procedures, who are eminent authorities in the fields of science, engineering, medicine, leadership, or academia.

Panel members who are not full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Panel members who are full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All members of the Panel are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Panel-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel. All written statements shall be submitted to the DFO for the Panel, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: April 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–08555 Filed 4–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Open to the public, Friday, May 15, 2020 from 11:00 a.m. to 3:00 p.m. EST.

ADDRESSES: This public meeting will be held via teleconference. To access the teleconference dial: 410–874–6300, Conference Pin: 450506218.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to

advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the seventeenth public meeting held by the DAC–IPAD. At this meeting the Committee will deliberate and vote on the draft DAC–IPAD *Report on the Feasibility and Advisability of Establishing a Process Under Which a Guardian Ad Litem May Be Appointed to Represent the Interest of a Victim of an Alleged Sex-Related Offense Who Has Not Attained the Age of 18 Years.* Next, the Committee will deliberate and vote on the DAC–IPAD response to the Department of Defense *Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims.* Finally, the Committee will receive updates from the DAC–IPAD Case Review, Policy and Data Working Groups.

Agenda: 11:00 a.m.–11:10 a.m. Public Meeting Begins—Welcome and Introduction; 11:10 a.m.–12:30 p.m. DAC–IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the draft DAC–IPAD *Report on the Feasibility and Advisability of Establishing a Process Under Which a Guardian Ad Litem may be Appointed to Represent the Interest of a Victim of an Alleged Sex-Related Offense Who Has Not attained the Age of 18 Years;* 12:30 p.m.–1:00 p.m. Lunch Break; 1:00 p.m.–2:00 p.m. Committee Deliberation and Vote on the DAC–IPAD Response to the Department of Defense *Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims;* 2:00 p.m.–2:15 p.m. Case Review Working Group Update; 2:15 p.m.–2:30 p.m. Policy Working Group Update; 2:30 p.m.–2:45 p.m. Data Working Group Update; 2:45 p.m.–3:00 p.m. Meeting Wrap-Up and Public Comment; 3:00 p.m. Public Meeting Adjourn.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public. This public meeting will be held via teleconference. To access the teleconference dial: 410–874–6300, Conference Pin: 450506218. Please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 2:45 p.m. to 3:00 p.m. on May 15, 2020.

Dated: April 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–08551 Filed 4–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Human Resources Activity, Department of Defense.

ACTION: Notice of revised per diem rates in non-foreign Areas outside the Continental U.S.

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 312. Bulletin Number 312 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States. The Fiscal Year (FY) 2020 per diem rate review for the U.S. Virgin Islands resulted in lodging and meal rate changes in certain locations.

DATES: The updated rates take effect May 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Shelly Greendyk, 571–372–1249.

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2020 per diem rate review for the U.S. Virgin Islands resulted in meal and incidental rate changes. Lodging rates remained the same. Bulletin Number 312 is published in the **Federal Register** to ensure that Government travelers outside the Department of Defense are notified of revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office's Per Diem Rate Review Frequently Asked Questions (FAQ) page at *https://www.defensetravel.dod.mil/site/faqraterev.cfm.*

Dated: April 17, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	161	113	274	06/01/2019
ALASKA	ADAK	01/01	12/31	161	117	278	06/01/2019
ALASKA	ANCHORAGE [INCL NAV RES]	05/01	08/31	229	125	354	06/01/2019
ALASKA	ANCHORAGE [INCL NAV RES]	09/01	04/30	199	125	324	06/01/2019
ALASKA	BARROW	05/15	09/14	320	129	449	06/01/2019
ALASKA	BARROW	09/15	05/14	265	129	394	06/01/2019
ALASKA	BARTER ISLAND LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	BETHEL	01/01	12/31	219	101	320	06/01/2019
ALASKA	BETTLES	01/01	12/31	161	113	*274	06/01/2019
ALASKA	CAPE LISBURNE LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	CAPE NEWENHAM LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	CAPE ROMANZOF LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	CLEAR AB	01/01	12/31	161	113	274	06/01/2019

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	COLD BAY	01/01	12/31	161	113	274	06/01/2019
ALASKA	COLD BAY LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	COLDFOOT	01/01	12/31	161	93	254	06/01/2019
ALASKA	COPPER CENTER	01/01	12/31	161	115	276	06/01/2019
ALASKA	CORDOVA	01/01	12/31	140	106	246	06/01/2019
ALASKA	CRAIG	05/01	09/30	139	94	233	06/01/2019
ALASKA	CRAIG	10/01	04/30	109	94	203	06/01/2019
ALASKA	DEADHORSE	01/01	12/31	120	113	*233	06/01/2019
ALASKA	DELTA JUNCTION	01/01	12/31	161	101	262	06/01/2019
ALASKA	DENALI NATIONAL PARK	05/17	09/17	189	98	287	06/01/2019
ALASKA	DENALI NATIONAL PARK	09/18	05/16	139	98	237	06/01/2019
ALASKA	DILLINGHAM	05/01	09/30	275	113	388	06/01/2019
ALASKA	DILLINGHAM	10/01	04/30	230	113	343	06/01/2019
ALASKA	DUTCH HARBOR-UNALASKA	01/01	12/31	161	129	290	06/01/2019
ALASKA	EARECKSON AIR STATION	01/01	12/31	146	74	220	06/01/2019
ALASKA	EIELSON AFB	05/16	09/15	154	100	254	06/01/2019
ALASKA	EIELSON AFB	09/16	05/15	75	100	175	06/01/2019
ALASKA	ELFIN COVE	01/01	12/31	161	113	274	06/01/2019
ALASKA	ELMENDORF AFB	05/01	08/31	229	125	354	06/01/2019
ALASKA	ELMENDORF AFB	09/01	04/30	199	125	324	06/01/2019
ALASKA	FAIRBANKS	05/16	09/15	154	100	254	06/01/2019
ALASKA	FAIRBANKS	09/16	05/15	75	100	175	06/01/2019
ALASKA	FORT YUKON LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	FT. GREELY	01/01	12/31	161	101	262	06/01/2019
ALASKA	FT. RICHARDSON	05/01	08/31	229	125	354	06/01/2019
ALASKA	FT. RICHARDSON	09/01	04/30	199	125	324	06/01/2019
ALASKA	FT. WAINWRIGHT	05/16	09/15	154	100	254	06/01/2019
ALASKA	FT. WAINWRIGHT	09/16	05/15	75	100	175	06/01/2019
ALASKA	GAMBELL	01/01	12/31	161	113	274	06/01/2019
ALASKA	GLENNALLEN	01/01	12/31	161	115	276	06/01/2019
ALASKA	HAINES	01/01	12/31	107	113	220	06/01/2019
ALASKA	HEALY	06/01	08/31	189	98	287	06/01/2019
ALASKA	HEALY	09/01	05/31	139	98	237	06/01/2019
ALASKA	HOMER	05/01	09/30	189	124	313	06/01/2019
ALASKA	HOMER	10/01	04/30	129	124	253	06/01/2019
ALASKA	JB ELMENDORF-RICHARDSON	05/01	08/31	229	125	354	06/01/2019
ALASKA	JB ELMENDORF-RICHARDSON	09/01	04/30	199	125	324	06/01/2019
ALASKA	JUNEAU	04/16	09/15	189	118	307	06/01/2019
ALASKA	JUNEAU	09/16	04/15	169	118	287	06/01/2019
ALASKA	KAKTOVIK	01/01	12/31	161	129	*290	06/01/2019
ALASKA	KAVIK CAMP	01/01	12/31	161	113	*274	06/01/2019
ALASKA	KENAI-SOLDOTNA	05/01	09/30	159	113	272	06/01/2019
ALASKA	KENAI-SOLDOTNA	10/01	04/30	89	113	202	06/01/2019
ALASKA	KENNICOTT	01/01	12/31	161	85	246	06/01/2019
ALASKA	KETCHIKAN	04/01	10/01	250	118	368	06/01/2019
ALASKA	KETCHIKAN	10/02	03/31	160	118	278	06/01/2019
ALASKA	KING SALMON	01/01	12/31	161	89	250	06/01/2019
ALASKA	KING SALMON LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	KLAWOCK	05/01	09/30	139	94	233	06/01/2019
ALASKA	KLAWOCK	10/01	04/30	109	94	203	06/01/2019
ALASKA	KODIAK	05/01	09/30	194	109	303	06/01/2019
ALASKA	KODIAK	10/01	04/30	136	109	245	06/01/2019
ALASKA	KOTZEBUE	01/01	12/31	161	121	282	06/01/2019
ALASKA	KULIS AGS	05/01	08/31	229	125	354	06/01/2019
ALASKA	KULIS AGS	09/01	04/30	199	125	324	06/01/2019
ALASKA	MCCARTHY	01/01	12/31	161	85	246	06/01/2019
ALASKA	MCGRATH	01/01	12/31	161	113	*274	06/01/2019
ALASKA	MURPHY DOME	05/16	09/15	154	100	254	06/01/2019
ALASKA	MURPHY DOME	09/16	05/15	75	100	175	06/01/2019
ALASKA	NOME	01/01	12/31	185	118	303	06/01/2019
ALASKA	NOSC ANCHORAGE	05/01	08/31	229	125	354	06/01/2019
ALASKA	NOSC ANCHORAGE	09/01	04/30	199	125	324	06/01/2019
ALASKA	NUIQSUT	01/01	12/31	161	113	*274	06/01/2019
ALASKA	OLIKTOK LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	PALMER	01/01	12/31	155	117	272	06/01/2019
ALASKA	PETERSBURG	01/01	12/31	130	108	238	06/01/2019
ALASKA	POINT BARROW LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	POINT HOPE	01/01	12/31	161	113	*274	06/01/2019
ALASKA	POINT LONELY LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	PORT ALEXANDER	01/01	12/31	161	113	*274	06/01/2019
ALASKA	PORT ALSWORTH	01/01	12/31	161	113	274	06/01/2019
ALASKA	PRUDHOE BAY	01/01	12/31	120	113	*233	06/01/2019
ALASKA	SELDOVIA	05/01	09/30	189	124	313	06/01/2019
ALASKA	SELDOVIA	10/01	04/30	129	124	253	06/01/2019
ALASKA	SEWARD	04/02	09/30	309	146	455	06/01/2019
ALASKA	SEWARD	10/01	04/01	80	146	226	06/01/2019
ALASKA	SITKA-MT. EDGECUMBE	04/01	09/30	245	116	361	06/01/2019
ALASKA	SITKA-MT. EDGECUMBE	10/01	03/31	200	116	316	06/01/2019
ALASKA	SKAGWAY	04/01	10/01	250	118	368	06/01/2019
ALASKA	SKAGWAY	10/02	03/31	160	118	278	06/01/2019
ALASKA	SLANA	01/01	12/31	161	113	274	06/01/2019
ALASKA	SPARREVOHN LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	SPRUCE CAPE	05/01	09/30	194	109	303	06/01/2019

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	SPRUCE CAPE	10/01	04/30	136	109	245	06/01/2019
ALASKA	ST. GEORGE	01/01	12/31	161	113	274	06/01/2019
ALASKA	TALKEETNA	01/01	12/31	161	120	281	06/01/2019
ALASKA	TANANA	01/01	12/31	185	118	303	06/01/2019
ALASKA	TATALINA LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	TIN CITY LRRS	01/01	12/31	161	113	274	06/01/2019
ALASKA	TOK	04/01	09/30	105	113	218	06/01/2019
ALASKA	TOK	10/01	03/31	99	113	212	06/01/2019
ALASKA	VALDEZ	05/16	09/15	197	110	307	06/01/2019
ALASKA	VALDEZ	09/16	05/15	179	110	289	06/01/2019
ALASKA	WAINWRIGHT	01/01	12/31	275	77	352	06/01/2019
ALASKA	WAKE ISLAND DIVERT AIRFIELD	01/01	12/31	161	113	274	06/01/2019
ALASKA	WASILLA	05/01	09/29	162	94	256	06/01/2019
ALASKA	WASILLA	09/30	04/30	98	94	192	06/01/2019
ALASKA	WRANGELL	04/01	10/01	250	118	368	06/01/2019
ALASKA	WRANGELL	10/02	03/31	160	118	278	06/01/2019
ALASKA	YAKUTAT	01/01	12/31	150	111	261	06/01/2019
AMERICAN SAMOA	AMERICAN SAMOA	01/01	12/31	139	86	225	07/01/2019
AMERICAN SAMOA	PAGO PAGO	01/01	12/31	139	86	225	07/01/2019
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01	12/31	159	96	255	09/01/2019
GUAM	JOINT REGION MARIANAS (ANDERSEN).	01/01	12/31	159	96	255	09/01/2019
GUAM	JOINT REGION MARIANAS (NAVAL BASE).	01/01	12/31	159	96	255	09/01/2019
GUAM	TAMUNING	01/01	12/31	159	96	255	09/01/2019
HAWAII	[OTHER]	01/01	12/31	218	149	367	07/01/2019
HAWAII	CAMP HM SMITH	01/01	12/31	177	149	326	07/01/2019
HAWAII	EASTPAC NAVAL COMP TELE AREA.	01/01	12/31	177	149	326	07/01/2019
HAWAII	FT. DERUSSEY	01/01	12/31	177	149	326	07/01/2019
HAWAII	FT. SHAFTER	01/01	12/31	177	149	326	07/01/2019
HAWAII	HICKAM AFB	01/01	12/31	177	149	326	07/01/2019
HAWAII	HILO	01/01	12/31	199	120	319	07/01/2019
HAWAII	HONOLULU	01/01	12/31	177	149	326	07/01/2019
HAWAII	ISLE OF HAWAII: HILO	01/01	12/31	199	120	319	07/01/2019
HAWAII	ISLE OF HAWAII: OTHER	01/01	12/31	218	156	374	07/01/2019
HAWAII	ISLE OF KAUAI	01/01	12/31	325	141	466	07/01/2019
HAWAII	ISLE OF MAUI	01/01	12/31	304	150	454	07/01/2019
HAWAII	ISLE OF OAHU	01/01	12/31	177	149	326	07/01/2019
HAWAII	JB PEARL HARBOR-HICKAM	01/01	12/31	177	149	326	07/01/2019
HAWAII	KAPOLEI	01/01	12/31	177	149	326	07/01/2019
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC.	01/01	12/31	325	141	466	07/01/2019
HAWAII	KILAUEA MILITARY CAMP	01/01	12/31	199	120	319	07/01/2019
HAWAII	LANAI	01/01	12/31	218	134	352	07/01/2019
HAWAII	LIHUE	01/01	12/31	325	141	466	07/01/2019
HAWAII	LUALUALEI NAVAL MAGAZINE	01/01	12/31	177	149	326	07/01/2019
HAWAII	MCB HAWAII	01/01	12/31	177	149	326	07/01/2019
HAWAII	MOLOKAI	01/01	12/31	218	106	324	07/01/2019
HAWAII	NOSC PEARL HARBOR	01/01	12/31	177	149	326	07/01/2019
HAWAII	PEARL HARBOR	01/01	12/31	177	149	326	07/01/2019
HAWAII	PMRF BARKING SANDS	01/01	12/31	325	141	466	07/01/2019
HAWAII	SCHOFIELD BARRACKS	01/01	12/31	177	149	326	07/01/2019
HAWAII	TRIPLER ARMY MEDICAL CENTER.	01/01	12/31	177	149	326	07/01/2019
HAWAII	WAHIAWA NCTAMS PAC	01/01	12/31	177	149	326	07/01/2019
HAWAII	WHEELER ARMY AIRFIELD	01/01	12/31	177	149	326	07/01/2019
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	07/01/2019
NORTHERN MARIANA ISLANDS	[OTHER]	01/01	12/31	69	113	182	09/01/2019
NORTHERN MARIANA ISLANDS	ROTA	01/01	12/31	130	114	244	09/01/2019
NORTHERN MARIANA ISLANDS	SAIPAN	01/01	12/31	161	113	274	09/01/2019
NORTHERN MARIANA ISLANDS	TINIAN	01/01	12/31	69	93	162	09/01/2019
PUERTO RICO	[OTHER]	01/01	12/31	109	112	221	06/01/2012
PUERTO RICO	AGUADILLA	01/01	12/31	171	84	255	11/01/2015
PUERTO RICO	BAYAMON	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	BAYAMON	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	CAROLINA	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	CAROLINA	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	CEIBA	01/01	12/31	139	92	231	10/01/2012
PUERTO RICO	CULEBRA	01/01	12/31	150	98	248	03/01/2012
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT].	01/01	12/31	139	92	231	10/01/2012
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	HUMACAO	01/01	12/31	139	92	231	10/01/2012
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	LUQUILLO	01/01	12/31	139	92	231	10/01/2012
PUERTO RICO	MAYAGUEZ	01/01	12/31	109	112	221	09/01/2010
PUERTO RICO	PONCE	01/01	12/31	149	89	238	09/01/2012
PUERTO RICO	RIO GRANDE	01/01	12/31	169	123	292	06/01/2012

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	SAN JUAN & NAV RES STA	06/01	11/30	167	88	255	12/01/2015
PUERTO RICO	SAN JUAN & NAV RES STA	12/01	05/31	195	88	283	12/01/2015
PUERTO RICO	VIEQUES	01/01	12/31	175	95	270	03/01/2012
VIRGIN ISLANDS (U.S.)	ST. CROIX	12/15	04/14	299	120	419	05/01/2020
VIRGIN ISLANDS (U.S.)	ST. CROIX	04/15	12/14	247	120	367	05/01/2020
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/04	04/30	230	123	353	05/01/2020
VIRGIN ISLANDS (U.S.)	ST. JOHN	05/01	12/03	170	123	293	05/01/2020
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	249	118	367	05/01/2020
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	339	118	457	05/01/2020
WAKE ISLAND	WAKE ISLAND	01/01	12/31	129	70	199	09/01/2019

*Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2020–08536 Filed 4–21–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Migrant Education Program Consortium Incentive Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On February 25, 2020, the Department of Education (Department or we) published in the **Federal Register** (85 FR 10660) a notice inviting applications (NIA) for the fiscal year (FY) 2020 Migrant Education Program Consortium Incentive Grant (CIG) Program competition, Catalog of Federal Domestic Assistance (CFDA) number 84.144F. The NIA established a deadline date of April 27, 2020, for the transmittal of applications. This notice extends the deadline date for transmittal of applications until May 27, 2020 at 11:59 p.m. and extends the date of intergovernmental review until July 27, 2020.

DATES:

Deadline for Transmittal of Applications: May 27, 2020.

Deadline for Intergovernmental Review: July 27, 2020.

FOR FURTHER INFORMATION CONTACT: Patricia Meyertholen, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E315, Washington, DC 20202–6135. Telephone: (202) 260–1394. Email: *Patricia.Meyertholen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 25, 2020, we published the NIA for the FY 2020 Migrant Education Program CIG Program competition in the **Federal Register** (85 FR 10660).[1] Due to the national emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, resulting in school and organization closures, the Department recognizes that additional time is necessary for State educational agency applicants to coordinate and complete their applications. We are extending the deadline date for transmittal of applications in order to allow consortium applicants more time to prepare and submit their applications.

Applicants that have already timely submitted applications under the FY 2020 Migrant Education Program CIG competition may resubmit applications, but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that is last submitted and timely received.

Note: All information in the NIA for this competition remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 6398(d).

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–08541 Filed 4–21–20; 8:45 am]

BILLING CODE 4000–01–P

[1] *https://www.federalregister.gov/d/2020-03763.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–42–000]

New England Ratepayers Association; Notice of Petition for Declaratory Order

Take notice that on April 14, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, New England Ratepayers Association (Petitioner), filed a petition for a declaratory order requesting that the Commission (1) declare that there is exclusive federal jurisdiction over wholesale energy sales from generation sources located on the customer side of the retail meter, and (2) order that the rates for such sales be priced in accordance with the Public Utility Regulatory Policies Act of 1978 or the Federal Power Act, 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 14, 2020.

Dated: April 15, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08446 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 298–081]

Southern California Edison Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

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.: 298–081.

c. *Date Filed:* December 23, 2019.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Kaweah Hydroelectric Project.

f. *Location:* The existing project is located on the Kaweah River and East Fork Kaweah River in Tulare County, California. The project occupies 176.26 acres of public lands administered by the Bureau of Land Management. The project incorporates non-project facilities (diversion structures and water conveyance facilities) located within Sequoia National Park, which are authorized by a National Park Service special use permit.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Wayne P. Allen, Principle Manager, Hydro Licensing and Implementation, Southern California Edison Company, 1515 Walnut Grove Avenue, Rosemead, CA 91770, (626) 302–9741 or email at *wayne.allen@sce.com.*

i. *FERC Contact:* Jim Hastreiter, (503) 552–2760 or *james.hastreiter@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–298–081.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Kaweah Project has three developments.

Kaweah No. 1

This development consists of: (1) A 20-foot-long and 6-foot-high concrete diversion dam on the East Fork Kaweah River, (2) a 30,723-foot-long steel flume, (3) a forebay tank, (4) a 3,340-foot-long penstock, and (4) a powerhouse with an impulse turbine rated at 2.25 megawatts (MW).

Kaweah No. 2

This development consists of: (1) A 161-foot-long and 7-foot-high masonry diversion dam on the Kaweah River, (2) a 16,738-foot-long concrete-lined ditch, (3) a 3,822-foot-long steel flume, (4) a 1,047-foot-long steel pipe, (5) a forebay, (6) a 1,012-foot-long buried penstock, and (7) a powerhouse with a Francis turbine rated at 1.8 MW.

Kaweah No. 3

This development consists of: (1) A 2,580-foot-long concrete-lined flume, (2) an embankment forebay, (3) a 3,151-foot-long penstock, and (4) a powerhouse with two impulse turbines rated at a combined 4.8 MW.

The project has a primary 4.09-mile-long transmission line extending from the Kaweah No. 3 powerhouse to a substation, and two tap lines (120-foot-long and 0.4-mile-long) connecting Kaweah No. 1 and No. 2 powerhouses, respectively, to the primary line, and appurtenant facilities.

Non-Project Facilities

The project makes use of several non-project facilities located in Sequoia National Park. These facilities comprise portions of Kaweah No. 1 and No. 3 developments: (1) Two diversion structures on the Middle Fork and Marble Fork Kaweah Rivers, (2) a 21,000-foot-long steel flume that is the initial section of flowline which conveys water to the Kaweah No. 3 powerhouse, and (3) four small reservoirs on the East Fork Kaweah River. These facilities are operated under a special use permit (Permit No. PWR–SEKI–6000–2016–015) issued to SCE by the National Park Service, which expires on September 8, 2026.

Project Boundary

SCE is proposing the following modifications to the existing project boundary to include all lands necessary for operation and maintenance of the project, remove lands no longer necessary for operation and maintenance of the project, and correct known errors in the current Exhibit G for the project.

Boundary Increases

The project boundary will be increased to include the following existing project facilities that are currently outside the boundary.

Kaweah No. 1 Development

- Kaweah No. 1 Gaging Cableway (Map G–1h)
- Kaweah No. 1 Diversion Solar Panel (Map G–1h)
- Kaweah No. 1 Solar Yard Satellite Repeater (Map G–1h)
- Kaweah No. 1 Flowline Access Road—Unnamed (portion) (Map G–1h)
- Kaweah No. 1 Flowline Access Road—Bear Canyon (portion) (Map G–1h)
- Kaweah No. 1 Flowline Access Road—Slick Rock (portion) (Map G–1h)

Kaweah No. 2 Development

- Kaweah No. 2 Gaging Cableway (Map G–1d)
- Kaweah No. 2 Flowline—West Access Road (portion) (Map G–1b)
- Kaweah No. 2 Flowline—Center Access Road (portion) (Map G–1b)
- Kaweah No. 2 Flowline Access Road—Canal 6 West (Map G–1c)
- Kaweah No. 2 Flowline Access Road—Canal 6 East (Map G–1c)
- Kaweah No. 2 Flowline Access Road—Canal 5 (portion) (Map G–1c)
- Kaweah No. 2 Flowline Access Road—Canal 4 West (Map G–1c)
- Kaweah No. 2 Flowline Access Road—Canal 4 East (Map G–1c)
- Kaweah No. 2 Flowline Access Road—Canal 2 Brushout Grid (portion) (Map G–1c)

Boundary Decreases

The project boundary will be decreased to remove communication line and road corridors that are no longer necessary for operation and maintenance of the project.

Kaweah No. 1 Development

- Communication line corridor along Kaweah No. 1 Flowline in the vicinity of Kaweah No. 1 Diversion Dam (Map G–1h)
- Communication line corridor along Kaweah No. 1 Flowline in the vicinity of Kaweah No. 1 Forebay Tank (Map G–1f)
- Communication line corridor between Kaweah No. 1 Powerhouse and Kaweah No. 2 Flowline (Map G–1b)

Kaweah No. 2 Development

- Communication line corridor along the Kaweah No. 2 Flowline in the vicinity of Flume 9/Flume 10 (Map G–1b)
- Communication line corridor along the Kaweah No. 2 Flowline in the vicinity of Canal 9 (Map G–1b)
- Communication line corridor along the Kaweah No. 2 Flowline in the vicinity of Canal 6 (Map G–1c)
- Communication line corridor along the Kaweah No. 2 Flowline in the vicinity of Flume 5 (Map G–1c)
- Communication line corridor along the Kaweah No. 2 Flowline in the vicinity of Flume 2 (Map G–1c)

The following road corridors will be removed as they are remnants of the original project which have been removed and are no longer in existence.

Kaweah No. 2 Development

- Road corridor along the Kaweah No. 2 Flowline in the vicinity of Canal 9 (Map G–1b)
- Road corridor from Kaweah No. 2 Flowline—East Access Road to Kaweah No. 2 Flowline (Map G–1c)

Kaweah No. 3 Development

- Road corridor from Kaweah No. 3 Forebay Road to Kaweah No. 3 Penstock (Map G–1d)

Boundary Corrections

The project boundary will be further modified because a review of the existing boundary against the latest data sources available for the project resulted in some corrections to the project boundary currently approved by the Commission. These specific instances of boundary corrections will be included in the revised Exhibit G.

m. The Commission provides all interested persons an opportunity to view and/or print the license application via the internet through the Commission's Home Page (*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 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item (h) above.

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. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served

upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	June 2020.
Commission issues Draft EA or EIS	February 2021.
Comments on Draft EA or EIS	March 2021.
Modified Terms and Conditions	May 2021.
Commission Issues Final EA or EIS	August 2021.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: April 15, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08447 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1563–000]

Midlands Lessee LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Midlands Lessee LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 5, 2020.

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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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.

Dated: April 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08440 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–073.
Applicants: J.P. Morgan Ventures Energy Corporation.
Description: Notice of Change in Status of the J.P. Morgan Ventures Energy Corporation.
Filed Date: 4/15/20.
Accession Number: 20200415–5145.
Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1106–001.
Applicants: Missisquoi, LLC.
Description: Tariff Amendment: Missisquoi Change In Status—Revised to be effective 2/28/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5068.
Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1567–000.
Applicants: ISO New England Inc.
Description: Compliance filing: ISO New England Inc.; Compliance Filing of Energy Security Improvements to be effective 11/1/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5058.
Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1568–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF 2020 Annual Update of Real Power Loss Factors to be effective 5/1/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5060.
Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1569–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Concurrence IPL Amended Exhibits and Attachments (2020) to be effective 6/15/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5061.
Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1570–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-El Algodon Alto Wind Farm Interconnection Agreement to be effective 4/2/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5077.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1571–000.

Applicants: Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: EAL-Chicot Solar, LLC, LBA Agreement to be effective 6/14/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5135.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1572–000.

Applicants: Turquoise Nevada LLC.

Description: § 205(d) Rate Filing: Turquoise Nevada LLC First Amendment to Shared Facilities Agreement to be effective 2/22/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5149.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1573–000.

Applicants: DesertLink, LLC.

Description: Compliance filing: DesertLinks Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5157.

Comments Due: 5 p.m. ET 5/6/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08449 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–115–000.

Applicants: Briar Creek Solar 1, LLC.

Description: Briar Creek Solar 1, LLC—Notice of Self-Certification of EWG Status.

Filed Date: 4/16/20.

Accession Number: 20200416–5092.

Comments Due: 5 p.m. ET 5/7/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2042–034; ER10–1944–007; ER10–2051–009; ER10–1942–026; ER17–696–014;ER14–2931–007; ER10–1941–012; ER19–1127–002; ER10–2043–009; ER10–2029–011; ER10–2041–009; ER18–1321–002; ER10–2040–009; ER10–1938–029; ER10–2036–010; ER13–1407–009; ER10–1934–028; ER10–1893–028; ER10–3051–033; ER10–2985–032; ER10–3049–033; ER10–1889–007; ER10–1888–012; ER10–1885–012; ER10–1884–012; ER10–1883–012; ER10–1878–012; ER10–3260–009; ER10–1877–007; ER10–1895–007; ER10–1876–012; ER10–1875–012; ER10–1873–012; ER10–1871–008; ER10–1870–007; ER11–4369–013; ER16–2218–013; ER12–1987–010; ER10–1947–012; ER12–2645–005; ER10–1863–007; ER10–1862–028; ER12–2261–011; ER10–1865–012; ER10–1858–007; ER13–1401–007; ER10–2044–009.

Applicants: Calpine Energy Services, L.P., Bethpage Energy Center 3, LLC, Calpine Bethlehem, LLC, Calpine Construction Finance Company, LP, Calpine Energy Solutions, LLC, Calpine Fore River Energy Center, LLC, Calpine Gilroy Cogen, L.P., Calpine Mid-Atlantic Generation, LLC, Calpine Mid-Atlantic Marketing, LLC, Calpine Mid Merit, LLC, Calpine Mid-Merit II, LLC, Calpine New Jersey Generation, LLC, Calpine Power America—CA, LLC, Calpine Vineland Solar, LLC, CES Marketing IX, LLC,CES Marketing X, LLC, Champion Energy, LLC, Champion Energy Marketing LLC, Champion Energy Services, LLC, CPN Bethpage 3rd Turbine, Inc., Creed Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Granite Ridge Energy, LLC, Hermiston Power, LLC, KIAC Partners, Los Esteros Critical Energy Facility LLC, Los Medanos Energy Center, LLC, Metcalf Energy Center, LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, Calpine King City Cogen, LLC, CCFC Sutter Energy, LLC, North American Power and Gas, LLC, Otay Mesa Energy Center, LLC, Pastoria Energy Facility L.L.C., Russell City Energy Company, LLC, Pine Bluff Energy, LLC, TBG Cogen Partners, South Point Energy Center, LLC, O.L.S. Energy-Agnews, Inc., North American Power Business, LLC, Power Contract Financing, L.L.C., Westbrook Energy Center, LLC, Zion Energy LLC.

Description: Notification of Change in Status of the Calpine MBR Sellers, et al.

Filed Date: 4/15/20.

Accession Number: 20200415–5159.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER17–2059–007.

Applicants: Puget Sound Energy, Inc.

Description: Notice of Non-Material Change in Status, et al. of Puget Sound Energy, Inc.

Filed Date: 4/15/20.

Accession Number: 20200415–5219.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER19–1282–001.

Applicants: Paulding Wind Farm IV LLC.

Description: Notice of Non-Material Change in Status of Paulding Wind Farm IV LLC.

Filed Date: 4/15/20.

Accession Number: 20200415–5152.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER19–1495–001.

Applicants: Virginia Electric and Power Company.

Description: Report Filing: VEPCO Settlement Refund Report to be effective N/A.

Filed Date: 4/16/20.

Accession Number: 20200416–5059.

Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1574–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–04–16_SA 3473 Ameren IL-Hickory Point Solar Energy Center GIA (J815) to be effective 4/2/2020.

Filed Date: 4/16/20.

Accession Number: 20200416–5028.

Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1576–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amend GIA and Distribution Service Agmt Tehachapi Plains Wind SA No. 651–652 to be effective 4/17/2020.

Filed Date: 4/16/20.

Accession Number: 20200416–5077.

Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1577–000.

Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC Updated Nuclear Decommissioning Expense to be effective 6/16/2020.
Filed Date: 4/16/20.
Accession Number: 20200416–5078.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1578–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Cedar Springs Wind NC–LGIA (Rev 2) to be effective 6/16/2020.
Filed Date: 4/16/20.
Accession Number: 20200416–5083.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1579–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–04–16_SA 3474 ATXI-Pana Solar GIA (J912) to be effective 4/2/2020.
Filed Date: 4/16/20.
Accession Number: 20200416–5096.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1580–000.
Applicants: Alcoa Power Generating Inc.
Description: Requests for Reinstatement of Open Access Transmission Tariff Waivers, et al. of Alcoa Power Generating Inc.
Filed Date: 4/16/20.
Accession Number: 20200416–5098.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1581–000.
Applicants: Midcontinent Independent System Operator, Inc., Republic Transmission, LLC.
Description: Compliance filing: 2020–04–16_Republic Attachment O Compliance to be effective 12/31/9998.
Filed Date: 4/16/20.
Accession Number: 20200416–5103.
Comments Due: 5 p.m. ET 5/7/20.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES20–25–000.
Applicants: DTE Electric Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DTE Electric Company.
Filed Date: 4/15/20.
Accession Number: 20200415–5197.
Comments Due: 5 p.m. ET 5/6/20.

Take notice that the Commission received the following public utility holding company filings:
Docket Numbers: PH20–9–000.
Applicants: ENMAX Corporation.
Description: ENMAX Corporation submits FERC 65–B Waiver Notification.
Filed Date: 4/15/20.
Accession Number: 20200415–5192.
Comments Due: 5 p.m. ET 5/6/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08512 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1562–000]

Midlands Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Midlands Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 5, 2020.

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 the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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.

Dated: April 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08448 Filed 4–21–20; 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: RP20–783–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing X–103 Abandonment to be effective 3/31/2020.
Filed Date: 4/14/20.
Accession Number: 20200414–5002.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–784–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: MNUS Cleanup Filing—Remove NC Agrmt K9003 to be effective 5/14/2020.
Filed Date: 4/14/20.
Accession Number: 20200414–5003.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–785–000.
Applicants: Kern River Gas Transmission Company.

Description: § 4(d) Rate Filing: 2020 Expiring Negotiated Rate Agreements to be effective 5/1/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5036.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–786–000.
Applicants: Gas Transmission Northwest LLC.
Description: § 4(d) Rate Filing: GTN 2020 Housekeeping Filing to be effective 5/15/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5074.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–787–000.
Applicants: Bison Pipeline LLC.
Description: § 4(d) Rate Filing: 2020 Bison Housekeeping Filing to be effective 5/15/2020.
Filed Date: 4/15/20.
Accession Number: 20200415–5076.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–788–000.
Applicants: Kinetica Energy Express, LLC.
Description: Compliance filing Petition for Approval of Settlement.
Filed Date: 4/15/20.
Accession Number: 20200415–5137.
Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–789–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—CES 5801 RP18–923 & RP20–131 Settlement to be effective 1/1/2019.
Filed Date: 4/15/20.
Accession Number: 20200415–5166.
Comments Due: 5 p.m. ET 4/27/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 16, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08513 Filed 4–21–20; 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: RP20–417–001.

Applicants: Spire STL Pipeline LLC.

Description: Compliance filing Spire STL NAESB Compliance Filing to be effective 11/18/2019.

Filed Date: 4/13/20.

Accession Number: 20200413–5144.

Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–781–000.

Applicants: Discovery Gas Transmission LLC.

Description: Imbalance Cash-out Report for 2019 Activity for Discovery Gas Transmission LLC under RP20–781.

Filed Date: 4/13/20.

Accession Number: 20200413–5140.

Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: RP20–782–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Revised Summary of Negotiated Rate Capacity Release Agreements on 4–13–2020 to be effective 4/1/2020.

Filed Date: 4/13/20.

Accession Number: 20200413–5169.

Comments Due: 5 p.m. ET 4/27/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08445 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6756–011]

Green Mountain Power Corporation; Sugar River Power LLC; Notice of Transfer of Exemption

1. On March 20, 2020, Green Mountain Power Corporation, exemptee for the Lower Valley Hydroelectric Project No. 6756, filed a letter notifying the Commission that the project was transferred from Green Mountain Power Corporation to Sugar River Power LLC. The exemption from licensing was originally issued on November 9, 1982.[1] The project is located on the Sugar River in Sullivan County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. Sugar River Power LLC is now the exemptee of the Lower Valley Hydroelectric Project No. 6756. All correspondence must be forwarded to: Sugar River Power LLC, c/o Mr. Robert E. King, 42 Hurricane Road, Keene, NH 03431, Email: *bking31415@gmail.com.*

Dated: April 15, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08443 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM Interconnection, L.L.C. Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C. (PJM) Members Committee and Markets and Reliability Committee meetings, as well as other PJM committee, subcommittee or task force meetings.[1] The Commission and Commission staff may attend the following meetings:

PJM Members Committee

- May 4, 2020 (Conference Call)

[1] *Claremont Hydro Associates,* 21 FERC ¶ 62,216 (1982). The project was transferred to Green Mountain Power Corporation on August 15, 2017.

[1] For example, PJM subcommittees and task forces of the standing committees (Operating, Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, the Commission and Commission staff may monitor the various meetings posted on the PJM website.

- May 28, 2020 (Audubon, PA)
- June 18, 2020 (Audubon, PA)
- July 23, 2020 (Audubon, PA)
- September 17, 2020 (Audubon, PA)
- October 29, 2020 (Audubon, PA)
- November 19, 2020 (Audubon, PA)
- December 17, 2020 (Audubon, PA)

PJM Markets and Reliability Committee

- April 30, 2020 (Conference Call)
- May 28, 2020 (Audubon, PA)
- June 18, 2020 (Audubon, PA)
- July 23, 2020 (Audubon, PA)
- August 20, 2020 (Audubon, PA)
- September 17, 2020 (Audubon, PA)
- October 29, 2020 (Audubon, PA)
- November 19, 2020 (Audubon, PA)
- December 17, 2020 (Audubon, PA)

PJM Market Implementation Committee

- April 15, 2020 (Conference Call)
- May 13, 2020 (Audubon, PA)
- June 3, 2020 (Audubon, PA)
- July 8, 2020 (Audubon, PA)
- August 5, 2020 (Audubon, PA)
- September 2, 2020 (Audubon, PA)
- October 7, 2020 (Audubon, PA)
- November 5, 2020 (Audubon, PA)
- December 2, 2020 (Audubon, PA)

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission, including the following currently pending proceedings:

Docket No. ER12–2708, *Potomac-Appalachian Transmission Highline, LLC. et. al.*
Docket No. EL14–37, *PJM Interconnection, L.L.C.*
Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket Nos. EL14–48, ER18–988, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Maryland and Delaware State Commissions* v. *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C*
Docket Nos. ER15–2562, ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL16–49, *Calpine Corporation, et. al.,* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–31, *Northern Illinois Municipal Power Agency* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–37, *American Municipal Power, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–62, *Potomac Economics, Ltd.* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–64, *Energy Storage Association* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–65, *Renewable Energy Systems America* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–68, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER17–725, *PJM Interconnection, L.L.C.*
Docket No. ER17–950, *PJM Interconnection, L.L.C.*
Docket No. ER17–1138, *PJM Interconnection, L.L.C.*
Docket No. ER17–1420, *PJM Interconnection, L.L.C.*
Docket No. ER17–1433, *PJM Interconnection, L.L.C.*
Docket No. EL18–7, *American Electric Power Service Corporation* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL18–26, *EDF Renewable Energy, Inc.* v. *Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL18–34, *PJM Interconnection, L.L.C.*
Docket No. EL18–54, *New Jersey Board of Public Utilities* v. *PJM Interconnection, L.L.C., New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC and New York Power Authority*
Docket No. EL18–61, *Public Citizen, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL18–145, *Tilton Energy L.L.C. v PJM Interconnection, L.L.C.*
Docket No. EL18–178, *PJM Interconnection, L.L.C.*
Docket No. EL18–170, *DC Energy, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL18–183, *Radford's Run Wind Farm, L.L.C.* v. *PJM Interconnection, L.L.C.*
Docket No. ER18–87, *PJM Interconnection, L.L.C.*
Docket No. ER18–579, *PJM Interconnection, L.L.C.*
Docket No. ER18–680, *PJM Interconnection, L.L.C.*
Docket No. ER18–1314, *PJM Interconnection, L.L.C.*
Docket No. ER18–2102, *PJM Interconnection, L.L.C.*
Docket No. EL19–34, *Brookfield Energy Marketing LP* v. *PJM Interconnection, L.L.C.*
Docket No. EL19–47, *Independent Market Monitor for PJM Interconnection, L.L.C.* v. *PJM Interconnection, L.L.C.*
Docket No. EL19–51, *Cube Yadkin Generation, L.L.C.* v. *PJM Interconnection, L.L.C.*
Docket No. EL19–58, ER19–1486, *PJM Interconnection, L.L.C.*
Docket No. EL19–63, *Joint Consumer Advocates* v. *PJM Interconnection, L.L.C.*
Docket Nos. EL19–90, EL19–91, EL19–92, *ISO New England Inc., PJM Interconnection, L.L.C., Southwest Power Pool, Inc., Order Instituting Section 206 Proceedings*
Docket No. ER19–100, *PJM Interconnection, L.L.C.*
Docket No. ER19–105, *PJM Interconnection, L.L.C.*
Docket No. ER19–469, *PJM Interconnection, L.L.C.*
Docket No. ER19–1958, *PJM Interconnection, L.L.C.*
Docket No. ER19–2722, *PJM Interconnection, L.L.C.*
Docket No. ER19–2915, *PJM Interconnection, L.L.C.*
Docket No. EL20–10, *Anabric Development Partners, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER20–457, *PJM Interconnection, L.L.C.*
Docket No. ER20–584, *PJM Interconnection, L.L.C.*
Docket No. ER20–939, *PJM Interconnection, L.L.C.*
Docket No. ER20–955, *PJM Interconnection, L.L.C.*
Docket No. ER20–1258, *PJM Interconnection, L.L.C.*
Docket No. ER20–1392, *PJM Interconnection, L.L.C.*
Docket No. ER20–1414, *PJM Interconnection, L.L.C.*
Docket No. ER20–1416, *PJM Interconnection, L.L.C.*
Docket No. ER20–1451, *PJM Interconnection, L.L.C.*

For additional meeting information, see: *http://www.pjm.com/committees-and-groups.aspx* and *http://www.pjm.com/Calendar.aspx.*

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: April 15, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08444 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–120–001.

Applicants: Sun Jupiter Holdings LLC, El Paso Electric Company.

Description: Proposed Mitigation Options for Alternative Analysis

Scenario of El Paso Electric Company, et al.

Filed Date: 4/15/20.

Accession Number: 20200415–5052.

Comments Due: 5 p.m. ET 5/6/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–113–000.

Applicants: Midlands Solar LLC.

Description: Self-Certification of EWG Status of Midlands Solar LLC.

Filed Date: 4/14/20.

Accession Number: 20200414–5155.

Comments Due: 5 p.m. ET 5/5/20.

Docket Numbers: EG20–114–000.

Applicants: Midlands Lessee LLC.

Description: Self-Certification of EWG status of Midlands Lessee LLC.

Filed Date: 4/14/20.

Accession Number: 20200414–5156.

Comments Due: 5 p.m. ET 5/5/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3285–003; ER10–3181–004; ER17–177–002; ER17–991–008.

Applicants: UGI Utilities Inc., UGI Development Company, UGI Energy Services, LLC, Hunlock Energy, LLC.

Description: Supplement to December 2, 2019 Updated Triennial Market Power Analysis for the Northeast Region and Notice of Non-Material Change in Status of the UGI MBR Companies, et al.

Filed Date: 3/25/20.

Accession Number: 20200325–5128.

Comments Due: 5 p.m. ET 4/27/20.

Docket Numbers: ER20–1214–000.

Applicants: CHPE, LLC.

Description: Supplement to March 9, 2020 Application for Authority to Sell Transmission Rights at Negotiated Rates of CHPE, LLC.

Filed Date: 4/15/20.

Accession Number: 20200415–5012.

Comments Due: 5 p.m. ET 4/20/20.

Docket Numbers: ER20–1023–001.

Applicants: Mankato Energy Center, LLC.

Description: Tariff Amendment: Amendment to Revised Market-Based Rate Tariff to be effective 1/17/2020.

Filed Date: 4/14/20.

Accession Number: 20200414–5149.

Comments Due: 5 p.m. ET 5/5/20.

Docket Numbers: ER20–1024–001.

Applicants: Mankato Energy Center II, LLC.

Description: Tariff Amendment: Amendment to Revised Market-Based Rate Tariff to be effective 1/17/2020.

Filed Date: 4/14/20.

Accession Number: 20200414–5150.

Comments Due: 5 p.m. ET 5/5/20.

Docket Numbers: ER20–1564–000.

Applicants: Northern Colorado Wind Energy Center, LLC.

Description: Baseline eTariff Filing: Northern Colorado Wind Energy Center, LLC Application for MBR Authority to be effective 6/14/2020.

Filed Date: 4/14/20.

Accession Number: 20200414–5132.

Comments Due: 5 p.m. ET 5/5/20.

Docket Numbers: ER20–1565–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3244R1 City of Malden ? Board of Public Works NITSA NOA to be effective 4/1/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5014.

Comments Due: 5 p.m. ET 5/6/20.

Docket Numbers: ER20–1566–000.

Applicants: ITC Midwest LLC, Interstate Power and Light Company.

Description: § 205(d) Rate Filing: Update to O&T Agreement Exhibits and Appendices to be effective 6/15/2020.

Filed Date: 4/15/20.

Accession Number: 20200415–5015.

Comments Due: 5 p.m. ET 5/6/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–24–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Orange and Rockland Utilities, Inc.

Filed Date: 4/14/20.

Accession Number: 20200414–5148.

Comments Due: 5 p.m. ET 5/5/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–8–000.

Applicants: Canada Pension Plan Investment Board.

Description: FERC 65B Notice of Non-Material Change in Facts of Canada Pension Plan Investment Board.

Filed Date: 4/15/20.

Accession Number: 20200415–5011.

Comments Due: 5 p.m. ET 5/6/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08442 Filed 4–21–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Extension of Order Under Sections 362 and 365 of the Public Health Service Act; Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces an extension of an Order issued March 20, 2020, under Sections 362 and 365 of the Public Health Service Act, and associated implementing regulations, that suspends the introduction of certain persons from countries where an outbreak of a communicable disease exists. The Order was issued on April 20, 2020 and shall remain in effect until 11:59 p.m. EDT on May 20, 2020. This Order may be amended or rescinded prior to that time at the discretion of the Director.

DATES: This action took effect April 20, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle McGowan, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS V18–2, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION: On March 20, 2020, the Director of the Centers for Disease Control and Prevention issued an Order prohibiting the introduction of certain persons from countries where an outbreak of a communicable disease exists (85 FR 17060; March 26, 2020).

The Order was scheduled to expire April 20, 2020.[1]

Unfortunately, COVID–19 has continued to spread since the March 20 Order. Canada and Mexico continue to see large numbers of COVID–19 infections and deaths. In addition, the United States has seen many states enter the acceleration phase of the COVID–19 pandemic, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID–19. At the Federal level, HHS and the Department of Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. The determinations made in support of the March 20 Order remain correct and should continue in place until 11:59 p.m. EDT on May 20.

A copy of the order is provided below and a copy of the signed order can be found at *https://www.cdc.gov/quarantine/aboutlawsregulations quarantineisolation.html*.

U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC)

Order Under Sections 362 & 365 of the Public Health Service Act

(42 U.S.C. 265, 268):

Extension of Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists

I am extending the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists issued on March 20, 2020 until 11:59 p.m. EDT on May 20 or until I determine that the danger of further introduction of COVID–19 into the United Sates has ceased to be a serious danger to the public health, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

I issued the March 20, 2020 Order pursuant to §§ 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. 265, 268, and the Act's implementing regulations, which authorize the Director of the Centers for Disease Control and Prevention (CDC) to suspend the introduction of persons into the United States when the Director determines that the existence of a communicable disease in a foreign country or place creates a serious danger of the introduction of such disease into the United States, and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of such introduction is necessary to protect the public health.

The March 20, 2020 Order suspended introduction of certain ''covered aliens'' into the United States for a period of 30 days. The March 20, 2020 Order defined ''covered aliens'' as follows:

> Persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry (''POE'') or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions. This order does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE.

In addition, the March 20, 2020 Order did not apply to ''persons whom customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests.''

The March 20, 2020 Order was based on the following determinations:

- COVID–19 is a communicable disease that poses a danger to the public health;
- COVID–19 is present in numerous foreign countries, including Canada and Mexico;
- There is a serious danger of the introduction of COVID–19 into the land POEs and Border Patrol stations at or near the United States borders with Canada and Mexico, and into the interior of the country as a whole, because COVID–19 exists in Canada, Mexico, and the other countries of origin of persons who migrate to the United States across the land borders with Canada and Mexico;
- But for a suspension-of-entry order under 42 U.S.C. 265, covered aliens would be subject to immigration processing at the land POEs and Border Patrol stations, and during that processing many of them (typically aliens who lack valid travel documents and are therefore inadmissible) would be held in the common areas of the facilities, in close proximity to one another, for hours or days; and
- Such introduction into congregate settings of persons from Canada or Mexico would increase the already serious danger to the public health to the point of requiring a temporary suspension of the introduction of covered aliens into the United States.

COVID–19 has continued to spread since the March 20, 2020 Order. Canada and Mexico continue to see increasing numbers of COVID–19 infections and deaths. In addition, the United States has seen many states experience exponential growth in the number of confirmed COVID–19 cases, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID–19. At the Federal level, the U.S. Departments of Health and Human Services (HHS) and Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. At a time when these domestic efforts are ongoing and effective, it would be counterproductive and dangerous to undermine those efforts by permitting the introduction of persons from outside the United States who pose a risk of transmission of COVID–19 within DHS facilities or the U.S. interior.

Further, the determinations made in support of the March 20, 2020 Order remain correct. If anything, they have become more compelling. I therefore conclude that the March 20, 2020 Order should remain in effect until 11:59 p.m. EDT on May 20.

COVID–19 Is Continuing To Spread in Canada, Mexico, and the United States

Since the March 20, 2020 Order, the number of COVID–19 cases globally,

[1] *See* 1 CFR 18.17. When a date falls on a weekend or holiday, the next Federal business day is used.

including in Canada, Mexico, and the United States, has continued to increase.

Canada

As of April 13, 2020, Canada has reported 24,804 confirmed cases of COVID–19, and a total of 734 deaths. Canada has tested 422,200 people for COVID–19.[2] The Public Health Agency of Canada estimates that 72% of infections are the result of community transmission. Canadian modeling indicates that, with the use of strong epidemic controls resulting in a 2.5% infection rate, Canada could see 940,000 people with infections, 73,000 hospitalizations, and 23,000 people requiring intensive care over the course of the COVID–19 pandemic.[3]

Canada has implemented and maintained robust public health measures to slow the spread of COVID–19, including closures of public schools and cancelation of public events.[4] Non-essential businesses have been closed across the country.

Mexico

As of April 12, 2020, Mexico has reported 3,844 confirmed cases of COVID–19 and 233 deaths.[5] Nevertheless, based on public health surveillance, Mexico estimates that its current case count is 26,519. Mexico's modeling, based on World Health Organization (WHO) reporting from China, assumes a 0.2% infection rate with 250,656 infected people during the acceleration phase of the pandemic.[6] Of those people, 70% (175,459) are anticipated to seek medical care.[7] Among people seeking medical care, it is projected that 80% (140,367) will be ambulatory patients, 14% (25,564) will need to be hospitalized without intensive care, and 6% (10,528) will require intensive care.[8]

On March 30, 2020, Mexico's General Health Council declared a ''State of Health Emergency'' and suspended all non-essential activities in the public and private sectors until April 30, 2020.[9] The order granted full authority to the Secretariat of Health to take action to address the pandemic across Mexico. The central guidance of the Mexican health authorities is to maximize social distancing and that people should only leave their homes for essential activities, such as to procure food or medical care.[10] State and local authorities in several Mexican states also are enforcing non-essential business closures and self-quarantine measures.

United States

As of April 13, 2020, the United States has reported 554,849 confirmed cases of COVID–19 across the United States and 21,942 deaths.[11] Community transmission of COVID–19 is occurring in many locations across the United States. Several cities and states have experienced widespread, sustained community transmission to the extent that their healthcare and public health systems are at risk of being overwhelmed. This includes parts of states and territories at or near borders of the United States which are reporting large increases in new COVID–19 cases since the March 20, 2020 Order.[12]

In addition to practicing rigorous hygiene and social distancing and limiting non-essential travel,[13] CDC's guidance to the general public has expanded to include the recommendation that individuals wear face coverings when out in public.[14] CDC expects widespread transmission of COVID–19 in the United States will occur and, in the coming months, most of the U.S. will be exposed to COVID–19.[15] Nevertheless, not all areas of the United States are currently experiencing high rates of infection or numbers of confirmed cases. Generally speaking, COVID–19 is currently concentrated along the East, West, and Gulf Coasts and in the Great Lakes region; there are significantly fewer cases in the interior of the United States.[16] Limiting the spread of COVID–19 in these less affected areas is a critical component of the overall U.S. strategy to ''flatten the curve,'' which requires limiting the number of foci, or infected individuals, who may enter these areas.

Joint Efforts

On March 20, 2020, the United States and Canada jointly decided to restrict all non-essential travel across the U.S.-Canadian border for 30 days, with limited exceptions for U.S. citizens and others entering Canada for essential business, provided these individuals have not been outside Canada or the United States in the 14 days prior to requesting entry into Canada. Foreign nationals, excluding those arriving from the U.S., will not be allowed into Canada, subject to certain exceptions.[17] The Canadian government is requiring individuals returning home to Canada to self-isolate for 14 days upon their return.[18] Individuals exhibiting symptoms of COVID–19 are not permitted to enter Canada, except for Canadian citizens or permanent residents.[19]

Similarly, on March 20, 2020, the United States and Mexico announced a joint initiative temporarily restricting all non-essential travel across their border in an effort to combat the spread of COVID–19.[20]

[2] Government of Canada, Coronavirus disease (COVID–19): Outbreak Update (Apr. 13, 2020), *https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink#a2.*

[3] Public Health Agency of Canada, COVID–19 in Canada: Using Data and Modeling to Inform Public Health Action (Apr. 9, 2020), available at *https://www.canada.ca/content/dam/phac-aspc/documents/services/diseases/2019-novel-coronavirus-infection/using-data-modelling-inform-eng.pdf.*

[4] *See generally* Kristin Rushowy, The Star, Ontario Schools Will Remain Closed Until at Least May 4. But Kids Can Expect Marks (Mar. 31, 2020), *https://www.thestar.com/politics/provincial/2020/03/31/ontario-schools-wont-open-until-at-least-may.html*; Ryan Rocca, Global News, Coronavirus: City of Toronto Cancels Events Through June 30, including Pride Parade (updated Apr. 1, 2020), *https://globalnews.ca/news/6758350/coronavirus-toronto-cancels-events-pride-parade/.*

[5] World Health Organization, Coronavirus Disease 2019 (COVID–19) Situation Report—83 (Apr. 12, 2020), *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=* 697ce98d_4.

[6] Secretaria De Salud, COVID–19: Comunicado Tecnico Diario (Mar. 17, 2020), available at *https://www.gob.mx/cms/uploads/attachment/file/541879/COVID-19_-_Presentacion_Comunicado_Tecnico_Diario_2020.03.17.pdf.pdf.*

[7] *Id.*

[8] *Id.*

[9] U.S. Department of State, U.S. Embassy and Consulates in Mexico, Health Alert—Mexico COVID–19 Update (Apr. 10, 2020), *https://mx.usembassy.gov/health-alert-mexico-covid-19-update-04-10-2020/.*

[10] *Id.*

[11] CDC, Cases in U.S. (updated Apr. 13, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[12] The New York Times, Coronavirus in the U.S.: Latest Map and Case Count (Apr. 13, 2020), *https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states; see also* CDC, Coronavirus Disease 2019 (COVID–19): Cases in U.S.: States Reporting Cases of COVID–19 to CDC (Apr. 14, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#cumulative.*

[13] CDC, COVID–19: How to Protect Yourself and Others (last reviewed Apr. 8, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.*

[14] CDC, COVID–19: How to Wear a Cloth Face Covering (last reviewed Apr. 9, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html.*

[15] CDC, Testing for COVID–19 (Mar. 21, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html.*

[16] *See* Johns Hopkins University, COVID–19 United States Cases by County, *https://coronavirus.jhu.edu/us-map.*

[17] *See* Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada, 85 FR 16548 (Mar. 24, 2020).

[18] Government of Canada, Coronavirus disease (COVID–19): Canada's Response, *https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/canadas-reponse.html?topic=tilelink.*

[19] *Id.*

[20] U.S. Department of Homeland Security, Joint Statement on U.S.-Mexico Joint Initiative to Combat

Availability of Rapid COVID–19 Testing

Since the March 20, 2020 Order, rapid testing for COVID–19 has been developed that can provide results in approximately 15 minutes and manufacturers are currently ramping up production and distribution of rapid COVID–19 testing.[21] Although rapid COVID–19 testing could ameliorate some of the public health concerns associated with congregate detention in DHS border facilities, rapid COVID–19 testing is not yet widely available, and demand outstrips supply. Moreover, once it is available, rapid COVID–19 testing should be prioritized to certain key locations, such as hospitals treating high numbers of COVID–19 patients, where the ability to quickly determine whether doctors and nurses have been infected with COVID–19 could increase the availability of care providers by eliminating the need for these individuals to self-isolate while awaiting test results.

Determination and Implementation

Based on the foregoing, I find that the global presence of COVID–19, including in Canada, Mexico, still presents a danger of further introduction of COVID–19 into the United States. This is true notwithstanding the community transmission of COVID–19 in many locations across the United States. There are many locations in the United States near our borders with Canada and Mexico that have not yet experienced widespread community transmission. The on-going COVID–19 pandemic, including in Canada and Mexico, remains a serious danger to such locations.

In the March 20, 2020 Order, I found the risks troubling partly because outbreaks of COVID–19 in POEs or Border Patrol stations would lead U.S. Customs and Border Protection to transfer persons with acute presentations of illness to local or regional healthcare providers for treatment, which would exhaust the local or regional healthcare resources or at least reduce the availability of such resources to the domestic population, and further expose local or regional healthcare workers to COVID–19. Millions of Americans are complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread, protect others, and relieve the strain on the healthcare system. Their efforts would be significantly undermined if outbreaks of COVID–19 in land POEs or Border Patrol stations crippled the DHS workforce and local or regional healthcare systems.

I consulted with DHS before issuing this Order and requested that DHS continue to implement the March 20, 2020 Order because CDC does not have the capability, resources, or personnel needed to alternatively issue quarantine or isolation orders.[22]

The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, or until I determine that the danger of further introduction of COVID–19 into the United Sates has ceased to be a serious danger to the public health, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

This Order is not a rule subject to notice and comment under the Administrative Procedure Act (APA). In the event this order qualifies as a rule subject to notice and comment, a delay in effective date are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this order and a delay in effective date.[23] Given the public health emergency caused by COVID–19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay the issuing and effective date of this order. In addition, because this order concerns ongoing discussions with Canada and Mexico on how to best control COVID–19 transmission over our shared borders, it directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Notice and comment and a delay in effective date would not be required for that reason as well.

* * * * *

The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, 2020.

Authority

The authority for these orders is Sections 362 and 365 of the Public Health Service Act (42 U.S.C. 265, 268) and 42 CFR 71.40.

Dated: April 19, 2020.

Robert K. McGowan,

Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2020–08605 Filed 4–20–20; 9:00 am]

BILLING CODE 4163–18–P

the COVID–19 Pandemic (Mar. 20, 2020), available at *https://www.dhs.gov/news/2020/03/20/joint-statement-us-mexico-joint-initiative-combat-covid-19-pandemic.*

[21] For instance, on March 27, 2020, Abbott received emergency use authorization from the U.S. Food and Drug Administration (''FDA'') for the fastest available point-of-care test for COVID–19. Abbott, ''Detect COVID–19 in as Little as 5 Minutes'' (Mar. 27, 2020), *https://www.abbott.com/corpnewsroom/product-and-innovation/detect-covid-19-in-as-little-as-5-minutes.html; see generally* U.S. Food and Drug Administration, Emergency Use Authorizations, *https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations#covid19ivd.* Rapid COVID–19 testing will significantly reduce the time needed to confirm a suspected diagnosis of COVID–19, which currently may take as long as three to four days. *See* CDC, Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists (Mar. 20, 2020), available at *https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf; see also* CDC, Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons for Coronavirus Disease 2019 (COVID–19) (updated Apr. 8, 2020), *https://www.cdc.gov/coronavirus/2019-nCoV/lab/guidelines-clinical-specimens.html.* When a case of COVID–19 is suspected, the sooner that confirmatory test results are available, the more quickly treatment and isolation and quarantine measures can be implemented, lowering the risk of infecting others. *See* CDC, Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID–19) (updated Mar. 24, 2020), *https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html.*

[22] As previously discussed in the March 20, 2020 Order, CDC relies on the Department of Defense, other federal agencies, and state and local governments to provide both logistical support and facilities for federal quarantines. *See* 42 U.S.C. 268(b) (requiring customs officers to aid in the enforcement of quarantine regulations). CDC lacks the resources, staffing, and facilities to quarantine covered aliens. Similarly, DHS has informed CDC that in the near term, it is not financially or logistically practicable for DHS to build additional facilities at POEs and Border Patrol stations for purposes of quarantine or isolation.

[23] *See* 5 U.S.C. 553(b)(B) and (d)(3).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5573]

Technical Considerations for Demonstrating Reliability of Emergency-Use Injectors Submitted Under a Biologics License Application, New Drug Application, or Abbreviated New Drug Application; Draft Guidance for Industry and Food and Drug Administration; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry and FDA entitled ''Technical Considerations for Demonstrating Reliability of Emergency-Use Injectors Submitted under a BLA, NDA or ANDA.'' For injectable drug or biological products that are intended to treat emergent, life-threatening conditions, it is essential to ensure that the emergency-use injector will reliably deliver the drug or biological product as

intended. This is particularly critical for drugs when failure of the injector may prevent adequate delivery of a life-saving drug to a patient. The draft guidance describes the technical considerations for demonstrating reliability of emergency-use injectors under a biologics license application (BLA), new drug application (NDA), or abbreviated new drug application (ANDA).

DATES: Submit either electronic or written comments on the draft guidance by June 22, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5573 for ''Technical Considerations for Demonstrating Reliability of Emergency-Use Injectors Submitted under a BLA, NDA or ANDA: Guidance for Industry and FDA.'' 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 draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia Love, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993, 301–796–8930, *patricia.love@fda.hhs.gov* or *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA entitled ''Technical Considerations for Demonstrating Reliability of Emergency-Use Injectors Submitted under a BLA, NDA or ANDA.'' For injectable drug or biological products that are intended to treat emergent, life-threatening conditions, it is essential to ensure that the injector will reliably deliver the drug or biological product as intended. This is particularly critical for drugs when failure of the emergency-use injector may prevent adequate delivery of a life-saving drug to a patient. This guidance's focus is emergency-use injectors marketed with the emergency-use drug/biological product as a prefilled single entity combination product or as a co-packaged combination product assigned to the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research with market authorization under an approved NDA, ANDA, or BLA.

The draft guidance describes the technical considerations for demonstrating reliability of emergency-use injectors under an NDA, ANDA, or BLA. For purposes of the draft guidance, reliability is defined as the probability that the injector will perform as intended, without failure, for a given time interval under specified conditions. The document describes information and data that FDA recommends be included in marketing applications to demonstrate that an emergency-use injector is reliable, including the details of an example of an acceptable approach for the mathematical model, statistics, fault tree analysis, and use of certain current good manufacturing practice requirements for combination products (21 CFR 4.4(b)(1)(ii) and (iv)) to establish reliability of the emergency-use injector.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The draft guidance, when finalized, will represent the current thinking of FDA on ''Technical Considerations for Demonstrating Reliability of Emergency-Use Injectors Submitted under a BLA, NDA or ANDA.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to currently 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 314 for NDAs have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for BLAs have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 814, subpart B, for premarket approval applications have been approved under OMB control number 0910–0231. The collections of information section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), subpart E for 510(k) notifications, have been approved under OMB control number 0910–0120. The collections of information in the guidance for industry and FDA staff entitled ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844. The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/combination-products-guidance-documents* or *https://www.regulations.gov.*

Dated: April 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08466 Filed 4–21–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4711]

Nonbinding Feedback After Certain Food and Drug Administration Inspections of Device Establishments; Guidance for Industry and Food and Drug Administration Staff; 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 entitled ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments.'' FDA is issuing this guidance to comply with the FDA Reauthorization Act of 2017 (FDARA), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act). This guidance identifies a standardized method for communicating and submitting requests for nonbinding feedback and describes how FDA evaluates and responds to such requests.

DATES: The announcement of the guidance is published in the **Federal Register** on April 22, 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–4711 for ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments'' to the Office of 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. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Patrick Weixel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, 301–796–5537 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, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing this guidance to comply with section 702 of FDARA (Pub. L. 115–52), which amended section 704 of the FD&C Act (21 U.S.C. 374). The purpose of this guidance is to explain how the owner, operator, or agent in charge of a device establishment may submit a request for nonbinding feedback to FDA regarding actions the firm has proposed to take to address certain kinds of inspectional observations that have been documented on an FDA Inspectional Observations Form (Form FDA 483) and issued to the firm upon completion of an inspection of the firm's establishment. This guidance identifies a standardized method for communicating and submitting requests for nonbinding feedback and describes how FDA evaluates and responds to such requests.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of February 19, 2019 (84 FR 4823). FDA revised the guidance as appropriate in response to the comments, including clarifying that if a request for nonbinding feedback does not meet the statutory criteria, FDA may choose to respond to these requests through an alternate mechanism (*e.g.,* written correspondence, teleconference, face-to-face meeting) at its discretion.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Nonbinding Feedback After Certain FDA Inspections of Device Establishments'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17047 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved 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 the following FDA guidance have been approved by OMB as listed in the following table:

21 CFR guidance	Topic	OMB control No.
''Nonbinding Feedback After Certain FDA Inspections of Device Establishments''	Nonbinding Feedback	0910–0886

Dated: April 16, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08461 Filed 4–21–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

Date: May 27, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Sciences and Technologies: AREA/REAP Review.

Date: May 28, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: May 28–29, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Early Phase Clinical Trials in Imaging and Image-Guided Interventions (R01 Clinical Trial Required).

Date: May 28, 2020.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ileana Hancu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20817, 3014023911, *ileana.hancu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08468 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council, May 12, 2020, 11:30 a.m. to May 12, 2020, 3:45 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on January 29, 2020, 85 FR 5218.

This notice is being amended to change the meeting date, time and location from May 12–13, 2020, 8:30 a.m. to 3:45 p.m., Porter Neuroscience Research Center, Building 35A, Convent Drive, Bethesda, MD 20892 to May 12, 2020, 11:30 a.m. to 3:45 p.m., as a virtual meeting. Any member of the public may submit written comments no later than 15 days after the meeting.

Dated: April 16, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08471 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel R13 review.

Date: April 23, 2020.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301 451–2854, *li.jia@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 16, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08549 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Advancing and Examinng Diversity Training in Aging Research (R24/R25).

Date: May 14, 2020.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carmen Moten, Ph.D., MPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Bldg., 2C212, 7201 Wisconsin Avenue Bethesda, MD 20814, (301) 402–7703, *cmoten@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 16, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08469 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Vision Imaging, Bioengineering and Low Vision Technology Development.

Date: May 20–21, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr. Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–762–3076, *susan.gillmor@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 16, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08467 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Deafness and Other Communication Disorders Advisory Council, May 29, 2020, 09:00 a.m. to May 29, 2020, 12:20 p.m., PORTER NEUROSCIENCE RESEARCH CENTER, building 35A, 35 Convent Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 03, 2019, 84 FR 66211.

This notice is being amended to change the meeting location from (in-person location) to a virtual meeting. The url link to this meeting is: *https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings.* The meeting is partially Closed to the public.

Dated: April 16, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08470 Filed 4–21–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2024]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain

management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alaska: City and Borough of Sitka.	City and Borough of Sitka, (20–10–0299P).	The Honorable Gary Paxton, Mayor, City and Borough of Sitka, 100 Lincoln Street, Sitka, AK 99835.	Sitka United States Post Office and Court House, 100 Lincoln Street, Sitka, AK 99835.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2020	020006
Arizona:						
Cochise	City of Sierra Vista, (18–09–2056P).	The Honorable Rick Mueller, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, AZ 85635.	Community Development Department, 1011 North Coronado Drive, Sierra Vista, AZ 85635.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 5, 2020	040017
Maricopa	City of Peoria, (20–09–0216P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2020	040050
Maricopa	Unincorporated Areas of Maricopa County, (19–09–1002P).	The Honorable Clint L Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2020	040037
California:						
Riverside	City of Indio, (19–09–1450P).	The Honorable Glenn A. Miller, Mayor, City of Indio, City Hall, 100 Civic Center Mall, Indio, CA 92201.	Engineering Services Division, 100 Civic Center Mall, Indio, CA 92202.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 26, 2020	060255
Riverside	Unincorporated Areas of Riverside County, (19–09–1450P).	The Honorable V Manuel Perez, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 26, 2020	060245
Ventura	City of Simi Valley, (19–09–1889P).	The Honorable Keith L Mashburn, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 1, 2020	060421
Illinois:						
Will	City of Naperville, (20–05–0194P).	The Honorable Steve Chirico, Mayor, City of Naperville, City Hall, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 6, 2020	170213
Williamson	City of Marion, (20–05–1350P).	The Honorable Mike Absher, Mayor, City of Marion, 1102 Tower Square Plaza, Marion, IL 62959.	City Hall, 1102 Tower Square Plaza, Marion, IL 62959.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 10, 2020	170719
Michigan: Oakland	Township of Bloomfield, (19–05–2978P).	Mr. Leo Savoie, Township of Bloomfield Supervisor, P.O. Box 489, Bloomfield Hills, MI 48303.	Bloomfield Township Clerk's Office, 4200 Telegraph Road, Bloomfield Hills, MI 48303.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 29, 2020	260169
Nevada: Clark	Unincorporated Areas of Clark County, (19–09–1371P).	The Honorable Marilyn Kirkpatrick, Chair, Board of Commissioners, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Clark County, Office of the Director of Public Works, 500 South Grand Central Parkway, 2nd Floor, Las Vegas, NV 89155.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 3, 2020	320003
New York:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Nassau	Village of Kings Point, (19–02–0330P).	The Honorable Michael C. Kalnick, Mayor, Village of Kings Point, Village Hall, 32 Stepping Stone Lane, Kings Point, NY 11024.	Village Hall, 32 Stepping Stone Lane, Kings Point, NY 11024.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 5, 2020	360473
Westchester ...	City of New Rochelle, (19–02–1191P).	The Honorable Noam Bramson, Mayor, City of New Rochelle, 515 North Avenue, New Rochelle, NY 10801.	City Hall/Department of Public Works, 515 North Avenue, New Rochelle, NY 10801.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 4, 2020	360922

[FR Doc. 2020–08460 Filed 4–21–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2025]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 21, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2025, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible

online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Yavapai County, Arizona and Incorporated Areas Project: 18–09–0020S Preliminary Date: August 29, 2019	
City of Prescott	Public Works Building, 433 North Virginia Street, Prescott, AZ 86303.
Town of Chino Valley	Public Works Development Services, 1982 Voss Drive, Chino Valley, AZ 86323.
Town of Dewey-Humboldt	Dewey-Humboldt Town Hall, 2735 South Highway 69, Humboldt, AZ 86329.
Town of Prescott Valley	Engineering Division, 7501 East Skoog Boulevard, Prescott Valley, AZ 86314.
Unincorporated Areas of Yavapai County	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.
LaPorte County, Indiana and Incorporated Areas Project: 13–05–4232S Preliminary Date: June 28, 2019	
City of Michigan City	City Hall, Planning and Redevelopment Department, 100 East Michigan Boulevard, Michigan City, IN 46360.
Town of Long Beach	Town Hall, 2400 Oriole Trail, Long Beach, IN 46360.
Town of Michiana Shores	Town Hall, 601 El Portal Drive, Michiana Shores, IN 46360.
Town of Pottawattamie Park	Town Office, 100 Jack Pine Drive, Pottawattamie Park, IN 46360.
Town of Trail Creek	Town Hall, 211 Rainbow Trail, Trail Creek, IN 46360.
Unincorporated Areas of LaPorte County	County Government Complex, LaPorte County Plan Commission, 809 State Street, Suite 503A, LaPorte, IN 46350.
Sac County, Iowa and Incorporated Areas Project: 17–07–0044S Preliminary Date: July 6, 2019	
City of Auburn	City Hall, 209 Pine Street, Auburn, IA 51433.
City of Early	City Hall, 107 Main Street, Early, IA 50535.
City of Lake View	City Hall, 305 Main Street, Lake View, IA 51450.
City of Odebolt	City Hall, 205 West 2nd Street, Odebolt, IA 51458.
City of Sac City	City Hall, 302 East Main Street, Sac City, IA 50583.
City of Schaller	City Hall, 101 South Main Street, Schaller, IA 51053.
City of Wall Lake	City Hall, 108 Boyer Street, Wall Lake, IA 51466.
Unincorporated Areas of Sac County	Sac County Courthouse, 100 Northwest State Street, Sac City, IA 50583.

[FR Doc. 2020–08459 Filed 4–21–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2022]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 21, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2022, to Rick Sacbibit, Chief, Engineering Services

Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Santa Rosa County, Florida and Incorporated Areas Project: 11–04–1991S Preliminary Date: July 18, 2016 and July 29, 2019	
City of Gulf Breeze	Department of Community Services, 1070 Shoreline Drive, Gulf Breeze, FL 32561.
City of Milton	Department of Planning and Zoning, 6738 Dixon Street, Milton, FL 32572.
Town of Jay	Town Hall, 3695 Highway 4, Jay, FL 32565.
Unincorporated Areas of Santa Rosa County	Santa Rosa County Public Services Department, 6051 Old Bagdad Highway, Milton, FL 32583.

[FR Doc. 2020–08458 Filed 4–21–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2019]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 21, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally,

the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2019, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Cook County, Illinois and Incorporated Areas Project: 13–05–4215S Preliminary Dates: June 26, 2019 and November 22, 2019	
City of Chicago	Department of Buildings Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602.
City of Evanston	Engineer's Office, 2100 Ridge Avenue, Evanston, IL 60201.
Unincorporated Areas of Cook County	Cook County Building and Zoning Department, 69 West Washington, 21st Floor, Chicago, IL 60602.
Village of Glencoe	Engineering Department, 675 Village Court, Glencoe, IL 60022.
Village of Kenilworth	Public Works Department, 347 Ivy Court, Kenilworth, IL 60043.
Village of Wilmette	Village Hall, Community Development Department, 1200 Wilmette Avenue, Wilmette, IL 60091.
Village of Winnetka	Public Works Department, 1390 Willow Road, Winnetka, IL 60093.
Porter County, Indiana and Incorporated Areas Project: 13–05–4233S Preliminary Date: June 28, 2019	
City of Portage	City Hall, 6070 Central Avenue, Portage, IN 46368.
Town of Beverly Shores	Administration Building, 500 South Broadway, Beverly Shores, IN 46301.
Town of Burns Harbor	Town Hall, 1240 North Boo Road, Burns Harbor, IN 46304.
Town of Dune Acres	Administrative Office, Building Department, 1 East Road, Dune Acres, IN 46304.
Town of Ogden Dunes	Town Hall, 115 Hillcrest Road, Ogden Dunes, IN 46368.
Town of Porter	Town Hall, Building & Development Department, 303 Franklin Street, Porter, IN 46304.
Unincorporated Areas of Porter County	Porter County, 155 Indiana Avenue, Suite 311, Valparaiso, IN 46383.
Emmet County, Iowa and Incorporated Areas Project: 16–07–2224S Preliminary Date: July 25, 2019	
City of Armstrong	City Hall, 519 6th Street, Armstrong, IA 50514.
City of Estherville	City Hall, 2 North 7th Street, Estherville, IA 51334.

Community	Community map repository address
City of Wallingford	City Hall, 101 St. James Avenue, Wallingford, IA 51365.
Unincorporated Areas of Emmet County	Emmet County Courthouse, 609 1st Avenue North, Estherville, IA 51334.
Ottawa County, Michigan and Incorporated Areas Project: 13–05–4246S Preliminary Date: September 27, 2019	
Charter Township of Grand Haven	Charter Township Administrative Offices, 13300 168th Avenue, Grand Haven, MI 49417.
Charter Township of Holland	Charter Township Office, 353 North 120th Avenue, Holland, MI 49424.
City of Ferrysburg	City Hall, 17290 Roosevelt Road, Ferrysburg, MI 49409.
City of Grand Haven	City Hall, 519 Washington Avenue, Grand Haven, MI 49417.
City of Holland	City Hall, 270 South River Avenue, Holland, MI 49423.
Township of Olive	Olive Township Office, 6480 136th Avenue, Holland, MI 49424.
Township of Park	Park Township Office, 52 152nd Avenue, Holland, MI 49424.
Township of Port Sheldon	Port Sheldon Township Hall, 16201 Port Sheldon Street, West Olive, MI 49460.
Township of Spring Lake	Township Hall, 106 South Buchanan Street, Spring Lake, MI 49456.
Village of Spring Lake	Village Hall, 102 West Savidge Street, Spring Lake, MI 49456.
Cottonwood County, Minnesota and Incorporated Areas Project: 17–05–1799S Preliminary Date: June 25, 2019	
City of Mountain Lake	City Hall, 930 3rd Avenue, Mountain Lake, MN 56159.
City of Windom	City Hall, 444 9th Street, Windom, MN 56101.
Unincorporated Areas of Cottonwood County	Environmental Office, 339 9th Street, Windom, MN 56101.
Washington County, Wisconsin and Incorporated Areas Project: 18–05–0010S Preliminary Date: October 9, 2019	
City of West Bend	City Hall, 1115 South Main Street, West Bend, WI 53095.
Unincorporated Areas of Washington County	Washington County Government Center, 432 East Washington Street, Suite 3029, West Bend, WI 53095.
Village of Germantown	Village Hall, N112 W17001 Mequon Road, Germantown, WI 53022.
Village of Jackson	Village Hall, N168 W20733 Main Street, Jackson, WI 53037.
Village of Richfield	Richfield Village Hall, 4128 Hubertus Road, Hubertus, WI 53033.

[FR Doc. 2020–08457 Filed 4–21–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of September 4, 2020 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for

each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Arapahoe County, Colorado and Incorporated Areas Docket No.: FEMA–B–1709	
City of Aurora	Public Works Department, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80012.
City of Centennial	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.
City of Glendale	Glendale Municipal Offices, 950 South Birch Street, Glendale, CO 80246.
City of Littleton	Public Works Department, 2255 West Berry Avenue, Littleton, CO 80120.
Unincorporated Areas of Arapahoe County	Arapahoe County Department of Public Works and Development, 6924 South Lima Street, Centennial, CO 80112.
City and County of Denver, Colorado Docket No.: FEMA–B–1709	
City and County of Denver	Department of Transportation and Infrastructure, 201 West Colfax Avenue, Department 608, Denver, CO 80202.
Douglas County, Colorado and Incorporated Areas Docket No.: FEMA–B–1709	
City of Lone Tree	Public Works Department, 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124.
Town of Parker	Town Hall, 20120 East Mainstreet, Parker, CO 80138.
Unincorporated Areas of Douglas County	Douglas County Department of Public Works Engineering, 100 3rd Street, Castle Rock, CO 80104.
Hamilton County, Florida and Incorporated Areas Docket No.: FEMA–B–1905	
Unincorporated Areas of Hamilton County	Hamilton County Building Department, 204 Northeast 1st Street, Jasper, FL 32052.
Madison County, Florida and Incorporated Areas Docket No.: FEMA–B–1905	
City of Madison	City Hall, 321 Southwest Rutledge Street, Madison, FL 32340.
Town of Lee	Town Hall, 286 Northeast County Road 255, Lee, FL 32059.
Unincorporated Areas of Madison County	Madison County Courthouse Annex, 229 Southwest Pinckney Street, Madison, FL 32340.

[FR Doc. 2020–08456 Filed 4–21–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0040]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Employment Authorization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 22, 2020.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2005–0035. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter, the agency name and Docket ID USCIS–2005–0035.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (202) 272–8377

(This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on January 16, 2020, at 85 FR 2755, allowing for a 60-day public comment period. USCIS did receive 4 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at *http://www.regulations.gov* and enter USCIS–2005–0035 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Form I–765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes of aliens authorized to accept employment are listed in 8 CFR 274a.12.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 is 2,286,000 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection Biometric Processing is 302,535 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Form I–765WS is 302,000 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for the information collection Passport-Style Photographs is 2,286,000 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,934,966 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

Dated: April 15, 2020.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2020–08483 Filed 4–21–20; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X L1109AF LLUTY02000 L17110000.PN0000 241A]

Call for Nominations for the Bears Ears National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations for five members to the Bears Ears National Monument Advisory Committee (BENM–MAC). The BENM–MAC provides information and advice regarding development of the management plan and, as appropriate, management of the Monument. The Monticello Field Office will accept public nominations for 30 days from the date this Notice is posted. Committee duties and responsibilities are solely advisory in nature.

DATES: A completed nomination form and accompanying nomination/recommendation letters must be received by May 22, 2020.

ADDRESSES: Send nominations to the Monticello Field Office, 365 North Main, Monticello, UT 84535, Attention: BENM–MAC Nominations, or *jepalma@blm.gov* with the subject line BENM–MAC Nominations.

FOR FURTHER INFORMATION CONTACT: Jake Palma, Bears Ears National Monument Manager, Monticello Field Office, 365 North Main, Monticello, UT 84535; phone (435) 587–1539, or email:

jepalma@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary of the Interior to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act. The rules governing advisory committees are found at 43 CFR subpart 1784.

The BENM–MAC has vacancies in the following categories:

(1) A representative with paleontological expertise;

(2) A representative of the conservation community;

(3) A representative of private landowners;

(4) A representative of local business owners; and

(5) A representative of the public at large, including, for example, sportsmen and sportswomen communities.

Members will be appointed to 3-year terms.

Nominating Potential Members: Nomination forms may be obtained from the Monticello Field Office, (address listed above) or *https://www.blm.gov/get-involved/rac-near-you/utah/benm-mac.* All nominations must include a completed Resource Advisory Council application (OMB Control No. 1004–0204), letters of reference from the represented interests or organizations, and any other information that speaks to the nominee's qualifications.

The specific category the nominee would be representing should be identified in the letter of nomination and in the application form.

Members of the BENM–MAC serve without compensation. However, while away from their homes or regular places of business, BENM–MAC and subcommittee members engaged in BENM–MAC or subcommittee business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

The BENM–MAC will meet approximately two to four times annually, and at such other times as designated by the DFO.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–1)

Anita Bilbao,

Acting State Director.

[FR Doc. 2020–08463 Filed 4–21–20; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, and Components Thereof, DN3450* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Universal Electronics, Inc. on April 16, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including streaming players, televisions, set top boxes, remote controllers, and components thereof. The complaint names as respondents: Roku Inc., Los Gatos, CA; TCL Electronics Holdings Limited, f/k/a TCL Multimedia Holdings Limited, Hong Kong; Shenzhen TCL New Technology Company Limited, China; TCL King Electrical Appliances (Huizhou) Company Limited, China; TTE Technology Inc. d/b/a/TCL USA and TCL North America, Corona, CA; TCL Corp., China; TCL Moka, Int'l Ltd., Hong Kong; TCL Overseas Marketing Ltd., Hong Kong; TCL Industries Holdings Co., Ltd., Hong Kong; TCL Smart Device (Vietnam) Company, Ltd., Vietnam; Hisense Co. Ltd., China; Hisense Electronics Manufacturing Company of America Corporation d/b/a Hisense USA, Suwanee, GA; Hisense Import & Export Co. Ltd., China; Qingdao Hisense Electric Co., Ltd., China; Hisense International (HK) Co., Ltd., Hong Kong; Funai Electric Co., Ltd., Japan; Funai Corporation Inc., Rutherford, NJ; and Funai (Thailand) Co., Ltd., Thailand. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3450'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 17, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08517 Filed 4–21–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1169]

Certain Fish-Handling Pliers and Packaging Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued a recommended determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended general exclusion order against certain fish-handling pliers and packaging thereof. This notice is soliciting comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(g)(1)(E).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's recommended determination on remedy and bonding issued in this investigation on April 10, 2020. Comments should address whether issuance of the recommended general exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended general exclusion order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended general exclusion order;

(iii) identify like or directly competitive articles that complainant, its licensees, or

third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended general exclusion order within a commercially reasonable time; and

(v) explain how the recommended general exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on May 8, 2020.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

[1] All contract personnel will sign appropriate nondisclosure agreements.

Issued: April 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08479 Filed 4–21–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1116]

Certain Blood Cholesterol Testing Strips and Associated Systems Containing the Same; Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, by ACON Biotech (Hangzhou) Co., Ltd. of Hangzhou, China, and ACON Laboratories, Inc., of San Diego, California, and has determined to issue a limited exclusion order. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 5, 2018, based on a complaint filed by Polymer Technology Systems, Inc. of Indianapolis, Indiana (''PTS''). 83 FR 26087–88. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain blood cholesterol testing strips and associated systems containing the same by reason of infringement of one or more claims of U.S. Patent Nos. 7,087,397 (''the '397 patent''); 7,625,721 (''the '721 patent''); and 7,494,818 (''the '818 patent''). *Id.* at 26087. The notice of investigation named as respondents ACON Laboratories, Inc. of San Diego, California (''ACON Labs''), and ACON Biotech (Hangzhou) Co., Ltd. of Hangzhou, China (''ACON Bio'') (collectively, ''ACON''). The Office of Unfair Import Investigations is not a party to the investigation. *Id.* at 26088.

The Commission subsequently terminated the investigation with respect to claims 10, 13, 14, and 20 of the '397 patent based on PTS's withdrawal of those allegations. *See* Order. No. 7 (Sept. 10, 2018), *not reviewed,* Notice (Sept. 25, 2018); Order No. 10 (Jan. 31, 2019), *not reviewed,* Notice (Feb. 21, 2019). The Commission also terminated the investigation for infringement purposes with respect to claim 17 of the '397 patent; claims 2, 3, 13, and 14 of the '721 patent; and claim 10 of the '818 patent based on PTS's withdrawal of allegations. Order No. 14 (Feb. 14, 2019), *not reviewed,* Notice (Mar. 5, 2019). Finally, the Commission terminated the investigation with respect to claims 1–3, 5, and 18 of the '397 patent and claims 5, 7, and 9 of the '721 patent based on PTS's withdrawal of allegations. Order No. 15 (Mar. 12, 2019), *not reviewed,* Notice (April 9, 2019). Accordingly, at the time of the Final ID, PTS asserted for infringement claim 19 of the '397 patent; claims 1, 4, 6, 8, and 15 of the '721 patent; and claims 8, 9, and 11 of the '818 patent. Final ID at 43.

On February 13, 2019, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') granting a summary determination that PTS satisfied the economic prong of the domestic industry requirement for each of three asserted patents under section 337(a)(3)(A), (B), and (C). Order No. 13 (Feb. 13, 2019). No party petitioned for review of the ID, and the Commission declined to review the ID. Notice (Mar. 12, 2019).

On June 4, 2019, the ALJ issued a final ID finding a violation of section 337 with respect to the '397 and '721 patents, and no violation with respect to the '818 patent. The ALJ found that ACON infringed claim 19 of the '397 patent and claims 1, 4, 6, 7, and 15 of the '721 patent, but did not infringe claims 8, 9, and 11 of the '818 patent. The ALJ also found that PTS satisfies the domestic industry requirement with respect to all three asserted patents, and that no asserted claims were shown to be invalid by clear and convincing evidence.

On June 17, 2019, ACON petitioned for review of the final ID with respect

to the '397 and '721 patents, and contingently petitioned for review of the final ID with respect to the '818 patent. PTS did not file a petition for review, and, on June 25, 2019, PTS filed a response to ACON's petition.

On August 13, 2019, the Commission determined to review the Final ID in part. Specifically, the Commission determined to review the following issues: (1) Whether ACON Labs' use of the accused products in the United States constitutes a violation of 19 U.S.C. 1337(a)(1)(B)(i); (2) the final ID's construction of ''reacting HDL . . . without precipitating said one or more non-selected analytes'' in the '721 patent, as well as related findings on infringement, the domestic industry, and invalidity; and (3) the final ID's finding that all of the asserted claims of the '721 patent are not shown to be invalid for a lack of enablement. The Commission did not review any other findings presented in the final ID.

The Commission also sought briefing from the parties on four issues and on remedy, bonding, and public interest. On August 27, 2019, PTS and ACON filed their initial submissions in response to the Commission's request for briefing. On September 3, 2019, PTS and ACON filed their reply submissions in response to the Commission's request for briefing. No third-party submissions on remedy, bonding, or the public interest were received.

Having examined the record of this investigation, including the Final ID, the petition, response, and other submissions from the parties, the Commission has determined that PTS has shown a violation of section 337 by ACON Bio and ACON Labs with respect to the '397 and '721 patents. The Commission has also determined to construe the term ''precipitating'' to mean ''separating a solid substance or material from a solution by a chemical reaction,'' and finds that, under this construction, PTS established infringement and the domestic industry requirement with respect to claims 1, 4, 6, 8, and 15 of the '721 patent, and that ACON failed to show that any claim is invalid by clear and convincing evidence. The Commission's determinations are explained more fully in the accompanying Opinion. All other findings in the ID under review that are consistent with the Commission's determinations are affirmed.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order with respect to ACON Bio and ACON Labs prohibiting the importation of imported blood cholesterol testing strips and associated systems containing the same that are covered by one or more of claim 19 of the '397 patent and claims 1, 4, 6, 8, and 15 of the '721 patent. The Commission has further determined that the public interest factors enumerated in subsection 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude the issuance of the limited exclusion order. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of zero percent of the entered value of such articles.

The Commission's notice, order, and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 16, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08480 Filed 4–21–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0056]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Special Agent Medical Preplacement—ATF Form 2300.10

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Special Agent Medical Preplacement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 2300.10.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Federal Government.

Abstract: The Special Agent Medical Preplacement Form—ATF Form 2300.10 is used to collect specific personally identifiable information (PII), including the name, address, telephone, social security number and certain medical data. The collected medical data is used to determine if a candidate is medically

qualified for and can be hired to serve as a criminal investigator (special agent) or an explosives enforcement officer.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 288 respondents will utilize the form annually, and it will each respondents approximately 45 minutes for all respondents to prepare their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 216 hours, which is equal to 288 (# of respondents) * 1 (number or responses per respondents) * .75 (45 minutes).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this collection include an increase in both the number of respondents and total burden hours by 168 and 126 hours respectively, since the last renewal in 2017. Due to more respondents and an increase in the postal rate, the public cost has also increased by $2,160, since 2017.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–08509 Filed 4–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 03–20]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, April 30, 2020, at 10:00 a.m.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2020–08585 Filed 4–20–20; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0003]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until May 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the STOP Formula Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 56 STOP state administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)) and their subgrantees. The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. The STOP Formula Grants Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grants Program. The grant funds must be distributed by STOP state administrators to

subgrantees according to a statutory formula (as amended by VAWA 2000 and by VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly 2500 subgrantees [1] to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grants Program is divided into sections that pertain to the different types of activities that subgrantees may engage in and the different types of subgrantees that receive funds, *i.e.* law enforcement agencies, prosecutors offices, courts, victim services agencies, etc.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 2,556 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: April 17, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–08506 Filed 4–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0034]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until May 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* STOP Formula Grant Program Match Documentation Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0034. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states and the District of Columbia The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which are awarded to states and territories to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women. Each state and territory must allocate 25 percent for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which at least 10 percent must be distributed to culturally specific community-based organizations), 5 percent to state and local courts, and 15 percent for discretionary distribution. VAWA provides for a 25 percent match requirement imposed on grant funds under the STOP Formula Grant Program. Thus, a grant made under this program may not cover more than 75 percent of the total costs of the project being funded. Under VAWA 2005, the state cannot require matching funds for a grant or subgrant for any tribe, territory, or victim service provider, regardless of funding allocation category. The state is exempted from matching the portion of the state award that goes to a victim service provider for victim services or that goes to tribes. Territories are also exempted in full. States can receive additional waiver of match based on a petition to OVW and a demonstration of financial need. OVW will look at the time of closeout at the entities and purposes of funds and base the required match on that. The purpose of this new information collection is to provide a worksheet for documenting the amount of matching funds required at the closeout of a specific fiscal year award under the STOP Formula Grant Program. The type of questions on the worksheet will include award number, award amount, amount of funds sub-awarded to victim service providers for victim services or to tribes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

[1] Each year the number of STOP subgrantees changes. The number 2,500 is based on the number of reports that OVW has received in the past from STOP subgrantees.

respond/reply: It is estimated that it will take the approximately 51 respondents approximately ten minutes to complete a STOP Formula Grant Program match documentation worksheet.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 8.5 hours, that is 51 STOP State Administrators completing an assessment tool one time with an estimated completion time being ten minutes.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: April 17, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–08507 Filed 4–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 16 2020, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Mexico in the lawsuit entitled, *City of Las Cruces and Doña Ana County* v. *United States of America, et al.,* Civil Action No. 2:17–cv–00809–JCH–GBW.

The City of Las Cruces and Doña Ana County (''City and County'') filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'') against the United States Department of Defense and National Guard Bureau. The United States filed counterclaims, on behalf of the U.S. Environmental Protection Agency (''EPA''), against the City and County. The case pertains to liability for response actions and response costs in connection with the Griggs and Walnut Ground Water Plume Superfund Site located in Las Cruces, New Mexico (''the Site''). Under the proposed settlement, the United States will pay $7,249,407 to resolve the United States' liability at the Site, and the City and County will pay $1,140,000 to the United States in reimbursement of past costs, will pay EPA's future costs at the Site and will perform the remedial action, including the operation and maintenance of a groundwater extraction and treatment system. In return, the United States agrees not to sue the City and County under sections 106 and 107 of CERCLA or under section 7003 of the Resource Conservation and Recovery Act for EPA's past costs and for work that the City and County have agreed to perform. The City and County likewise agree not to sue the United States under sections 106 and 107 of CERCLA with respect to the Site. The City and County have also asserted claims in this action against four entities associated with current or former dry cleaners in the area (*i.e.,* The Lofts at Alameda, LLC, American Linen Supply of New Mexico, LLC, Rawson Leasing Limited Liability Co., and Chilsolm's-Village Plaza, LLC), and these claims are unaffected by the proposed settlement.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *City of Las Cruces and Doña Ana County* v. *United States of America, et al.,* D.J. Ref. No. 90–11–3–09067/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $99.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $14.50.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 2020–08553 Filed 4–21–20; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0029]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until June 22, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended and the Prison Rape Elimination Act for Applicants to the STOP Formula Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0029. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005, and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory. As a result of VAWA 2013 and the penalty provision of the Prison Rape Elimination Act (PREA), States are required to certify compliance with PREA. If States cannot certify compliance, they have the option of forfeiting five percent of covered funds or executing an assurance that five percent of covered funds will be used towards coming into compliance with PREA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) 10 minutes to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as amended and the Prison Rape Elimination Act.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 10 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: April 17, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–08508 Filed 4–21–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than May 4, 2020.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Administrator, Office of Trade Adjustment Assistance, at the address shown below, not later than May 4, 2020.

The petitions filed in this case are available for inspection at the Office of the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC this 10th day of April 2020.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

111 TAA PETITIONS INSTITUTED BETWEEN 3/1/20 AND 3/31/20

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
95748	Aclara Meters LLC (Company)	Somersworth, NH	03/02/20	02/28/20
95749	Aptargroup, Inc. (State/One-Stop)	Torrington, CT	03/02/20	02/28/20
95750	Conduent Patient Access Solutions (State/One-Stop)	Chesapeake, VA	03/02/20	02/28/20
95751	DENSO Air Systems Michigan, Inc. (State/One-Stop)	Battle Creek, MI	03/02/20	02/28/20
95752	Manchester Tank & Equipment Company (State/One-Stop).	Bedford, IN	03/02/20	02/28/20
95753	Spark Networks (State/One-Stop)	Lehi, UT	03/02/20	02/26/20
95754	US Steel (State/One-Stop)	Dearborn, MI	03/02/20	02/28/20

111 TAA PETITIONS INSTITUTED BETWEEN 3/1/20 AND 3/31/20—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
95755	International Automotive Components (IAC) (State/One-Stop).	Madisonville, KY	03/03/20	03/02/20
95756	Lufkin Industries a GE Oil & Gas (Baker Hughes) (State/One-Stop).	Lufkin, TX	03/03/20	03/02/20
95757A	Mondelez Global LLC (Company)	East Hanover, NJ	03/03/20	03/02/20
95757	Mondelez Global LLC (Company)	Hanover Township, PA	03/03/20	03/02/20
95758	Southern Graphic Systems, LLC (Workers)	Louisville, KY	03/03/20	03/02/20
95759	Sterlingwear of Boston (Union)	Boston, MA	03/03/20	03/02/20
95760	Franchise World Headquarters dba Subway (State/One-Stop).	Milford, CT	03/03/20	03/03/20
95761	Thermo Fisher Scientific (FEI Co.) (State/One-Stop)	Hillsboro, OR	03/03/20	03/02/20
95762	Commercial Dehydrator Systems, Inc. (State/One-Stop)	Eugene, OR	03/04/20	03/03/20
95763	Hartshorne Mining Group, LLC (Workers)	Rumsey, KY	03/04/20	03/03/20
95764	Landis Gyr (State/One-Stop)	Pequot Lakes, MN	03/04/20	03/03/20
95765	Modern Business Machines (Xerox) (State/One-Stop)	Appleton, WI	03/04/20	03/04/20
95766	Modern Transmission Development Company (Company).	Leitchfield, KY	03/04/20	03/03/20
95767	Lufkin Industries LLC (State/One-Stop)	Lufkin, TX	03/04/20	03/03/20
95768	State Street Bank (State/One-Stop)	Quincy, MA	03/04/20	03/03/20
95769	Stewart & Stevenson (State/One-Stop)	Houston, TX	03/04/20	03/03/20
95770	Thermo Ramsey LLC (State/One-Stop)	Minneapolis, MN	03/04/20	03/03/20
95771	Aventri, Inc. (State/One-Stop)	Norwalk, CT	03/05/20	03/05/20
95772	Component Bar (State/One-Stop)	O'Fallon, MO	03/05/20	03/04/20
95773	HKT Teleservices (State/One-Stop)	Lincoln, NE	03/05/20	03/04/20
95774	Powerex Inc. (State/One-Stop)	Youngwood, PA	03/05/20	03/03/20
95775	Ridewell Suspensions (State/One-Stop)	Springfield, MO	03/05/20	03/04/20
95776	Rockland Industries (State/One-Stop)	Bamberg, SC	03/05/20	03/04/20
95777	Cardone Industries (State/One-Stop)	Harlingen, TX	03/06/20	03/05/20
95778	RTR Industries LLC (State/One-Stop)	Anaheim, CA	03/06/20	03/05/20
95779	Synamedia Americas, LLC (State/One-Stop)	Costa Mesa, CA	03/06/20	03/05/20
95780	Temp-Flex, L.L.C. (State/One-Stop)	South Grafton, MA	03/06/20	03/04/20
95781	The Travelers Indemnity Company (State/One-Stop)	Saint Paul, MN	03/06/20	03/05/20
95782	Ultra Clean Technology (Workers)	Hayward, CA	03/06/20	03/05/20
95783	UnitedHealth Group (State/One-Stop)	Minnetonka, MN	03/06/20	03/05/20
95784	Veritas Tools (State/One-Stop)	Ogdensburg, NY	03/06/20	03/05/20
95785	Senior Aerospace AMT (State/One-Stop)	Arlington, WA	03/09/20	03/06/20
95786	Arauco North America, Inc. (State/One-Stop)	Eugene, OR	03/09/20	03/06/20
95787	Arconic (State/One-Stop)	Hutchinson, KS	03/09/20	03/06/20
95788	Honeywell Safety Products (State/One-Stop)	Franklin, PA	03/09/20	03/06/20
95789	Jeannette Specialty Glass (Union)	Jeannette, PA	03/09/20	03/06/20
95790	Lanz Cabinets (State/One-Stop)	Eugene, OR	03/09/20	03/06/20
95791	Lippert Components Manufacturing, Inc. (State/One-Stop).	Nampa, ID	03/09/20	03/06/20
95792	Littelfuse, Inc. REVISED VERSION (State/One-Stop)	Rapid City, SD	03/09/20	03/06/20
95793	RealWear (State/One-Stop)	Vancouver, WA	03/09/20	03/03/20
95794	Saint Gobain SEFPRO dba Corhart Refractories (Union)	Buckhannon, WV	03/09/20	03/05/20
95795	SS&C Technology Holdings/formerly DST (State/One-Stop).	Kansas City, MO	03/09/20	03/05/20
95796	Tyson Foods, Inc. (State/One-Stop)	Springdale, AR	03/09/20	03/06/20
95797	Concentrix CVG Corporation (State/One-Stop)	Laredo, TX	03/10/20	03/09/20
95798	Corsicana Bedding, LLC (State/One-Stop)	Dallas, TX	03/10/20	03/09/20
95799	Eaton Hydraulics LLC (Company)	Shawnee, OK	03/10/20	03/05/20
95800	Xerox Corporation (State/One-Stop)	Webster, NY	03/10/20	03/09/20
95801	A&I Products—John Deere (State/One-Stop)	Williamsport, PA	03/11/20	03/10/20
95802	Caldwell Corporation (Company)	Emporium, PA	03/11/20	03/10/20
95803	Crown Cork and Seal (State/One-Stop)	Omaha, NE	03/11/20	03/10/20
95804	Imperial Health LLP (State/One-Stop)	Lake Charles, LA	03/11/20	03/10/20
95805	Russell Stover Chocolates, LLC (State/One-Stop)	Montrose, CO	03/11/20	03/10/20
95806	United Steel, Inc. (State/One-Stop)	East Hartford, CT	03/11/20	03/10/20
95807	Denton Publications (State/One-Stop)	Elizabethtown, NY	03/12/20	03/11/20
95808	Dispensing Dynamics (Company)	City of Industry, CA	03/12/20	03/11/20
95809	Formfactor (State/One-Stop)	Beaverton, OR	03/12/20	03/11/20
95810	Papyrus Stationary (State/One-Stop)	St. Louis, MO	03/12/20	03/11/20
95811	OptumRX (State/One-Stop)	Phoenix, AZ	03/13/20	03/12/20
95812	Smiths Detection (Company)	Edgewood, MD	03/13/20	03/04/20
95813	United States Steel Corporation, Minnesota Operations (State/One-Stop).	Mountain Iron, MN	03/13/20	03/12/20
95814	Dun and Bradstreet (State/One-Stop)	Tucson, AZ	03/16/20	03/13/20
95815	Knoll, Inc. (State/One-Stop)	Grand Rapids, MI	03/16/20	03/13/20
95816	Noron Composite Technologies, Inc. (State/One-Stop)	Grant Township, MI	03/16/20	03/13/20
95817	HCL America, Inc. (State/One-Stop)	Wethersfield, CT	03/17/20	03/16/20

111 TAA PETITIONS INSTITUTED BETWEEN 3/1/20 AND 3/31/20—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
95818	Regal Beloit Corporation (Union)	Valparaiso, IN	03/17/20	03/16/20
95819	Southwire, LLC. (Workers)	Hayesville, NC	03/17/20	03/16/20
95820	Timberland Forest Products (State/One-Stop)	West Plains, MO	03/17/20	03/16/20
95821	Cox Machine (State/One-Stop)	Harper, KS	03/18/20	03/17/20
95822	Ricoh USA, Inc. (State/One-Stop)	Houston, TX	03/18/20	03/17/20
95823	SMB Corporation (State/One-Stop)	Wichita, KS	03/18/20	03/17/20
95824	HCL America , INC (formally—Xerox) (State/One-Stop)	Lewisville, TX	03/19/20	03/18/20
95825	Steelcase Inc. (State/One-Stop)	Grand Rapids, MI	03/19/20	03/18/20
95826	Wexco Corporation (Union)	Lynchburg, VA	03/19/20	03/18/20
95827	AMETEK Instrumentation Systems (Company)	Grand Junction, CO	03/20/20	03/19/20
95828	Petrosmith (State/One-Stop)	Abilene, TX	03/20/20	03/10/20
95829	Takeda Pharmaceuticals (State/One-Stop)	Thousand Oaks, CA	03/20/20	03/19/20
95830	Wayzata Home Products (State/One-Stop)	Edina, MN	03/20/20	03/19/20
95831	Basic Energy Services (State/One-Stop)	San Angelo, TX	03/23/20	03/20/20
95832	F5 Networks, Inc. (State/One-Stop)	Liberty Lake, WA	03/23/20	03/17/20
95833	Formtek-Maine (State/One-Stop)	Clinton, ME	03/23/20	03/20/20
95834	Nichols Oil Tools (State/One-Stop)	San Angelo, TX	03/23/20	03/20/20
95835	NTT Limited (State/One-Stop)	Omaha, NE	03/23/20	03/20/20
95836	Precision for Medicine (State/One-Stop)	Norwalk, CT	03/23/20	03/20/20
95837	Echo Canyon Energy Products Supply, LLC (State/One-Stop).	San Angelo, TX	03/24/20	03/23/20
95838	EFI (Workers)	Fremont, CA	03/24/20	03/23/20
95839	IPSCO Koppel Tubulars, Inc. (subsidiary of Tenaris) (State/One-Stop).	Baytown, TX	03/24/20	03/23/20
95840	Northwest Hardwoods (State/One-Stop)	Garibaldi, OR	03/24/20	03/23/20
95841	Pier 1 Imports (State/One-Stop)	Jonesboro, AR	03/24/20	03/23/20
95842	Pier 1 Imports (State/One-Stop)	Kansas City, MO	03/24/20	03/20/20
95843	Amcor Rigid Packaging (State/One-Stop)	Hazelwood, MO	03/25/20	03/24/20
95844	Cloud Terre Studio (State/One-Stop)	Winchester, VA	03/25/20	03/24/20
95845	Danfoss, LLC. (State/One-Stop)	Arkadelphia, AR	03/25/20	03/24/20
95846	Denver Plastics (State/One-Stop)	Wahoo, NE	03/25/20	03/24/20
95847	ELO Touch Solutions (State/One-Stop)	Rochester, NY	03/25/20	03/24/20
95848	FTS International (State/One-Stop)	Hobbs, NM	03/25/20	03/24/20
95849	Con-Vey (State/One-Stop)	Roseburg, OR	03/26/20	03/25/20
95850	Hotelbeds (Workers)	Orlando, FL	03/26/20	03/25/20
95851	Titan Wheel Corporation of Virginia (State/One-Stop)	Saltville, VA	03/26/20	03/25/20
95852	Coastal Drilling Company, LLC (State/One-Stop)	Corpus Christi, TX	03/27/20	03/26/20
95853	Oracle America (State/One-Stop)	Reston, VA	03/27/20	03/26/20
95854	Flir Systems, Inc. (State/One-Stop)	Wilsonville, OR	03/30/20	03/27/20
95855	Lipan Services, LLC (State/One-Stop)	San Angelo, TX	03/30/20	03/27/20
95856	Rialto Services, LLC (State/One-Stop)	San Angelo, TX	03/30/20	03/27/20
95857	WTX Oilfield Services, LLC (State/One-Stop)	San Angelo, TX	03/30/20	03/27/20

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Section 223 (19 U.S.C. 2273) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of March 1, 2020 through March 31, 2020. (This Notice primarily follows the language of the Trade Act. In some places however, changes such as the inclusion of subheadings, a reorganization of language, or ''and,'' ''or,'' or other words are added for clarification.)

Section 222(a)—Workers of a Primary Firm

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements under Section 222(a) of the Act (19 U.S.C. 2272(a)) must be met, as follows:

(1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2272(a)(1)) is that a significant number or proportion of the workers in such workers' firm (or ''such firm'') have become totally or partially separated, or are threatened to become totally or partially separated;

AND (2(A) or 2(B) below)

(2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be satisfied by either (A) the Increased Imports Path, or (B) the Shift in Production or Services to a Foreign Country Path/Acquisition of Articles or Services from a Foreign Country Path, as follows:

(A) Increased Imports Path

(i) the sales or production, or both, of such firm, have decreased absolutely;

AND (ii and iii below)

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; OR

(II)(aa) imports of articles like or directly competitive with articles into which one or more component parts

produced by such firm are directly incorporated, have increased; OR

(II)(bb) imports of articles like or directly competitive with articles which are produced directly using the services supplied by such firm, have increased; OR

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

AND

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; OR

(B) Shift in Production or Services to a Foreign Country Path OR Acquisition of Articles or Services From a Foreign Country Path

(i) (I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; OR

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm;

AND

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

Section 222(b)—Adversely Affected Secondary Workers

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(b) of the Act (19 U.S.C. 2272(b)) must be met, as follows:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

AND

(2) the workers' firm is a supplier or downstream producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act (19 U.S.C. 2272(a)), and such supply or production is related to the article or service that was the basis for such certification (as defined in subsection 222(c)(3) and (4) of the Act (19 U.S.C. 2272(c)(3) and (4));

AND

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; OR

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

Section 222(e)—Firms Identified by the International Trade Commission

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for TAA, the group eligibility requirements of Section 222(e) of the Act (19 U.S.C. 2272(e)) must be met, by following criteria (1), (2), and (3) as follows:

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1) of the Act (19 U.S.C. 2252(b)(1)); OR

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1) of the Act (19 U.S.C. 2436(b)(1)); OR

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

AND

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) of the Trade Act (19 U.S.C. 2252(f)(1)) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3) (19 U.S.C. 2252(f)(3)); OR

(B) notice of an affirmative determination described in subparagraph (B) or (C)of paragraph (1) is published in the **Federal Register**;

AND

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); OR

(B) notwithstanding section 223(b) of the Act (19 U.S.C. 2273(b)), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (Increased Imports Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
95,008	Vie De France Yamazaki, Inc., Yamazaki Baking Co., Ltd	Vienna, VA	July 19, 2018.
95,008A	Vie De France Yamazaki, Inc., Alexandria Plant, Yamazaki Baking Co., Ltd.	Alexandria, VA	July 19, 2018.
95,008B	Vie De France Yamazaki, Inc., Elmsford Cake Plant, Yamazaki Baking Co., Ltd.	Elmsford, NY	July 19, 2018.
95,008C	Vie De France Yemazaki, Inc., Los Angeles Plant, Yamazaki Baking Co., Ltd., Aramark Management Services.	Vernon, CA	July 19, 2018.
95,155	Subtext LLC	Portland, OR	September 5, 2018.
95,212	Fiber Innovators International, LLC, Durafibers, PolyQuest, Arthur Services, Personnel Services Unlimited.	Grover, NC	September 23, 2018.
95,333	Cameron International Corporation, Schlumberger Ltd, Guidant Global	Ville Platte, LA	October 28, 2018.
95,342	Siemens Government Technologies, Inc., Dresser Rand, Walker Services, IT Tech Connexion Systems.	Wellsville, NY	March 3, 2019.

TA–W No.	Subject firm	Location	Impact date
95,377	Modern Tool, Inc., Atlas Staffing, Inc., Platinum Staffing Group, Inc	Coon Rapids, MN	November 13, 2018.
95,391	Alorica Inc	Mesa, AZ	November 19, 2018.
95,476	St. John Knits, Inc., Corporate and Manufacturing Division, St. John Knits International, Inc.	Irvine, CA	June 22, 2019.
95,518	Corsicana Bedding, LLC, Accurate Personnel LLC	Barnesville, PA	December 27, 2018.
95,635	Smiths Interconnect Americas, Inc., Smiths Group PLC	Costa Mesa, CA	January 30, 2019.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (Shift in Production or Services to a Foreign Country Path or Acquisition of Articles or Services from a Foreign Country Path) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,353	DXC Technology Company, DXC Technology Services LLC	Tysons, VA	November 20, 2017.
94,353A	Enterprise Services LLC, DXC Technology Company	Herndon, VA	November 20, 2017.
94,353B	Enterprise Services LLC, DXC Technology Company	Norfolk, VA	November 20, 2017.
94,353C	Enterprise Services LLC, DXC Technology Company	Stafford, VA	November 20, 2017.
94,353D	DXC Technology Services LLC	Richmond, VA	November 20, 2017.
94,353E	Computer Sciences Corporation (CSC), DXC Technology Company, 45154 Underwood Lane.	Sterling, VA	November 20, 2017.
94,353F	Computer Sciences Corporation (CSC), DXC Technology Company, 22810 International Drive.	Sterling, VA	November 20, 2017.
94,627	Toppan Merrill LLC, Toppan Printing Co., Merrill Communications, Toppan Vintage, Randstad, etc.	Century City, CA	March 12, 2018.
94,909	The Safariland Group, Safariland, LLC, Arrow Staffing, Kinetic Staffing, Select Staffing.	Ontario, CA	June 14, 2018.
95,073	TechFive LLC, iQor US, Inc	Klamath Falls, OR	August 13, 2018.
95,103	PPG Industries, Inc., Metokote Corporation, The Crown Group Co	Pittsburgh, PA	August 21, 2018.
95,103A	Metokote Corporation dba PPG Coatings Services, PPG Industries, Inc., The Crown Group Co.	Peru, IL	August 21, 2018.
95,103B	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Asheboro, NC	August 21, 2018.
95,103C	Cuming Microwave Corporation, PPG Industries, Inc., Metokote Corporation, The Crown Group Co.	Avon, MA	August 21, 2018.
95,103D	PPG Industries Ohio, Inc., Circleville Resins Plant, PPG Industries, Inc., Metokote Corporation, etc.	Circleville, OH	August 21, 2018.
95,103E	PPG Architectural Finishes, Inc., PPG Industries, Inc., Metokote Corporation, The Crown Group Co.	Cranberry Township, PA	August 21, 2018.
95,103F	PPG Industries Ohio, Inc., Delaware Plant, PPG Industries, Inc., Metokote Corporation, The Crown Group.	Delaware, OH	August 21, 2018.
95,103G	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Detroit, MI	August 21, 2018.
95,103H	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	East Moline, IL	August 21, 2018.
95,103I	Metokote Corporation dba PPG Coatings Services, PPG Industries, Inc., The Crown Group Co.	Fort Valley, GA	August 21, 2018.
95,103J	The Crown Group Co. dba PPG Coating Services, PPG Industries, Inc., Metokote Corporation.	Fort Wayne, IN	August 21, 2018.
95,103K	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Franklin, GA	August 21, 2018.
95,103L	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Greenville, SC	August 21, 2018.
95,103M	Metokote Corporation dba PPG Coatings Services, PPG Industries, Inc., The Crown Group Co.	Dayton, OH	August 21, 2018.
95,103N	Metokote Corporation dba PPG Coatings Services, PPG Industries, Inc., The Crown Group Co.	Lebanon, TN	August 21, 2018.
95,103O	Metokote Corporation dba PPG Coatings Services, PPG Industries, Inc., The Crown Group Co.	Lima, OH	August 21, 2018.
95,103P	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Portland, TN	August 21, 2018.
95,103Q	Sem Products, Inc., PPG Industries, Inc., Metokote Corporation, Crown Group Co.	Rock Hill, SC	August 21, 2018.
95,103R	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Shelby Township, MI	August 21, 2018.
95,103S	PPG Industries, Inc., Springdale Plant, Metokote Corporation, The Crown Group Co.	Springdale, PA	August 21, 2018.
95,103T	Metokote Corporation dba PPG Coating Services, PPG Industries, Inc., The Crown Group Co.	Sumter, SC	August 21, 2018.
95,103U	PPG Industries, Inc., Troy Automotive Technical Center, Metokote Corporation, The Crown Group Co.	Troy, MI	August 21, 2018.
95,103V	The Crown Group Co. dba PPG Coatings Services, PPG Industries, Inc., Metokote Corporation.	Waterloo, IA	August 21, 2018.

TA–W No.	Subject firm	Location	Impact date
95,112	Walmart, Inc., Global Business Services Division, Robert Half	Charlotte, NC	August 22, 2018.
95,134	Johnson Controls Fire Protection LP, SimplexGrinnell, Service Request Resolution Department, etc.	Westminster, MA	August 28, 2018.
95,139	MACOM Technology Solutions Inc., MACOM Technology Solutions Holdings, Inc., Lightwave PE/TE R&D Division.	Ithaca, NY	August 30, 2018.
95,180	Johnson Controls International, Information Technology Group, Enterforce Inc.	Westminster, MA	September 12, 2018.
95,238	Thryv, Inc., Thryv Holdings, Inc	St. Petersburg, FL	September 30, 2018.
95,303	JPMorgan Chase & Co., Commercial Banking—Client Data Management, etc.	Brookfield, WI	October 20, 2018.
95,303A	JPMorgan Chase & Co., Commercial Banking—Client Data Management, etc.	Neenah, WI	October 20, 2018.
95,417	Qualfon Data Services Group, LLC	Idaho Falls, ID	November 21, 2018.
95,427	Wyndham Vacation Ownership, Inc., Wyndham Destinations	Redmond, WA	November 14, 2018.
95,457	The Bank of New York Mellon, Operations Technology, CSD Technology, The Bank of New York, WIPRO, etc.	New York, NY	December 6, 2018.
95,457A	The Bank of New York Mellon, Operations Technology, CSD Technology, The Bank of New York Corporation.	Oriskany, NY	December 6, 2018.
95,462	SKF USA Inc	Hanover, PA	December 5, 2018.
95,473	Author Solutions, LLC, GoDirect, LLC	Bloomington, IN	December 13, 2018.
95,479	Molex, LLC, Medical Pharmaceutical Solutions, Little Rock Connector Plant, Aerotek, etc.	Maumelle, AR	December 13, 2018.
95,482	Treetop Commons, LLC	Portland, OR	December 13, 2018.
95,483	Wells Fargo Bank N.A., Wells Fargo & Company, Payments, Virtual Solutions and Innovation, etc.	Glen Allen, VA	December 13, 2018.
95,527	Wells Fargo Bank N.A., Wells Fargo & Company, Payments, Virtual Solutions and Innovation, etc.	Concord, CA	January 1, 2019.
95,528	International Automotive Components (IAC), Noonan Group, Inc	Dayton, TN	January 2, 2019.
95,529	ATI Holdings, LLC, Central Insurance Verification Department and Patient Advocate Department.	Bolingbrook, IL	January 3, 2019.
95,531	Mercari, Inc., TRG Customer Solutions d/b/a IBEX Global Solutions, TaskUs, Inc.	Portland, OR	January 3, 2019.
95,539	U.S. Bank National Association, Collections & Recovery and Consumer Advocacy Division, etc.	Portland, OR	January 6, 2019.
95,542	Honeywell International Inc	Atlanta, GA	January 7, 2019.
95,544	Sanko Electronics America, Inc., Decton Staffing Services	Torrance, CA	January 7, 2019.
95,549	MAS US Holdings Inc	Asheboro, NC	January 8, 2019.
95,550	Branson Ultrasonics Corporation, Emerson Electronic Company, Willis Tower Watson Group, Aerotek, etc.	Honeoye Falls, NY	January 9, 2019.
95,550A	Branson Ultrasonics Corporation, Emerson Electronic Company, Willis Tower Watson Group, Robert Half, etc.	Danbury, CT	January 9, 2019.
95,551	Kautex, Inc., Textron Division, Textron, Inc	Detroit, MI	January 9, 2019.
95,553	Alcoa, Inc., Global Primary Products, CCC Group, Gardenland Nursery, G&W Engineers, etc.	Point Comfort, TX	January 10, 2019.
95,565	Optum Technology, Enterprise Enablement Platform Services, IT Services Desk, etc.	Windsor, CT	January 14, 2019.
95,570	Hutchinson Technology Incorporated, TDK, Masterson Staffing Solutions	Hutchinson, MN	May 19, 2020.
95,575	Zions Bancorporation, N.A., Aerotek, Apex Systems, CompuGain, ConsultNet, Edge Services, etc.	Salt Lake City, UT	January 16, 2019.
95,603	Agilent Technologies, Inc., Biomolecular Analysis Division, Volt Workforce Solutions.	Ankeny, IA	January 24, 2019.
95,611	The Bank of New York Mellon, Global Custody & Cash Services, The Bank of New York Mellon, etc.	New York, NY	January 27, 2019.
95,613	Hudson's Bay Company, Store Staffing Division, Lord & Taylor	Wilkes-Barre, PA	January 27, 2019.
95,619	Concentrix	Arnold, MO	January 28, 2019.
95,625	Schawk USA Inc., Matthews International Corporation, Manpower	Cincinnati, OH	January 27, 2019.
95,633	Mohawk Industries, Wood and Laminate Division	Melbourne, AR	January 30, 2019.
95,634	NDS Surgical Imaging, LLC, Randstad Staffing, Aerotek, ATR International Inc.	San Jose, CA	January 30, 2019.
95,640	J2 Cloud Services, LLC, Voice Division, J2 Global, Inc	Los Angeles, CA	February 3, 2019.
95,646	Dometic Corporation, Americas Division, Dometic Holding AB, Pro Resources, etc.	LaGrange, IN	February 4, 2019.
95,649	Kaiser Foundation Health Plan of Washington, IT Compute Services & End User Services, Kaiser Foundation Health Plan, etc.	Renton, WA	February 4, 2019.
95,656	BancTec, Inc., BPO Group, Exela Technologies, Inc	Irving, TX	February 5, 2019.
95,657	Frontier Communications, Network Operations Center (NOC) Tier II Time-Division, etc.	Allen, TX	February 5, 2019.
95,657A	Frontier Communications, Network Operations Center (NOC) Tier II Time-Division, etc.	Irving, TX	February 5, 2019.
95,659	Lovelace Health System, Shared Services/Division Office, Ardent Health Service.	Albuquerque, NM	February 5, 2019.
95,668	Parallon Employer LLC, HCA Healthcare, Medical Coding Team	Nashville, TN	February 6, 2019.
95,688	Eaton Corporation, Vehicle Group North America, Quaker Houghton Fluid Care, etc.	Shenandoah, IA	April 18, 2020.

TA–W No.	Subject firm	Location	Impact date
95,694	Unique-Chardan, Inc., Unique Fabricating, Elwood Staffing, Staffmark, Career Integration, etc.	Bryan, OH	February 13, 2019.
95,712	Confluent Medical Technologies, Ryzen Solutions	Campbell, CA	February 20, 2019.
95,721	Fabtex, Inc., PeopleReady	Orange, CA	February 21, 2019.
95,722	Futuredontics Inc	Los Angeles, CA	February 21, 2019.
95,727	Darex, LLC, Express Employment Professionals	Ashland, OR	February 24, 2019.
95,728	Dell Products L.P., Network Hardware Team, Dell, Inc	Santa Clara, CA	January 24, 2019.
95,733	Carestream Health, Inc., Technical Support Unit	Rochester, NY	February 25, 2019.
95,743	Flowmaster Mufflers, Holley Performance Products, Aerotek, Horizon Personnel Services, etc.	West Sacramento, CA	February 26, 2019.
95,745	L.L.Bean, Inc., Compunnel Software Group, NTT DATA Services, Prosearch, etc.	Freeport, ME	February 27, 2019.
95,747	Navex Global, Inc., Navex Global Holding Company	Rexburg, ID	February 27, 2019.
95,751	DENSO Air Systems Michigan, Inc., Thermal Division, WSI, OnStaff USA.	Battle Creek, MI	February 28, 2019.
95,755	International Automotive Components (IAC), Madisonville Plant, PeoplePlus, Manpower, Custom Staffing.	Madisonville, KY	March 2, 2019.
95,757	Mondelez Global LLC	Hanover Township, PA	March 2, 2019.
95,766	Modern Transmission Development Company, Hamilton-Ryker	Leitchfield, KY	March 3, 2019.
95,770	Thermo Ramsey LLC, Thermo Fisher Scientific, Chemical Analysis, Workspend, DCR Workforce.	Minneapolis, MN	March 3, 2019.
95,771	Aventri, Inc., ITN, Inc., Advanced Resources	Norwalk, CT	March 5, 2019.
95,780	Temp-Flex, L.L.C., Molex, LLC, CoWorx Staffing Agency	South Grafton, MA	March 4, 2019.
95,785	Senior Aerospace AMT, Terra Staffing Group, CADstar International, Orion International, etc.	Arlington, WA	March 6, 2019.
95,786	Arauco North America, Inc., Eugene Oregon MDF Mill, Arauco Canada Limited.	Eugene, OR	March 6, 2019.
95,804	Imperial Health LLP	Lake Charles, LA	March 10, 2019.
95,811	OptumRX, Avella Revenue Cycle Management, United Healthcare Services Inc.	Phoenix, AZ	March 12, 2019.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
94,252	Faurecia Automotive Seating, Inc	Auburn Hills, MI	October 19, 2017.
94,876	General Motors Global Propulsion Systems, General Motors Company	Pontiac, MI	June 5, 2018.
95,072	General Motors Pontiac Metal Center, General Motors, Jones Lang LaSalle-Building Maintenance, Eurest-Janitorial.	Pontiac, MI	August 5, 2018.
95,296	Leadec Corporation	Warren, OH	October 31, 2019.
95,378	Winona PVD Coatings, LLC	Warsaw, IN	November 14, 2018.
95,399	Georgia-Pacific Panel Products, LLC, Particleboard Division, Georgia-Pacific, Koch Industries, etc.	Hope, AR	November 20, 2018.
95,526	Parkdale Mills, Inc., Plant 22, Parkdale America, LLC, Parkdale, Inc., Defender Services, Inc.	Galax, VA	December 21, 2018.
95,526A	Parkdale Mills, Inc., Plant 23, Parkdale America, LLC, Parkdale, Inc., Defender Services, Inc.	Landis, NC	December 21, 2018.
95,569	Almatis, Inc., Oyak Group	Leetsdale, PA	January 16, 2019.
95,604	Atlas Aerospace, LLC	Wichita, KS	January 24, 2019.
95,605	Cox Machine Inc., Summit Employment Professionals, The Arnold Group.	Wichita, KS	January 24, 2019.
95,639	Android Industries, 2053 division, Focus: HOPE Companies, Inc	Detroit, MI	October 31, 2019.
95,639A	Express Employment Professionals, Android Industries, 2053 division	Detroit, MI	February 3, 2019.
95,670	LMI Aerospace, Inc., Aerotek, ATSI, Beacon Hill	Cottonwood Falls, KS	February 7, 2019.
95,687	Axiom Engineering, LaborMax	Wichita, KS	February 13, 2019.
95,787	Arconic, AAC Hutchinson Division	Hutchinson, KS	March 6, 2019.
95,818	Regal Beloit Corporation, Power Transmission Solutions, Sterling Engineering, Aerotek, Express, etc.	Valparaiso, IN	March 16, 2019.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
95,600	Siletz Trucking Company Corporation	Independence, OR	January 23, 2019.

The following certifications have been issued. The requirements of Section 222(e) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
95,615	Restwell Mattress Co	Eden Prairie, MN	December 12, 2018.
95,616	Sleep Number Corporation	Minneapolis, MN	December 12, 2018.
95,627	Comfort Holding, LLC operating as Innocor, Inc., BCPE INCR Holding Inc, Onin Staffing, Elite Staffing.	West Chicago, IL	December 12, 2018.
95,628	Corsicana Bedding, LLC, ClearStaff Inc., Express Employment Professionals.	Aurora, IL	December 12, 2018.
95,638	FXI, Inc., FXI Holdings, Inc., Terra Staffing, Express Employment Professionals.	Portland, OR	December 12, 2018.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for TAA have not been met for the reasons specified.

The investigation revealed that the requirements of Trade Act section 222 (a)(1) and (b)(1) (significant worker total/partial separation or threat of total/partial separation), or (e) (firms identified by the International Trade Commission), have not been met.

TA–W No.	Subject firm	Location	Impact date
95,456	Artech Information Systems, IT Project Manager-GTS Group, Artech, LLC.	Morristown, NJ.	
95,511	Artech LLC, IT Support-GTS Group, Artech Government Services	Morristown, NJ.	
95,572	Tektronix, Inc., Vanderhouwen & Associates, Creative Financial Staffing, etc.	Beaverton, OR.	
95,606	Optum Technology, Data Solutions, United Healthcare (UHC) Asset Development, etc.	Rocky Hill, CT.	
95,738	Precision Aluminum, Inc	Wadsworth, OH.	
95,757A	Mondelez Global LLC	East Hanover, NJ.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both), or (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,577	PiRod, Inc., Engineering Support Structures (ESS) division, Valmont Industries, Inc.	Salem, OR.	
95,237	John Deere Coffeyville Works, Inc., Deere & Company	Coffeyville, KS.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
94,821	NYDJ Production, LLC, NYDJ Apparel, LLC	Vernon, CA.	
94,889	Xerox Corporation, Collabera, Computer Task Group, InSync Staffing, Paladin Consulting, etc.	Wilsonville, OR.	
94,906	General Motors Milford Proving Ground, Vehicle Development Department, General Motors, Allegis Global Services.	Milford, MI.	
95,039	Lexington Lighting Group LLC, HW Staffing Solutions	Rumford, RI.	
95,052	AT&T Services, Inc., Technology Development, Process & Tools for System Development, AT&T Inc.	Schaumburg, IL.	
95,076	The Bank of New York Mellon, Technology Services Group—Digital On-Site Support, etc.	Uniondale, NY.	
95,138	Conduent Commercial Solutions, LLC, Conduent Business Services, LLC.	Tigard, OR.	
95,149	AIG PC Global Services, Inc., General Insurance IT Production Services, New York, etc.	New York, NY.	
95,221	Manitou Equipment America, LLC, CEP Division, Manitou America Holding, Inc., ESG.	Madison, SD.	

TA–W No.	Subject firm	Location	Impact date
95,269	Clever-Brooks, Inc., Engineered Boiler Systems Division	Lincoln, NE.	
95,288	Hand Held Products, Inc., Honeywell International, Inc	Cedar Rapids, IA.	
95,307	Fred's Distribution Center, Highway 257 location, Advantage Resourcing	Dublin, GA.	
95,307A	Fred's Store 1538, US 80 location	East Dublin, GA..	
95,310	Shawnee Tubing Industries, LLC, Express Personnel Services	Shawnee, OK.	
95,379	Lundbeck Seattle BioPharmaceuticals, Inc., Alder BioPharmaceuticals, Lundbeck, NuWest Search Partners, etc.	Bothell, WA.	
95,440	Gerdau	Duluth, MN.	
95,487	Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc	Jonesboro, AR.	
95,525	Optum Technology, United Healthcare Technology, Employer & Individual Software Dev., etc.	Hartford, CT.	
95,525A	Optum Technology, Enterprise Enablement Platform Services, Enterprise Architecture, etc.	Hartford, CT.	
95,532	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Kalamazoo, MI.	
95,532A	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Plymouth, MI.	
95,532B	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Cadillac, MI.	
95,532C	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Gaylord, MI.	
95,532D	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Saginaw, MI.	
95,532E	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Lansing, MI.	
95,532F	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Grand Rapids, MI.	
95,532G	Nestle Dreyers Ice Cream Company and Nestle Prepared Foods Company, Direct Store Delivery, Nestle USA, Inc.	Fort Wayne, IN.	
95,540	Applied Materials, AGS Training Services, GP Strategies, Adecco Employment Service.	Kalispell, MT.	
95,547	Cognizant Technology Solutions U.S. Corporation, Digital Operations Division, Cognizant Technology Solutions Corporation.	Mountain View, CA.	
95,559	Allianz Life Insurance Company of North America, Workforce Transformation and Analytics, Allianz of America, Inc., etc.	Minneapolis, MN..	
95,580	Philadelphia Energy Solutions Refining and Marketing LLC, PES Administrative Services LLC, Project Control Services Inc., etc.	Philadelphia, PA.	
95,720	Seneca Food Corporation	Rochester, MN.	

Determinations Terminating Investigations of Petitions for Trade Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's website, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
95,641	Leo D. Bernstein & Sons, Inc., DBA Bernstein Display	Shaftsbury, VT.	
95,711	UTC Aerospace	Chula Vista, CA.	

The following determinations terminating investigations were issued in cases where the petition regarding the investigation has been deemed invalid.

TA–W No.	Subject firm	Location	Impact date
95,323	ProLogistix, Harley-Davidson Motor Company Operations, Inc., etc	Kansas City, MO.	

The following determinations terminating investigations were issued because the worker group on whose behalf the petition was filed is covered under an existing certification.

TA–W No.	Subject firm	Location	Impact date
95,095	Absolute Consulting, Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station.	Plymouth, MA.	
95,113	Walmart, Inc., Global Business Services Division	Charlotte, NC.	

TA–W No.	Subject firm	Location	Impact date
95,314	GDI Integrated Facility Services, Harley-Davidson Motor Company Operations, Inc., etc.	Kansas City, MO.	
95,318	Syncreon US, Inc., Harley-Davidson Motor Company Operations, Inc., etc.	Kansas City, MO.	
95,319	Kelly Services, Inc., Harley-Davidson Motor Company Operations, Inc., etc.	Kansas City, MO.	
95,445	Comprehensive Decommissioning International, Entergy Nuclear Operations, Inc., Pilgrim Nuclear Power Station.	Plymouth, MA.	
95,618	Branson Ultrasonics Corporation	Danbury, CT.	
95,651	Rosenberger North America	Plano, TX.	
95,655	Dun & Bradstreet, Editorial Department	Austin, TX.	
95,704	Standard Insurance Company, The Standard Life Insurance Company, Volt, Robert Half.	Portland, OR.	

The following determinations terminating investigations were issued because the petitioning group of workers is covered by an earlier petition that is the subject of an ongoing investigation for which a determination has not yet been issued.

TA–W No.	Subject firm	Location	Impact date
95,328	The Yankee Candle Company, Newell Brands, Inc., Newell Operating Company, A Delaware Corporation.	South Deerfield, MA.	
95,374	Formativ Health Management Inc	Jacksonville, FL.	
95,475	Pancon Corporation	Temecula, CA.	
95,644	Petrobras America Inc	Houston, TX.	
95,709	Qualfon Data Services Group, LLC	Idaho Falls, ID.	

I hereby certify that the aforementioned determinations were issued during the period of March 1, 2020 through March 31, 2020. These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of April 2020.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2020–08520 Filed 4–21–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) number issued during the period of March 1, 2020 through March 31, 2020. Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

Affirmative/Negative Determinations Regarding Applications for Reconsideration

The certifying officer may grant an application for reconsideration under the following circumstances: (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous; (2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or (3) If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the determination. See 29 CFR 90.18(c).

Affirmative Determinations Regarding Applications for Reconsideration

The following Applications for Reconsideration have been received and granted. See 29 CFR 90.18(d). The group of workers or other persons showing an interest in the proceedings may provide written submissions to show why the determination under reconsideration should or should not be modified. The submissions must be sent no later than ten days after publication in **Federal Register** to the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW, Washington, DC 20210. See 29 CFR 90.18(f).

TA–W No.	Subject firm	Location
95,143	AK Steel Corporation	Ashland, KY.

Revised Certifications of Eligibility

The following revised certifications of eligibility to apply for TAA have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination, and the reason(s) for the determination.

The following revisions have been issued.

TA–W No.	Subject firm	Location	Impact date	Reason(s)
93,882	Harley-Davidson Motor Company Operations, Inc.	Kansas City, MO	6/5/2017	Worker Group Clarification.
94,592	Entergy Nuclear Operations, Inc.	Plymouth, MA	3/5/2018	Worker Group Clarification.
94,702	Rosenberger North America	Plano, TX	4/4/2018	Worker Group Clarification.
94,973	DXC Technology Services LLC.	Plano, TX	7/5/2018	Worker Group Clarification.

Negative Determinations on Reconsideration (After Affirmative Determination Regarding Application for Reconsideration)

The investigation revealed that the criteria under Trade Act section 222(a)(2)(A) (increased imports), (a)(2)(B) (shift in production or services to a foreign country or acquisition of articles or services from a foreign country), (b)(2) (supplier to a firm whose workers are certified eligible to apply for TAA or downstream producer to a firm whose workers are certified eligible to apply for TAA), and (e) (International Trade Commission) have not been met.

TA–W No.	Subject firm	Location
95,061	United Steelworkers Local 8–676	Westernport, MD.

I hereby certify that the aforementioned determinations were issued during the period of *March 1, 2020 through March 31, 2020.* These determinations are available on the Department's website *https://www.doleta.gov/tradeact/petitioners/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 10th day of April 2020.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2020–08521 Filed 4–21–20; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal-State Unemployment Insurance Program Data Exchange Standardization

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 22, 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 is required by the Middle Class Tax Relief and Job Creation Act of 2012 to designate eXtensible Markup Language (XML) as a data exchange standard. The data exchange standards help improve the interoperability of these systems that collect and exchange information for UI administrative purposes. Through this regulation, the Department makes use of data exchange standards for ICON and SIDES. To improve UI program operations by states, the Department has been the facilitating entity for development and implementation of automated systems that states may adopt for efficiently processing claims and improving program integrity. These automated systems, which have been developed through a collaborative effort with states and the National Association of Workforce Agencies (NASWA), have replaced manual paper processing with automated exchanges of information between states as well as those between states and employers. The Department provides funding to facilitate the development and implementation of these automated systems, and encourages the use of these systems by states. The Federal requirement to use this standard requires the Department to establish, through regulation, that all such exchanges of electronic information must use XML to comply with the Act. For additional substantive information about this ICR, see the

related notice published in the **Federal Register** on January 2, 2020 (85 FR 133).

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: Federal-State Unemployment Insurance Program Data Exchange Standardization.

OMB Control Number: 1205–0510.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 25.

Total Estimated Number of Responses: 25.

Total Estimated Annual Time Burden: 3,000 hours.

Total Estimated Annual Other Costs Burden: $498,740.

(Authority: 44 U.S.C. 3507(a)(1)(D)).

Dated: April 16, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08519 Filed 4–21–20; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; DOL-Only Performance Accountability, Information, and Reporting System

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 22, 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: This request fulfills Workforce Innovation and Opportunity Act reporting requirements regarding the collection of performance indicators described in Sec. 116(b)(2)(A). Requirements for state level collection of this data for the programs contained in this collection are based on WIOA requirements. As part of this ICR, the Department of Labor's (DOL) Employment and Training Administration (ETA) has made changes to the Participant Individual Record Layout (ETA–9172), (Program) Performance Report (ETA–9173–APPSHP) to facilitate State and grantee performance reporting. In particular, as part of DOL's effort to streamline program performance reporting for ETA grants with significant apprenticeship components as a primary goal of the program (Apprenticeship grants), DOL is adding the performance information collection requirements for Apprenticeship grants. DOL also is adding a new information collection requirement to this ICR: the Apprenticeship Outreach: Organization/Employer Record Layout. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 21, 2019 (84 FR 29245).

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: DOL-Only Performance Accountability, Information, and Reporting System.

OMB Control Number: 1205–0521.

Affected Public: State, Local and Tribal Governments; Individuals or Household and Private Sector, Business or other for-profits and not for-profit institutions.

Total Estimated Number of Respondents: 17,583,750.

Total Estimated Number of Responses: 41,064,037.

Total Estimated Annual Time Burden: 10,459,627 hours.

Total Estimated Annual Other Costs Burden: $245,464,843.38.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 31, 2020.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2020–08498 Filed 4–21–20; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–037]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We are proposing to renew the information collection described in this notice and have submitted it to

OMB for approval. We invite you to comment on this proposed collection.

DATES: OMB must receive written comments on or before May 22, 2020.

ADDRESSES: Submit written comments and recommendations for the proposed information collection at *www.reginfo.gov/public/do/PRAMain.* You can 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: Tamee Fechhelm, by telephone at 301.837.1694 or by fax at 301.713.7409, with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for this information collection on February 11, 2020 (85 FR 7785) and we received no comments. We have therefore submitted the described information collection to OMB for approval to renew.

Any comments or suggestions you submit should address one or more of the following points: (a) Whether the proposed information collection is necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collection and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether the collection affects small businesses. All comments will become a matter of public record.

In this notice, we solicit comments concerning the following information collection:

Title: Application and permit for use of space in Presidential library and grounds.

OMB Number: 3095–0024.

Agency Form Number: NA Form 16011.

Type of Review: Regular.

Affected Public: Private organizations.

Estimated Number of Respondents: 600.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 200 hours.

Abstract: The information collection is prescribed by 36 CFR 1280. Requesters submit the application to request the use of space in a Presidential library for a privately sponsored activity. We use the information to determine whether the requested use meets the criteria in 36 CFR 1280 and to schedule the date.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2020–08464 Filed 4–21–20; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281; NRC–2020–0096]

Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company, for operation of the Surry Power Station (Surry), Unit Nos. 1 and 2. The proposed amendments would revise Technical Specification (TS) 6.4.Q.4.b to add a note to permit a one-time deferral of the Surry, Unit No. 2 Steam Generator (SG) B inspection from the Surry, Unit No. 2 spring 2020 refueling outage (RFO) (2R29) to the Surry, Unit No. 2 fall 2021 RFO (2R30).

DATES: Submit comments by May 6, 2020. Requests for a hearing or petition for leave to intervene must be filed by June 22, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0096. 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: G. Edward Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2481, email: *Ed.Miller@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0096 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–2020–0096.
- *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 license amendment request, dated April 14, 2020, is available in ADAMS under Accession No. ML20105A223.

B. Submitting Comments

Please include Docket ID NRC–2020–0096 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company, for operation of Surry, Unit Nos. 1 and 2, located in Surry County, Virginia.

The proposed amendments would revise TS 6.4.Q.4.b to add a note to permit a one-time deferral of the Surry, Unit No. 2 SG B inspection from the Surry, Unit No. 2 spring 2020 RFO (2R29) to the Surry, Unit No. 2 fall 2021 RFO (2R30).

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

Pursuant to 50.91(a)(6) of title 10 of the *Code of Federal Regulations* (10 CFR) for amendments to be granted under exigent circumstances, the NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a note to TS 6.4.Q.4.b to permit a one-time deferral of the Surry Unit 2 SG B inspection from the Surry Unit 2 spring 2020 refueling outage (RFO) (S2R29) to the Surry Unit 2 fall 2021 refueling outage (S2R30). An operational assessment has been performed that concludes Surry Unit 2 SG B will continue to meet its specific structural and leakage integrity performance criteria throughout the operating period preceding the next inspection in fall 2021. In addition, the proposed change does not implement plant physical changes to any plant structure, system or component; hence, no new failure modes are introduced. Therefore, the probability of an accident previously evaluated is not significantly increased. Also, there is no significant increase in the consequences of an accident because the TS primary-to-secondary leakage limit is not being changed, and the SG tubes continue to meet the SG Program performance criteria and remain bounded by the plant's accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a note to TS 6.4.Q.4.b to permit a one-time deferral of the Surry Unit 2 SG B inspection from the Surry Unit 2 spring 2020 refueling outage (RFO) (S2R29) to the Surry Unit 2 fall 2021 refueling outage (S2R30). The proposed change does not alter the design function or operation of the SGs or the ability of a SG to perform its design function. The SG tubes continue to meet the SG Program performance criteria. No plant physical changes are being implemented that would result in plant operation in a configuration outside the plant safety analyses or design basis. The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Furthermore, Surry Unit 2 SG B will continue to meet its specific structural and leakage integrity performance criteria throughout the operating period preceding the next inspection in fall 2021. Finally, no new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a note to TS 6.4.Q.4.b to permit a one-time deferral of the Surry Unit 2 SG B inspection from the Surry Unit 2 spring 2020 refueling outage (RFO) (S2R29) to the Surry Unit 2 fall 2021 refueling outage (S2R30). Extending the Surry Unit 2 SG B inspection schedule does not involve changes to any limit on accident consequences specified in the Surry licensing bases or applicable regulations, does not modify how accidents are mitigated, and does not involve a change in a methodology.

A forward-focused operational assessment (OA) of Surry Unit 2 SG B was performed that demonstrates there is reasonable assurance the structural integrity and accident induced leakage performance criteria will remain satisfied in SG B throughout the period preceding the fall 2021 RFO inspection for a total operating duration of three cycles between primary side inspections. The OA also identified projected margin to the structural integrity and accident induced leakage performance criteria prior to the fall 2021 RFO for each evaluated degradation mechanism.

Therefore, operation of the facility in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59

p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendments dated April 14, 2020.

Attorney for licensee: W.S. Blair, Senior Counsel, Dominion Energy Services Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Michael T. Markley.

Dated: April 17, 2020.

For the Nuclear Regulatory Commission.

Glenn E. Miller,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–08503 Filed 4–21–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0216]

Information Collection: Licenses, Certifications, and Approvals for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

DATES: Submit comments by June 22, 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 on or 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–2019–0216. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0216 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0216. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0216 on this website.
- *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 supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML20013E094 and ML20013E096.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2019–0216 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions 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, and 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''
2. *OMB approval number:* 3150–0151.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion. Applications are submitted only when licensing action is sought.
6. *Who will be required or asked to respond:* Applicants for early site permits (ESPs), standard design approvals (SDAs) and certifications, manufacturing licenses (MLs), and licenses which combine construction permits (CPs) and conditional operating licenses (OLs), *e.g.*, COLs, for commercial nuclear power reactors.
7. *The estimated number of annual responses:* 1,428 (1,411 reporting responses plus 17 recordkeepers).
8. *The estimated number of annual respondents:* 17.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 335,891 hours (318,716 reporting, plus 17,175 recordkeeping).
10. *Abstract:* The licensing processes in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) provide for issuance of ESPs, SDAs, MLs, CPs, and COLs for commercial nuclear power reactors. The applicants submit updated reports, applications for renewals, exemption requests and maintain records of changes to the facility and records of detailed design related information. These licensing procedures are options to the two-step licensing process in 10 CFR part 50, which provides for a CP and an OL. The part 52 licensing process places procedural requirements in part 52 and technical requirements in part 50. Part 52 reduces the overall paperwork burden borne by applicants for CPs and OLs because part 52 only requires a single application and provides options for referencing standardized designs. The information in 10 CFR part 52 is needed by the agency to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, plans and procedures for the protection of public health and safety. Regulatory Guide 1.206 provides guidance for applicants for combined licenses for nuclear power plants. Section C.2.1 of Regulatory Guide 1.206 deals with pre-application activities for respondents who intend to submit applications for combined licenses for nuclear power plants. Pre-application activities encompass all the communications, correspondence, meetings, document submittals/reviews, and other interactions that occur between the NRC staff and a prospective applicant before the tendering of an application under part 52 of title 10 of the *Code of Federal Regulations.* Participation in pre-application activities is voluntary. Potential applicants who engage in pre-application activities benefit from an early NRC staff assessment of the completeness and level of detail of the information that the applicant proposes to submit and staff identification of potential deficiencies in the application. Pre-application activities are expected to increase the efficiency of the staff's review of those applications once they are submitted. Subpart B of part 52 establishes the process for obtaining design certifications. The addition of Appendix F to 10 CFR part 52 allows interested parties to reference the Advanced Power Reactor 1400 (APR1400) standard design in an application for a combined license.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 16, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–08473 Filed 4–21–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–120 and CP2020–128]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 24, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–120 and CP2020–128; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 16, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 24, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–08537 Filed 4–21–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket No. C2020–1; Presiding Officer's Ruling No. 2]

Complaint of Randall Ehrlich

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing the *Complaint of Randall Ehrlich v. United States Postal Service,* which relates to alleged discrimination by Postal Service management in continuing a suspension of mail service due to a dog hold on the Complainant's residence. This notice informs the public of the filing and procedural schedule.

DATES: *Deadline for notices of intervention:* May 1, 2020; *Prehearing Conference:* July 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone; *Hearing of evidence to begin:* September 1, 2020; *Deadline for requests to hold a hearing before the Presiding Officer for oral presentation of evidence:* No later than 7 days before the prehearing conference.

ADDRESSES: For additional information, Presiding Officer's Ruling No. 2 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

Pursuant to 39 CFR 3001.19 and 39 CFR 3001.17, the Commission gives notice of the *Complaint of Randall Ehrlich* v. *United States Postal Service,* which relates to alleged discrimination by Postal Service management in continuing a suspension of mail service due to a dog hold on the Complainant's residence, potentially violating 39 U.S.C. 403(c).[1] This notice informs the public of the filing and of the procedural schedule established in Presiding Officer's Ruling No. 2.[2]

II. Procedural Schedule

1. The deadline to file a notice of intervention pursuant to 39 CFR 3001.20 (formal intervention) or 39 CFR 3001.20a (limited participation) is May 1, 2020.

2. A prehearing conference is scheduled to be conducted before the Presiding Officer on July 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone.

3. The hearing of evidence in this case shall begin September 1, 2020.

4. A request to hold a hearing before the Presiding Officer for the oral presentation of evidence (including any testimony) shall be filed no later than 7 days before the prehearing conference and shall specify each witness for which oral testimony is proposed.

Erica A. Barker,

Secretary.

[FR Doc. 2020–08529 Filed 4–21–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *Complaint of Randall Ehrlich,* December 23, 2019.

[2] *See* Presiding Officer's Ruling Establishing Procedural Schedule, April 16, 2020.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88664; File No. SR–CboeEDGA–2020–005]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend EDGA Rule 11.8(e), Which Describes the Handling of MidPoint Discretionary Orders Entered on the Exchange

April 16, 2020.

On February 28, 2020, Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

amend EDGA Rule 11.8(e), which describes the handling of MidPoint Discretionary Orders entered on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 10, 2020.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 24, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates June 8, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGA–2020–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08486 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 88323 (March 5, 2020), 85 FR 13957.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88668; File No. SR–NASDAQ–2020–016]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled Transfer of Positions Within Options 6, Section 5

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule of The Nasdaq Stock Market LLC (''NOM'') titled ''Transfer of Positions'' within NOM Options 6, Section 5.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Transfer of Positions'' within NOM Options 6, Section 5, which is currently reserved. Today, NOM does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Participant may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the NOM. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.[3]

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled ''Transfer of Positions'' to provide for the circumstances pursuant to which Participants may transfer their options positions without first exposing the order. This rule states that a Participant must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, NOM has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), ''*Permissible Transfers.* Existing positions in options listed on the Exchange of a Participant or non-Participant that are to be transferred on, from, or to the books of a Clearing Participant may be transferred off the if the transfer involves one or more of the following events:

(1) Pursuant to General 9, Section 1, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

[3] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;

(5) the dissolution of a joint account in which the remaining Participant assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Participant's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[4]

The Exchange proposes to define ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.''[5] The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Participant or a non-Participant may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Participant.[6] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[7] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[8] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Participant wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Participant could not transfer the offsetting series, as they would net against each other and close the positions.[9]

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Participant, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on NOM, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for NOM transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Participant, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;[10] or (4) the then-current market price of the positions at the time the transfer is effected.[11]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Participant and its Clearing Participant (to the extent that the Participant is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Participant(s).[12] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any

[4] *See* Cboe Rule 6.7(a).

[5] *See* Cboe Rule 1.1.

[6] *See* proposed Options 6, Section 5(a)(5) and (7).

[7] *See* proposed Options 6, Section 5(h).

[8] For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

[9] *See* Cboe Rule 6.7(b).

[10] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[11] *See* Cboe Rule 6.7(c).

[12] This notice provision applies only to transfers involving a Participant's positions and not to positions of non-Participant parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

other information requested by the Exchange.[13] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Participant(s) and its Clearing Participant(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Participants and Clearing Participants that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Participant and each Clearing Participant that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Participant or Clearing Participant provide.[14]

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Participant (with respect to the Participant's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[15]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[16] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)[20] 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 the Section 6(b)(5)[21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Participant that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Participant that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Participant may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

[13] *See* Cboe Rule 6.7(d).

[14] *See* Cboe Rule 6.7(e).

[15] *See* Cboe Rule 6.7(f).

[16] *See* Cboe Rule 6.7(g).

[17] *See* Cboe Rule 6.7(h).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),[22] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Participant and the rule will apply uniformly to all Participants. Use of the transfer procedure is voluntary, and all Participants may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Participant that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the

[22] *See* Cboe Rule 6.7(f).

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

date of filing. However, Rule 19b–4(f)(6)(iii)[25] 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. The Commission notes that waiver of the operative delay would provide Participants with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–NASDAQ–2020–016 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–2020–016. 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–2020–016 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08489 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* CBOE Rule 6.7.

[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88670; File No. SR–ISE–2020–16]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled Transfer of Positions Within Options 6, Section 5

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Transfer of Positions'' within Options 6, Section 5.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Transfer of Positions'' within Options 6, Section 5, which is currently reserved. Today, ISE does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the ISE. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled ''Transfer of Positions'' to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, ISE has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), ''*Permissible Transfers.* Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

(1) Pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;

(5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[4]

The Exchange proposes to define ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.''[5] The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to an transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[6] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[7] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[8] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[9]

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on ISE, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for ISE transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;[10] or (4) the then-current market price of the positions at the time the transfer is effected.[11]

This proposed rule change provides market participants that effect transactions with flexibility to select a

[4] *See* Cboe Rule 6.7(a).

[5] *See* Cboe Rule 1.1.

[6] *See* proposed Options 6, Section 5(a)(5) and (7).

[7] *See* proposed Options 6, Section 5(h).

[8] For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

[9] *See* Cboe Rule 6.7(b).

[10] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[11] *See* Cboe Rule 6.7(c).

transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[12] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[13] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of a transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[14]

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[15]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[16] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)[20] 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 the Section 6(b)(5)[21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer

[12] This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[13] *See* Cboe Rule 6.7(d).

[14] *See* Cboe Rule 6.7(e).

[15] *See* Cboe Rule 6.7(f).

[16] *See* Cboe Rule 6.7(g).

[17] *See* Cboe Rule 6.7(h).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),[22] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

[22] *See* Cboe Rule 6.7(f).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [25] 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. The Commission notes that waiver of the operative delay would provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–ISE–2020–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–16 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08491 Filed 4–21–20; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* CBOE Rule 6.7.

[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88663; File No. SR–CboeEDGX–2020–010]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend EDGX Rule 11.8(g), Which Describes the Handling of MidPoint Discretionary Orders Entered on the Exchange

April 16, 2020.

On February 19, 2020, Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend EDGX Rule 11.8(g), which describes the handling of MidPoint Discretionary Orders entered on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 6, 2020.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 20, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88309 (March 2, 2020), 85 FR 13193.

[4] 15 U.S.C. 78s(b)(2).

to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates June 4, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeEDGX–2020–010).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08485 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33840; File No. 812–15067]

KKR Credit Opportunities Portfolio and KKR Credit Advisors (US) LLC

April 16, 2020.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the 1940 Act, pursuant to section 6(c) and 23(c) of the 1940 Act for an exemption from rule 23c–3 under the 1940 Act, and for an order pursuant to section 17(d) of, and rule 17d–1 under, the 1940 Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest (''Shares'') and to impose asset-based service and/or distribution fees and early withdrawal charges.

Applicants: KKR Credit Opportunities Portfolio (the ''Initial Fund'') and KKR Credit Advisors (US) LLC (the ''Adviser'').

Filing Dates: The application was filed on September 11, 2019, and amended and restated on December 16, 2019.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 11, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service.

Pursuant to rule 0–5 under the 1940 Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o Mike Nguyen, by email to *Mike.Nguyen@kkr.com.*

FOR FURTHER INFORMATION CONTACT: Jay M. Williamson, Senior Counsel, at (202) 551–3393, or David Nicolardi, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained by searching the Commission's website, at *http://www.sec.gov/search/search.htm,* using the application's file number or the applicant's name, or by calling the Commission at (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a newly organized Delaware statutory trust that is registered under the 1940 Act as a closed-end management investment company and classified as a non-diversified investment company. The Initial Fund's investment objective is to seek to provide attractive risk-adjusted returns and high current income.

2. The Adviser, a Delaware organized limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Initial Fund to offer investors multiple classes of Shares with varying sales loads and asset-based service and/or distribution fees and to impose early withdrawal charges.

4. Applicants request that the order also apply to any other registered closed-end management investment company that conducts a continuous offering of its shares, existing now or in the future, for which the Adviser, its successors,[1] or any entity controlling, controlled by, or under common control with the Adviser, or its successors, acts as investment adviser, and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with either rule 23c–3 under the 1940 Act or rule 13e–4 under the Securities Exchange Act of 1934 (the ''1934 Act'') (each such closed-end management investment company a ''Future Fund'' and, together with the Initial Fund, each a ''Fund,'' and collectively the ''Funds'').[2]

5. The Initial Fund currently issues a single class of Shares (the ''Initial Class Shares''). The Initial Class Shares are currently being offered on a continuous basis pursuant to a registration statement under the Securities Act of 1933 at their net asset value per share. The Initial Fund, as a closed-end management investment company, does not continuously redeem Shares as does an open-end management investment company. Shares of the Initial Fund are not listed on any securities exchange and do not trade on an over-the-counter system. Applicants do not expect that any secondary market will ever develop for the Shares.

6. If the requested relief is granted, the Initial Fund intends to offer multiple classes of Shares, such as the Initial Class Shares and a new Share class (the ''New Class Shares''), or any other classes. Because of the different distribution fees, shareholder services fees, and any other class expenses that may be attributable to the different classes, the net income attributable to, and any dividends payable on, each class of Shares may differ from each other from time to time.

7. Applicants state that, from time to time, the Board of a Fund may create and offer additional classes of Shares, or may vary the characteristics described of the Initial Class and New Class Shares, including without limitation, in the following respects: (1) The amount of fees permitted by a distribution and service plan as to such class; (2) voting rights with respect to a distribution and service plan as to such class; (3) different class designations; (4) the impact of any class expenses directly attributable to a particular class of Shares allocated on a class basis as

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The Initial Fund and any Future Fund relying on the requested relief will do so in compliance with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

described in the application; (5) differences in any dividends and net asset values per Share resulting from differences in fees under a distribution and service plan or in class expenses; (6) any early withdrawal charge or other sales load structure; and (7) any exchange or conversion features, as permitted under the 1940 Act.

8. Applicants state that, in order to provide some liquidity to shareholders, the Initial Fund is structured as an ''interval fund'' and makes quarterly offers to repurchase between five percent and twenty-five percent of its outstanding Shares at net asset value, pursuant to rule 23c–3 under the 1940 Act, unless such offer is suspended or postponed in accordance with regulatory requirements. Any other investment company that intends to rely on the requested relief will provide periodic liquidity to shareholders in accordance with either rule 23c–3 under the 1940 Act or rule 13e–4 under the 1934 Act.

9. Applicants represent that any asset-based distribution and servicing fee of a Fund will comply with the provisions of Rule 2341 of the Rules of the Financial Industry Regulatory Authority (''FINRA Rule 2341'').[3] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses, and other characteristics of each class of Shares offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N–1A. As if it were an open-end management investment company, each Fund will disclose fund expenses borne by shareholders during the reporting period in shareholder reports[4] and describe in its prospectus any arrangements that result in breakpoints in, or elimination of, sales loads.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge and private equity funds.[6]

10. Each Fund and its distributor (the ''Distributor'') will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end management investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements apply to the Fund and the Distributor. Each Fund or the Distributor will contractually require that any other distributor of the Fund's Shares comply with such requirements in connection with the distribution of Shares of the Fund.

11. All expenses incurred by a Fund will be allocated among its various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution and service plan of that class (if any), shareholder services fees attributable to a particular class (including transfer agency fees, if any), and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of the Fund's Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the 1940 Act as if it were an open-end management investment company.

12. Applicants state that the Initial Fund does not intend to offer any exchange privilege or conversion feature, but any such privilege or feature introduced in the future by a Fund will comply with rule 11a–1, rule 11a–3, and rule 18f–3 as if the Fund were an open-end management investment company.

13. Applicants state that the Initial Fund does not currently impose, nor does it currently intend to impose, an early withdrawal charge. In the future, however, a Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period. Each Fund may waive the early withdrawal charges on repurchases for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the 1940 Act as if the Fund were an open-end management investment company.

14. The Initial Fund, operating as an interval fund pursuant to rule 23c–3 under the 1940 Act, does not presently intend to, but a Fund (including the Initial Fund in the future) may, offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their Shares of the Fund for shares of the same class of (i) Registered open-end management investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the 1940 Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, the ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the repurchase offer amount for such Fund as specified in rule 23c–3 under the 1940 Act. Any exchange option will comply with rule 11a–3 under the 1940 Act, as if the Fund were an open-end management investment company subject to rule 11a–3. In complying with rule 11a–3 under the 1940 Act, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load (a ''CDSL'').[7]

15. Applicants state that the Initial Fund does not currently, nor does it currently intend to, impose a repurchase fee, but may do so in the future.[8] If a Fund charges a repurchase fee, Shares of the Fund will be subject to a repurchase fee at a rate of no greater than two percent of the shareholder's repurchase proceeds if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of those Shares is less than one year. Repurchase fees, if charged, will equally apply to all classes of Shares of the Fund, consistent with section 18 of the 1940 Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate a repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the 1940 Act as if the repurchase fee were a CDSL and as if the Fund were a registered open-end management investment company. In addition, the Fund's waiver of, scheduled variation in, or elimination of the repurchase fee

[3] Any references to FINRA Rule 2341include any successor or replacement rule that may be adopted by FINRA.

[4] Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release).

[5] Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release).

[6] Fund of Funds Investments, Investment Company Act Release Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (June 20, 2006) (adopting release). *See also* rules 12d1–1, *et seq.* under the 1940 Act.

[7] A CDSL, assessed by an open-end fund pursuant to Rule 6c–10 under the 1940 Act, is a distribution-related charge payable to the distributor. Pursuant to the requested order, the early withdrawal charge will likewise be a distribution-related charge payable to the distributor as distinguished from a repurchase fee which is payable to a Fund.

[8] Unlike a distribution-related charge, the repurchase fee is payable to the Fund to compensate long-term shareholders for the expenses related to shorter-term investors, in light of the Fund's generally longer-term investment horizons and investment operations.

will apply uniformly to all shareholders of the Fund regardless of class.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2)(A) and (B) makes it unlawful for a registered closed-end management investment company to issue a senior security that is a stock unless (a) immediately after such issuance it will have an asset coverage of at least 200% and (b) provision is made to prohibit the declaration of any distribution upon its common stock, or the purchase of any such common stock, unless in every such case such senior security has at the time of the declaration of any such distribution, or at the time of any such purchase, an asset coverage of at least 200% after deducting the amount of such distribution or purchase price, as the case may be. Applicants state that the creation of multiple classes of Shares of the Funds may violate section 18(a)(2) because the Funds may not meet section 18(a)(2)'s requirements with respect to a class of Shares that may be a senior security.

2. Section 18(c) of the 1940 Act provides, in relevant part, that a registered closed-end management investment company may not issue or sell any senior security which is a stock if immediately thereafter the company will have outstanding more than one class of senior security that is a stock. Applicants state that the creation of multiple classes of Shares of a Fund may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the 1940 Act generally provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of a Fund may violate section 18(i) of the 1940 Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or from any rule or regulation under the 1940 Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c), and 18(i) to permit the Funds to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit each Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end management investment company multiple class structure does not raise the concerns underlying section 18 of the 1940 Act to any greater degree than open-end management investment companies' multiple class structures that are permitted by rule 18f–3 under the 1940 Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end management investment company.

Early Withdrawal Charges

1. Section 23(c) of the 1940 Act provides, in relevant part, that no registered closed-end management investment company shall purchase securities of which it is the issuer, except:

(a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the 1940 Act permits an interval fund to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the 1940 Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) of the 1940 Act provides that the Commission may issue an order that would permit a closed-end management investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for each Fund to impose early withdrawal charges on shares of the Fund submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to CDSLs imposed by open-end management investment companies under rule 6c–10 under the 1940 Act. Rule 6c–10 permits open-end management investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor. Applicants state that these same policy considerations support imposition of early withdrawal charges in the interval fund context, and are a solid basis for the Commission to grant exemptive relief to permit interval funds to impose early withdrawal charges. In addition, applicants state that early withdrawal charges may be necessary for the Fund's Distributor to recover distribution costs from shareholders who exit their investments early. Applicants represent that any early withdrawal charge imposed by a Fund will comply with rule 6c–10 under the 1940 Act as if the rule were applicable to closed-end management investment companies.

Each Fund will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of, and rule 17d–1 under, the 1940 Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the 1940 Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the 1940 Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end management investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the 1940 Act. Applicants request an order under section 17(d) of, and rule 17d–1 under, the 1940 Act, to the extent necessary, to permit each Fund to impose asset–based service and/or distribution fees (in a manner similar to rule 12b–1 fees for an open–end management investment company). Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules apply to closed–end management investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its Shares through asset-based service and/or distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and/or distribution fees is consistent with the provisions, policies, and purposes of the 1940 Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the requested order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1 and, where applicable, 11a–3 under the 1940 Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from time to time, as if that rule applies to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08476 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33841; File No. 812–15082]

American Century ETF Trust, et al.

April 16, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Applicants: American Century ETF Trust (the ''Trust'') and American Century Investment Management, Inc. (the ''Adviser'').

Summary of Application: Applicants request an order (''Order'') that permits: (a) The Funds (defined below) to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds to acquire Shares of the Funds. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (''Reference Order'').[1]

Filing Date: The application was filed on December 11, 2019 and amended on February 24, 2020 and April 9, 2020.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 11, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: American Century ETF Trust and American Century Investment Management, Inc., *chuck_etherington@americancentury.com.*

FOR FURTHER INFORMATION CONTACT: Erin Loomis Moore, Senior Counsel, at (202) 551–6721 or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants

1. The Trust is a statutory trust organized under the laws of the State of Delaware and will consist of one or more series operating as a Fund. The Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to two Funds (as defined below, and those Funds, the ''Initial Funds''). The Funds will offer exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order.[2]

2. The Adviser, a Delaware corporation, will be the investment adviser to the Initial Funds. Subject to approval by the Fund's board of trustees, the Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with

[1] Natixis ETF Trust II, *et al.,* Investment Company Act Rel. Nos. 33684 (November 14, 2019) (notice) and 33711 (December 10, 2019) (order).

[2] To facilitate arbitrage, among other things, each day a Fund will publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

other investment advisers to act as sub-advisers with respect to the Funds (each a ''Sub-Adviser''). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor will be a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the distributor and principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser. Any distributor will comply with the terms and conditions of the Order.

Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested Order would permit applicants to offer Funds that utilize the NYSE Proxy Portfolio Methodology. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into a licensing agreement with NYSE Group, Inc. in order to offer Funds that utilize the NYSE Proxy Portfolio Methodology,[3] the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term ''Adviser''); (b) offers exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order (each such company or series and any Initial Fund, a ''Fund'').[4]

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08477 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

[3] The NYSE Proxy Portfolio Methodology (as defined in the Reference Order) is the intellectual property of the NYSE Group, Inc.

[4] All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88674; File No. SR–CBOE–2020–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Operation of Its SPXPM Pilot Program

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 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 and II 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.

[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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to extend the operation of its SPXPM pilot program. The text of the proposed rule change is provided below.
(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.13. Series of Index Options

* * * * *

Interpretations and Policies

.01–.12 No change.

.13 In addition to A.M.-settled S&P 500 Stock Index options approved for trading on the Exchange pursuant to Rule 4.13, the Exchange may also list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series). The Exchange may also list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). P.M.-settled third Friday-of-the-month SPX options series and P.M.-settled XSP options will be listed for trading for a pilot period ending [May 4]*November 2,* 2020.

* * * * *

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

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 February 8, 2013, the Securities and Exchange Commission (the ''Commission'') approved a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'').[5] On July 31, 2013, the Commission approved a rule change that amended the Pilot Program that allows the Exchange to list options on the Mini-SPX Index (''XSP'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled XSP'')[6] (together, SPXPM and P.M.-settled XSP to be referred to herein as the ''Pilot Products'').[7] The Exchange has extended the pilot period numerous times, which, pursuant to Rule 4.13.13,[8] is currently set to expire on the earlier of May 4, 2020 or the date on which the pilot program is approved on a permanent basis.[9] The Exchange hereby proposes to further extend the end date of the pilot period to November 2, 2020.

During the course of the Pilot Program and in support of the extensions of the Pilot Program, the Exchange submits reports to the Commission regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order[10] and the P.M.-settled XSP Approval Order.[11] Specifically, the Exchange submits annual Pilot Program reports to the Commission that contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange also submits periodic interim reports that contain some, but not all, of the information contained in the annual reports. In providing the annual and periodic interim reports (the ''pilot reports'') to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA'').[12]

The pilot reports both contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, S&P 500 index options traded on Cboe Options, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

(1) A time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order and the P.M.-settled XSP Approval Order.[13] Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the Pilot Program,[14] and will make public any data and analyses it submits to the Commission under the Pilot Program in the future.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to

[5] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[6] *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (the ''P.M.-settled XSP Approval Order'').

[7] For more information on the Pilot Products or the Pilot Program, *see* the SPXPM Approval Order and the P.M.-settled XSP Approval Order.

[8] The Exchange recently relocated prior Rule 24.9, containing the provision which governs the Pilot Program, to current Rule 4.13. *See* SR–CBOE–2019–092 (October 4, 2019), which did not make any substantive changes to prior Rule 24.9 and merely relocated it to Rule 4.13.

[9] *See* Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR–CBOE–2014–004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR–CBOE–2014–076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR–CBOE–2016–036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR–CBOE–2017–025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR–CBOE–2018–036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR–CBOE–2018–069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR–CBOE–2019–023); and 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR–CBOE–2019–107).

[10] *See supra* note 5.

[11] *See supra* note 6.

[12] 5 U.S.C. 552.

[13] Pursuant to Securities Exchange Act Release No. 75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR–CBOE–2015–079), the Exchange added SPXPM and P.M.-settled XSP options to the list of products approved for trading during Extended Trading Hours (''ETH''). The Exchange will also include the applicable information regarding SPXPM and P.M.-settled XSP options that trade during ETH in its annual and interim reports.

[14] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data.*

consider the impact of the Pilot Program. To this point, Cboe Options believes that the Pilot Program has been well-received by its Trading Permit Holders and the investing public, and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP options. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order and the P.M.-settled XSP Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to November 2, 2020.

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.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] 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 the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and P.M.-settled XSP, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all Cboe Options market participants, and the Pilot Products will be available to all Cboe Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on Cboe Options. To the extent that the continued trading of the Pilot Products may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Program prior to its expiration on May 4, 2020, and maintain the status quo, thereby reducing market disruption. 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 Pilot Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

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.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–036 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–2020–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–036, and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88660; File No. SR–MRX–2020–09]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8 Relating to the Options Opening Process

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend MRX Rules at Options 3, Section 8, titled ''Options Opening Process.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend MRX Rules at Options 3, Section 8, titled ''Options Opening Process.'' The proposal seeks to amend aspects of the current functionality of the Exchange's System regarding the opening of trading in an option series. Each amendment is described below.

Definitions

The Exchange proposes to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) as the number of unmatched contracts priced through the Potential Opening Price. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change. In conjunction with this rule change, the Exchange proposes to remove the text within Options 3, Section 8(j)(1) which seeks to define an imbalance as an unmatched contracts. The Exchange is proposing a description which is more specific than this rule text and is intended to bring greater clarity to the term ''imbalance.''

Eligible Interest

Options 3, Section 8(b) describes the eligible interest that will be accepted during the Opening Process. This includes Valid Width Quotes, Opening Sweeps and orders. The Exchange proposes to specifically exclude orders with a Time in Force of ''Immediate-or-Cancel'' [3] and Add Liquidity Orders [4] from the type of orders that are eligible during the Opening Process. Today, the Exchange does not accept Immediate-or-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An Immediate-or-Cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. An Immediate-or-Cancel order entered by a Market Maker through the Specialized Quote Feed protocol will not be subject to the Limit Order Price Protection and Size Limitation Protection as defined in MRX Options 3, Section 15(b)(2) and (3). *See* Options 3, Section 7(b)(3).

[4] An Add Liquidity Order is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. Members may specify whether an Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange, but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity Order would lock or cross one or more non-displayed orders on the Exchange, the Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). An Add Liquidity Order will only be re-priced once and will be executed at the re-priced price. An Add Liquidity Order will be ranked in the Exchange's limit order book in accordance with Options 3, Section 10. *See* Options 3, Section 7(n).

Cancel Orders during the Opening Process, except for Opening Only Orders.[5] The Exchange does permit orders marked as Opening Only Orders to be entered as Immediate-or-Cancel. These are the only acceptable Immediate-or-Cancel Orders for the Opening Process. All other types of Immediate-or-Cancel Orders may not be entered during the Opening Process. For example, All-or-None [6] Orders may not be entered during the Opening Process because they have a time-in-force designation of Immediate-or-Cancel. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, these orders may not be entered into the Opening Process. This amendment does not result in a System change. The Exchange believes the addition of this rule text will clarify which order types are eligible to be entered during the Opening Process.

Additionally, the Exchange proposes a non-substantive amendment at Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest'' pursuant to Options 3, Section 10. Options 3, Section 10 describes the manner in which interest is allocated on MRX. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange proposes to amend the requirements for MRX Market Makers [7] to enter Valid Width Quotes within Options 3, Section 8(c). Today, a Primary Market Maker is required to enter a Valid Width Quote within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the opening price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website), or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website). Alternatively, the Valid Width Quote of at least two Competitive Market Makers entered within the above-referenced timeframe would also open an option series. Finally, if neither the Primary Market Maker's Valid Width Quote nor the Valid Width Quotes of two Competitive Market Makers have been submitted within such timeframe, one Competitive Market Maker may submit a Valid Width Quote to open the options series.

The Exchange proposes to amend the requirement to submit Valid Width Quotes in an effort to streamline its current process. The Exchange proposes to continue to require a Primary Market Maker to submit a Valid Width Quote, but also would permit the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe described above to conclude. This effectively would take the 2 step process for accepting quotes to a one step process. The Exchange believes this proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. As is the case today, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day by submitting a Valid Width Quote.[8] Moreover, a Primary Market Maker has continuing obligations to quote intra-day pursuant to Options 2, Section 5.

Potential Opening Price

The Exchange proposes to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process paragraph which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.'' This paragraph is not intended to amend the function of the Opening Process, rather it is intended to provide context to the process and describe a Potential Opening Price within Options 3, Section 8(g). This is a non-substantive amendment.

An amendment is proposed to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price.'' The Opening Price is defined within Options 3, Section 8(a)(3) and provides, ''The Opening Price is described herein in sections (h) and (j).'' The Exchange notes that ''Opening Price'' is the more accurate term that represents current System functionality as compared to Potential Opening Price. Options 3, Section 8(g)(3) provides that ''the Potential Opening Price calculation is bounded by the better away market price that may not be satisfied with the Exchange routable interest.'' In fact, the Opening Price is bounded by the better away market price that may not be satisfied with Exchange routable interest pursuant to sections (h) and (j). The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met. The Potential Opening Price is a less accurate term and the Exchange proposes to utilize the more precise term by changing the words in this sentence to ''Opening Price'' for specificity. This amendment is not substantive, rather it is clarifying.

Opening Quote Range

The Exchange proposes to add a sentence to Options 3, Section 8(i) to describe the manner in which the Opening Quote Range or ''OQR'' is bound. The Exchange proposes to provide, ''OQR is constrained by the least aggressive limit prices within the broader limits of OQR. The least aggressive buy order or Valid Width Quote bid and least aggressive sell order or Valid Width Quote offer within the OQR will further bound the OQR.'' The Exchange previously described [9] the OQR as an additional type of boundary beyond the boundaries mentioned in Options 3, Section 8 at proposed

[5] An Opening Only Order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled. *See* Options 3, Section 7(o).

[6] An All-Or-None order is a limit or market order that is to be executed in its entirety or not at all. An All-Or-None Order may only be entered as an Immediate-or-Cancel Order. *See* Options 3, Section 7(c).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[8] Options 3, Section 8(c)(3) provides, ''The PMM assigned in a particular equity or index option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. Provided an options series has not opened pursuant to Options 3, Section 8 (c)(1)(ii) or (iii), PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security or, in the case of index options, following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening.''

[9] *See* Securities Exchange Commission Release No. 81205 (July 25, 2017), 82 FR 35566 (July 31, 2017) (SR–MRX–2017–01).

paragraph (j). OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the Best Bid or Best Offer (''BBO''), the OQR is outside of the BBO. It is meant to provide a price that can satisfy more size without becoming unreasonable. The Exchange proposes to add rule text within Options 3, Section 8 to describe the manner in which today OQR is bound. This proposed amendment does not change the manner in which MRX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price. Below is an example of the manner in which OQR is constrained.

Assume the below pre-opening interest:

Primary Market Maker quotes 4.10 (100) × 4.20 (50)
Order1: Priority Customer Buy 300 @ 4.39
Order2: Priority Customer Sell 50 @ 4.13
Order3: Priority Customer Sell 5 @ 4.37
Opening Quote Range configuration in this scenario is +/−0.18
9:30 a.m. events occur, underlying opens
First imbalance message: Buy imbalance @ 4.20, 100 matched, 200 unmatched
Next 4 imbalance messages: Buy imbalance @ 4.37, 105 matched, 195 unmatched
Potential Opening Price calculation would have been 4.20 + 0.18 = 4.38, but OQR is further bounded by the least aggressive sell order @ 4.37
Order1 executes against Order2 50 @ 4.37
Order1 executes against Primary Market Maker quote 50 @ 4.37
Order1 executes against Order3 5 @ 4.37
Remainder of Order1 cancels as it is through the Opening Price
Primary Market Maker quote purges as its entire offer side volume has been exhausted

Similarly, the Exchange proposes to amend Options 3, Section 8(i)(3) which currently provides, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that are executable against each other or the ABBO:''. The Exchange proposes to instead state, ''If one or more away markets are disseminating a BBO that is not crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (c)(5)) and there are Valid Width Quotes on the Exchange that *cross each other or are marketable against* the ABBO:''. The proposed language more accurately describes the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. A similar change is also proposed to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross''. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange proposes to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7). The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' The current rule text is imprecise. When routing, the Exchange first determine if the interest is routable. A DNR Order [10] would not be routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange proposes to add new rule text to Options 3, Section 8(j)(1)(A) to describe the information conveyed in an Imbalance Message. The Exchange proposes to provide at Options 3, Section 8(j)(1)(A),

> An Imbalance Message will be disseminated showing a ''0'' volume and a $0.00 price if: (i) No executions are possible but routable interest is priced at or through the ABBO; (ii) internal quotes are crossing each other; or (iii) there is a Valid Width Quote, but there is no Quality Opening Market. Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.

This rule text is consistent with the current operation of the System. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. The Exchange believes that explaining the potential scenarios which led to the dissemination of a ''0'' volume, such as (1) when no executions are possible and routable interest is priced at or through the ABBO; (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market, will provide greater detail to the potential state of the interest available. The Exchange further clarifies in this new rule text, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(j)(3)(i) to simply add punctuation at the end of the sentence.

The Exchange proposes to amend Options 3, Section 8(j)(3)(ii) to remove the phrase ''at the Opening Price'' within the paragraph in two places. The current second sentence of paragraph 8(j)(3)(ii) states, ''If during the Route Timer, interest is received by the System which would allow the Opening Price to be within OQR without trading through away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the System will open with trades at the Opening Price and the Route Timer will simultaneously end.'' The Exchange proposes to remove the words ''at the Opening Price'' because while anything traded on MRX would be at the Opening Price, the trades that are routed away would be at an ABBO price which may differ from the MRX Opening Price. To avoid any confusion, the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(ii) which currently only references quotes. During the Price Discovery Mechanism, both quotes and orders are considered.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(5) to add the phrase ''if consistent with the Member's instructions'' to the end of the paragraph to make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading.

[10] The manner in which the System will handle orders marked with the instruction ''Do-Not-Route'' (''DNR'' Orders) is described in Options 3, Section 8(j)(6).

This amendment brings greater clarity to the Exchange's Rules.

The Exchange proposes to amend the last sentence of Options 3, Section 8(j)(6) which provides, ''The System will only route non-contingency Public Customer orders, except that only the full volume of Public Customer Reserve Orders may route.'' The Exchange proposes to instead provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume.'' The Exchange is rewording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment brings greater clarity to the rule.

The Exchange proposes to add an introductory sentence of Options 3, Section 8(j)(6)(i) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price . . .''. The addition of this sentence is intended to provide context to the handling of orders. The Exchange opens and routes simultaneously during its Opening Process. This proposed sentence is a transition sentence from Options 3, Section 8(j)(6), wherein the System executes and routes orders. Options 3, Section 8(j)(6)(i) describes DNR Orders, which are not routed. The proposed introductory sentence would reflect that Options 3, Section 8(j)(6) is intended to make clear that as DNR Orders and orders priced through the Opening Price are not routable orders that will cancel. The System will cancel any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur. An order *or quote* that is priced through the Opening Price will also be cancelled. All other interest will be eligible for trading after opening. This amended rule text is consistent with the behavior of the System. This non-substantive amendment is intended to add greater clarity to the Exchange's Rules. The Exchange also proposes to remove the phrase ''will be cancelled'', which is duplicative, and add the words ''or quote'' to the first sentence so it would provide, ''[t]he System will cancel (i) any portion of a Do-Not-Route order that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur, or (ii) any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening.'' Today, any order or quote that is priced through the Opening Price will be cancelled. This new rule text makes clear that all interest applies.

The Exchange proposes to renumber current Options 3, Section 8(k) as Section 8(j)(6)(ii) and renumber current Options 3, Section 8(l) as Section 8(j)(6)(iii).

The Exchange proposes to add a new paragraph at Options 3, Section 8(j)(6)(iv) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price.'' The Exchange notes that this paragraph describes current System behavior. This rule text accounts for orders which routed away and were returned unsatisfied to MRX as well as interest that was unfilled during the Opening Process, provided it was not priced through the Opening Price. This sentence is being included to account for the manner in which all interest is handled today by MRX and how certain interest rests on the order book once the Opening Process is complete. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will bring greater transparency to the Rules and is consistent with the Exchange's current System operation. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once MRX opens an options series.

Opening Process Cancel Timer

The Exchange proposes to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to The Nasdaq Options Market LLC's (''NOM'') Rules and Nasdaq BX, Inc.'s (''BX'') at Options 3, Section 8(c).[11] The Exchange proposes to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange. The Opening Process Cancel Timer would be established by the Exchange and posted on the Exchange's website. Similar to NOM and BX, orders submitted through OTTO or FIX with a TIF of Good-Till-Canceled [12] or ''GTC'' or Good-Till-Date [13] or ''GTD'' may not be cancelled. MRX has monitored the operation of the Opening Process to identify instances where market efficiency can be enhanced. The Exchange believes that adopting a cancel timer similar to NOM and BX will increase the efficiency of MRX's Opening Process. This provision would provide for the return of orders for un-opened options symbols. This enhancement will provide market participants the ability to elect to have orders returned, except for non-GTC/GTD Orders, when options do not open. It provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow MRX to continue to have a robust Opening Process.

Implementation

The Exchange proposes to implement the amendments proposed herein prior to Q3 2020. The Exchange will issue an Options Trader Alert announcing the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. The Exchange believes that the proposed changes significantly improve the quality of execution of MRX's opening.

[11] NOM Options 3, Section 8(c) provides, ''Absence of Opening Cross. If an Opening Cross in a symbol is not initiated before the conclusion of the Opening Process Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Process Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by Nasdaq on its website.'' BX Options 3, Section 8 is worded similarly.

[12] An order to buy or sell that remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC Orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. *See* Options 3, Section 7(r).

[13] A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series. *See* Options 3, Section 7(p).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

Definitions

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract, will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This is a non-substantive rule change and represents current System functionality. Today, the term ''imbalance'' is simply defined as unmatched contracts. The proposed definition is more precise in its representation of the current System functionality.

Eligible Interest

The Exchange's proposal to amend Options 3, Section 8(b) which describes the eligible interest that will be accepted during the Opening Process is consistent with the Act. Specifically, only accepting Opening Only Orders and excluding all other orders with a Time in Force of ''Immediate-or-Cancel'' is the manner in which the System operates today. The Exchange proposes to specifically note within the Opening Process that all other Immediate-or-Cancel Orders would not be acceptable if they are not Opening Only Orders. Notwithstanding the foregoing, Opening Only Orders would be accepted. Further, Add Liquidity Orders are not accepted from the Opening Process because these orders cannot add liquidity during the Opening Process. The Exchange notes that today, both of these types of orders may not be entered into the Opening Process. The Exchange believes making clear which orders are not accepted within the Opening Process will bring greater transparency for market participants who desire to enter interest and understand the System handling.

The proposed amendment to Options 3, Section 8(b)(2) to replace the phrase ''aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes'' with ''allocate interest'' pursuant to Options 3, Section 10 is consistent with the Act. This amendment is non-substantive and merely points to Options 3, Section 10, which today describes the manner in which interest is allocated on MRX. The Exchange believes that simply referring to the allocation rule will accurately describe the manner in which the System will allocate interest.

Valid Width Quotes

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for MRX Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe is consistent with the Act. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. A Primary Market Maker has continuing obligations to quote throughout the trading day pursuant to Options 2, Section 5. In addition, Primary Market Makers are required to ensure each option series to which it is appointed is opened each day MRX is open for business by submitting a Valid Width Quote.[16] Primary Market Makers will continue to remain responsible to open an options series, unless it is otherwise opened by a Competitive Market Maker. A Competitive Market Maker also has obligations to quote intra-day, once they commence quoting for that day.[17] The Exchange notes if Competitive Market Makers entered quotes during the Opening Process to open an option series, those quote must qualify as Valid Width Quotes. This ensures that the quotations that are entered are in alignment with standards that help ensure a quality opening. The Exchange believes that allowing one Competitive Market Maker to enter a quotation continues to protect investors and the general public because the Competitive Market Maker will be held to the same standard for entering quotes as a Primary Market Maker and the process will also ensure an efficient and timely opening, while continuing to hold Primary Market Makers responsible for entering Valid Width Quotes during the Opening Process.

Potential Opening Price

The Exchange's proposal to amend Options 3, Section 8(g) to add an introductory sentence to the Potential Opening Process which provides, ''The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met,'' is consistent with the Act. This paragraph is not intended to amend the current function of the Opening Process, rather it is intended to provide context to the process described within Options 3, Section 8(g). Specifically, the new text describes a Potential Opening Price. This rule text is consistent with the current operation of the System. This is a non-substantive amendment.

Further, the amendment to Options 3, Section 8(g)(3) to replace the words ''Potential Opening Price calculation'' with the more defined term ''Opening Price'' is consistent with the Act. ''Opening Price'' is the more accurate term that represents current System functionality. The Opening Price is bounded by any better away market price that may not be satisfied with the Exchange routable interest. Changing the words in this sentence to ''Opening Price'' will make this statement accurate. This amendment is not substantive.

Opening Quote Range

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound will bring greater clarity to the manner in which OQR is calculated. OQR is an additional type of boundary beyond the boundaries mentioned within the Opening Process rule. The System will calculate an OQR for a particular option series that will be utilized in the Price Discovery Mechanism if the Exchange has not opened, pursuant to the provisions in Options 3, Section 8(c)–(h). OQR would broaden the range of prices at which the Exchange may open to allow additional interest to be eligible for consideration in the Opening Process. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. Although the Exchange applies other boundaries such as the BBO, the OQR provides a range of prices that may be able to satisfy additional contracts while still ensuring a reasonable Opening Price. More specifically, the Exchange's Opening Price is bounded by the OQR without trading through the limit price(s) of interest within OQR, which is unable to fully execute at the Opening Price in order to provide participants with assurance that their orders will not be traded through. The Exchange seeks to execute as much volume as is possible at the Opening Price. The Exchange's method for determining the Potential Opening Price and Opening Price is consistent with the Act because the proposed process seeks to discover a reasonable price and considers both interest present in System as well as away market interest. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices. The rule provides for opening with a trade, which is consistent with the Act because it enables an immediate opening to occur within a certain boundary without the need for the price discovery process. The boundary

[16] *See* note 9 above.

[17] *See* Options 2, Section 5.

provides protections while still ensuring a reasonable Opening Price. The Exchange's proposal protects investors and the general public by more clearly describing how the boundaries are handled by the System. This proposed amendment does not change the manner in which MRX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to amend Options 3, Section 8(i)(3) to replace the phrase ''that are executable against each other or the ABBO:'' with ''that *cross each other or are marketable against* the ABBO:'' will more accurately describe the current Opening Process. Valid Width Quotes are not routable and would not be executable against the ABBO. This rule text is more specific than ''executable against each other.'' The Exchange believes that this rule text adds greater transparency to the Opening Process. This is a non-substantive amendment.

The Exchange's proposal to make a similar change to Options 3, Section 8(i)(4) to replace the words ''are executable against'' with ''cross,'' is consistent with the Act. The Exchange believes that the amended rule text adds greater transparency to the Opening Process. These are non-substantive amendments.

The Exchange's proposal to replace the phrase ''route'' with ''route routable'' and also replace the phrase ''in price/time priority to satisfy the away market'' with ''pursuant to Options 3, Section 10(c)(1)(A)'' at the end of Options 3, Section 8(i)(7) is consistent with the Act. The current rule text is imprecise. When allocating, the Exchange first determines if the interest is routable, it may be marked as a DNR Order, which is not routable. Of the routable interest, the Exchange will route the interest in price/time priority to satisfy the away market interest. The Exchange believes changing the word ''route'' to ''route routable'' and adding the citation to the allocation rule within Options 3, Section 10 clarifies the meaning of this sentence and better explains the System handling. The final sentence would provide, ''The System will route routable Public Customer interest pursuant to Options 3, Section 10(c)(1)(A).'' This is a non-substantive amendment which is intended to bring greater clarity to the Exchange's Rules.

Price Discovery Mechanism

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages is consistent with the Act. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. An imbalance process is intended to attract liquidity to improve the price at which an option series will open, as well as to maximize the number of contracts that can be executed on the opening. This process will only occur if the Exchange has not been able to otherwise open an option series utilizing the other processes available in Options 3, Section 8. The Imbalance Timer is intended to provide a reasonable time for participants to respond to the Imbalance Message before any opening interest is routed to away markets and, thereby, maximize trading on the Exchange. The Exchange believes that the proposed rule text provides market participants with additional information as to the imbalance message. The following potential scenarios, which may lead to the dissemination of a ''0'' volume, include (1) when no executions are possible and routable interest is priced at or through the ABBO: (2) internal quotes are crossing; and (3) there is a Valid Width Quote, but there is no Quality Opening Market. The Exchange believes adding this detail will provide greater information as to the manner in which Imbalance Messages are disseminated today. The Exchange's process of disseminating zero imbalance messages is consistent with the Act because the Exchange is seeking to identify a price on the Exchange without routing away, yet which price may not trade through another market and the quality of which is addressed by applying the OQR boundary. Announcing a price of zero will permit market participants to respond to the Imbalance Message, which interest would be considered in determining a fair and reasonable Opening Price.

The Exchange further proposes to clarify its current System functionality by stating, ''Where the Potential Opening Price is through the ABBO, an imbalance message will display the side of interest priced through the ABBO.'' The Exchange believes that this proposed text will bring greater transparency to the information available to market participants during the Opening Process.

The Exchange's proposal to amend Options 3, Section 8(j)(3)(ii) to remove the phrase ''at the Opening Price'' within the paragraph in two places is consistent with the Act because removing the current phrase will avoid confusion. The Exchange notes that anything traded on MRX would be at the Opening Price, the trades that are routed away would be at an ABBO price, which differs from the MRX Opening Price. To avoid any confusion the Exchange is amending the sentence to remove the reference to the Opening Price. In addition, the Exchange proposes to add the phrase ''and orders'' to Options 3, Section 8(j)(3)(ii) which currently only references quotes. During the Price Discovery Mechanism both quotes and orders are considered.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(5) to amend the phrase ''if consistent with the Member's instructions'' to the end of the paragraph will make clear that the instructions provided by a Member in terms of order types and routing would be applicable to interest entered during the Opening Process which remains eligible for intra-day trading. This proposal is consistent with the Act and will add greater clarity to the Exchange's Rules.

The Exchange's proposal to amend the last sentence of Options 3, Section 8(j)(6) to provide, ''The System will only route non-contingency Public Customer orders, except that Public Customer Reserve Orders may route up to their full volume,'' is consistent with the Act. The Exchange is re-wording the current sentence to make clear that Public Customer Reserve Orders may route up to their full volume. The current sentence is awkward in that is seems to imply that only full volume would route. This was not the intent of the sentence. As revised, the sentence more clearly conveys its intent. The Exchange believes that this amendment is non-substantive and is a more precise manner of expressing the quantity of Reserve Orders that may route.

The Exchange's proposal to add an introductory phrase to Options 3, Section 8(j)(6)(i) which provides, ''For contracts that are not routable, pursuant to Options 3, Section 8(j)(6), such as DNR Orders and orders priced through the Opening Price . . .,'' is consistent with the Act. The addition of this sentence is intended simply to provide context to the handling of orders. The prior paragraph, Options 3, Section 8(j)(6), describes how the System executes and routes orders. This proposed new text explains why DNR Orders are cancelled. This sentence is being added to indicate that at this stage in the Opening Process, routable interest would have routed, non-routable interest does not route and may not execute if priced through the Opening Price. This information is currently not contained within the rules, however the

rule text is consistent with the behavior of the System. This non-substantive amendment is consistent with the Act because it adds greater clarity to the Exchange's Rules.

The proposal to remove the duplicative text ''will be cancelled'' and add the words ''or quote'' to the second sentence are non-substantive rule changes. All other interest will be eligible for trading after opening,'' is consistent with the Act. Today, any order or quote that is priced through the Opening Price will be cancelled. This rule text is consistent with the System's current operation. This amendment is intended to add greater clarity to the Exchange's Rules.

The Exchange's proposal to add a new paragraph at Options 3, Section 8(j)(6)(iv) which provides, ''Remaining contracts which are not priced through the Exchange Opening Price after routing a number of contracts to satisfy better priced away contracts will be posted to the Order Book at the better of the away market price or the order's limit price,'' will bring greater transparency to the handling of orders once an option series is opened for trading. After away interest is cleared by routable interest and the opening cross has occurred, DNR Orders are handled by the System. DNR Order interest will rest on the Order Book, provided it was not priced through the Opening Price. This rule text accounts for orders which have routed away and returned to MRX unsatisfied and also accounts for interest that remains unfilled during the Opening Process, provided it was not priced through the Opening Price. The Exchange notes that the posted interest will be priced at the better of the away market price or the order's limit price. This additional clarity will protect investors and the general public by adding greater transparency to the Exchange's current System operation by explaining how all interest is handled during the Opening Process. The Exchange believes that this detail will provide market participants with all possible scenarios that may occur once MRX opens its options series. This amendment represents the System's current function.

Opening Process Cancel Timer

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c) is consistent with the Act. The Exchange's proposal to add a process whereby if an options series has not opened before the conclusion of the Opening Process Cancel Timer, a Member may elect to have orders returned by providing written notification to the Exchange is consistent with the Act. MRX believes that this amendment will promote just and equitable principles of trade and to protect investors and the public interest by enhancing its Opening Process. Adopting a cancel timer similar to NOM and BX will increase the efficiency of MRX's Opening Process by providing Members with the ability to elect to have orders returned, except for non-GTC/GTD orders. This functionality provides Members with choice, when symbols do not open, about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. These proposed enhancements will allow MRX to continue to have a robust Opening Process.

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. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal will enhance the Opening Process by making it more efficient and beneficial to market participants. Moreover, the Exchange believes that the proposed amendments will significantly improve the quality of execution of MRX's Opening Process. The proposed amendments provide market participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow.

The Exchange's proposal to define the term ''imbalance'' at proposed Options 3, Section 8(a)(10) and remove the text within Options 3, Section 8(j)(1), which seeks to define an imbalance as an unmatched contract does not impose an undue burden on competition. The Exchange believes that the addition of this defined term will bring greater clarity to the manner in which the term ''imbalance'' is defined within the System. This description is consistent with the current System operation. This is a non-substantive rule change.

The Exchange's proposal to specifically exclude orders with a Time in Force of ''Immediate-or-Cancel'' and Add Liquidity Orders from the type of orders that are eligible during the Opening Process does not impose an undue burden on competition. The Exchange notes that today all market participants may enter Opening Only Orders. Today, the Exchange does not permit Immediate-or-Cancel Orders to be entered unless they are Opening Only Orders. With respect to Add Liquidity Orders, these orders are not appropriate for the Opening Process because these orders cannot add liquidity during the Opening Process and would not be accepted from any market participant today. The addition of these exceptions does not impact any market participant as today all market participants are restricted from utilizing ''Immediate-or-Cancel''or Add Liquidity Orders.

The Exchange's proposal to amend the requirements within Options 3, Section 8(c) for MRX Market Makers to enter Valid Width Quotes by permitting the Valid Width Quote of one Competitive Market Maker to open an option series without waiting for the two minute timeframe does not impose an undue burden on competition. This proposal would allow the market to open more efficiently as well as enable greater participation by Competitive Market Makers in the Opening Process. Primary Market Makers continue to remain obligated to open their appointed options series. Competitive Market Maker may participate in the Opening Process, as is the case today, provided they enter Valid Width Quotes, which is intended to ensure a quality opening. The Exchange does not believe this proposal would burden the ability of market participants who enter quotes to participate in the Opening Process.

The Exchange's proposal to add a sentence to Options 3, Section 8(i) to describe the manner in which the OQR is bound does not impose an undue burden on competition. OQR is intended to limit the Opening Price to a reasonable, middle ground price and thus reduce the potential for erroneous trades during the Opening Process. The Exchange's method seeks to validate the Opening Price and avoid opening at aberrant prices for the protection of all investors. This proposed amendment does not change the manner in which MRX's System operates today. The Exchange believes that this rule text will bring greater transparency to the manner in which the Exchange arrives at an Opening Price.

The Exchange's proposal to add new rule text at Options 3, Section 8(j)(1)(A) to describe the current operation of the System with respect to imbalance messages does not impose an undue

burden on competition. The purpose of this proposed text is to provide greater information to market participants to explain the information that is being conveyed when an imbalance message indicates ''0'' volume. All market participants are able to respond to an imbalance messages and have their interest considered in determining a fair and reasonable Opening Price.

The Exchange's proposal to adopt an Opening Process Cancel Timer within Options 3, Section 8(k), similar to NOM's and BX's Rules at Options 3, Section 8(c), does not impose an undue burden on competition. Adopting a cancel timer similar to NOM and BX will increase the efficiency of MRX's Opening Process for all market participants. All market participants will have the ability to elect to have orders returned, except for non-GTC/GTD orders, when symbols do not open. This feature provides Members with choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this additional feature will attract additional order flow to the Exchange.

The remainder of the proposed rule text is intended to bring greater transparency to the Opening Process rule while also adding additional detail and clarity and therefore does not have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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 [18] and Rule 19b–4(f)(6) thereunder.[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 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–MRX–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–MRX–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 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–MRX–2020–09 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08484 Filed 4–21–20; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88671; File No. SR–GEMX–2020–10]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled Transfer of Positions Within Options 6, Section 5

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Transfer of Positions'' within Options 6, Section 5.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Transfer of Positions'' within Options 6, Section 5, which is currently reserved. Today, GEMX does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the GEMX. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.[3]

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled ''Transfer of Positions'' to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, GEMX has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), ''*Permissible Transfers.* Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

(1) Pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;

(5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[4]

The Exchange proposes to define ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.'' [5] The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[6] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[7] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[8] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[9]

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on GEMX, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for GEMX transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market

[3] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

[4] *See* Cboe Rule 6.7(a).

[5] *See* Cboe Rule 1.1.

[6] *See* proposed Options 6, Section 5(a)(5) and (7).

[7] *See* proposed Options 6, Section 5(h).

[8] For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

[9] *See* Cboe Rule 6.7(b).

Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which a transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; [10] or (4) the then-current market price of the positions at the time the transfer is effected.[11]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[12] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[13] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[14]

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[15]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[16] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5) [20] 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

[10] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[11] *See* Cboe Rule 6.7(c).

[12] This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[13] *See* Cboe Rule 6.7(d).

[14] *See* Cboe Rule 6.7(e).

[15] *See* Cboe Rule 6.7(f).

[16] *See* Cboe Rule 6.7(g).

[17] *See* Cboe Rule 6.7(h).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

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 the Section 6(b)(5) [21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),[22] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The

[21] *Id.*

[22] *See* Cboe Rule 6.7(f).

proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [25] 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. The Commission notes that waiver of the operative delay would provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–GEMX–2020–10 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–GEMX–2020–10. 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–GEMX–2020–10 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* CBOE Rule 6.7.

[27] 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).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88672; File No. SR–BX–2020–006]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled Transfer of Positions Within Options 6, Section 5

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2020, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Transfer of Positions'' within BX Options 6, Section 5.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Transfer of Positions'' within BX Options 6, Section 5, which is currently reserved. Today, BX does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Participant may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the BX. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.[3]

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled ''Transfer of Positions'' to provide for the circumstances pursuant to which Participants may transfer their options positions without first exposing the order. This rule states that a Participant must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, BX has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), ''*Permissible Transfers.* Existing positions in options listed on the Exchange of a Participant or non-Participant that are to be transferred on, from, or to the books of a Clearing Participant may be transferred off the if the transfer involves one or more of the following events:

(1) Pursuant to General 9, Section 1, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;

(5) the dissolution of a joint account in which the remaining Participant assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Participant's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[4]

The Exchange proposes to define ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.''[5] The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Participant or a non-Participant may be subject to a transfer, except under specified circumstances in which a transfer may only be effected for positions of a Participant.[6] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[7] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position (''netting''), and no position transfer may result in preferential margin or haircut treatment.[8] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Participant wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Participant could not transfer the offsetting series, as they would net against each other and close the positions.[9]

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Participant, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the

[3] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

[4] *See* Cboe Rule 6.7(a).

[5] *See* Cboe Rule 1.1.

[6] *See* proposed Options 6, Section 5(a)(5) and (7).

[7] *See* proposed Options 6, Section 5(h).

[8] For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

[9] *See* Cboe Rule 6.7(b).

exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on BX, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for BX transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Participant, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date; [10] or (4) the then-current market price of the positions at the time the transfer is effected.[11]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Participant and its Clearing Participant (to the extent that the Participant is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Participant(s).[12] The notice must indicate: the Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[13] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Participant(s) and its Clearing Participant(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Participants and Clearing Participants that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Participant and each Clearing Participant that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Participant or Clearing Participant provide.[14]

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Participant (with respect to the Participant's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[15]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[16] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to

[10] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[11] *See* Cboe Rule 6.7(c).

[12] This notice provision applies only to transfers involving a Participant's positions and not to positions of non-Participant parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[13] *See* Cboe Rule 6.7(d).

[14] *See* Cboe Rule 6.7(e).

[15] *See* Cboe Rule 6.7(f).

[16] *See* Cboe Rule 6.7(g).

positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)[20] 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 the Section 6(b)(5)[21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Participant that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Participant that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Participant may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),[22] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Participant and the rule will apply uniformly to all Participants. Use of the transfer procedure is voluntary, and all Participants may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Participant that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to

[17] *See* Cboe Rule 6.7(h).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See* Cboe Rule 6.7(f).

market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [25] 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. The Commission notes that waiver of the operative delay would provide Participants with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–BX–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2020–006. 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

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* CBOE Rule 6.7.

[27] 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).

Number SR–BX–2020–006 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08493 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88669; File No. SR–MRX–2020–10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled Transfer of Positions Within Options 6, Section 5

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Transfer of Positions'' within Options 6, Section 5.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Transfer of Positions'' within Options 6, Section 5, which is currently reserved. Today, MRX does not permit transfers. This proposed rule specifies the specific limited circumstances under which a Member may effect transfers of positions. This rule would permit market participants to move positions from one account to another without first exposure of the transaction on the MRX. This rule would permit transfers upon the occurrence of significant, non-recurring events. The proposed rule change is similar to Cboe Rule 6.7.[3]

Permissible Transfers

The Exchange proposes to adopt new Options 6, Section 5 titled ''Transfer of Positions'' to provide for the circumstances pursuant to which Members may transfer their options positions without first exposing the order. This rule states that a Member must be on at least one side of the transfer. This rule is similar to CBOE Rule 6.7. Currently, MRX has no rule that specifically addresses transfers.

The Exchange proposes to provide at proposed Options 6, Section 5(a), ''*Permissible Transfers.* Existing positions in options listed on the Exchange of a Member or non-Member that are to be transferred on, from, or to the books of a Clearing Member may be transferred off the Exchange if the transfer involves one or more of the following events:

(1) Pursuant to Options 9, Section 5, an adjustment or transfer in connection with the correction of a bona fide error in the recording of a transaction or the transferring of a position to another account, provided that the original trade documentation confirms the error;

(2) the transfer of positions from one account to another account where no change in ownership is involved (*i.e.,* accounts of the same Person, provided the accounts are not in separate aggregation units or otherwise subject to information barrier or account segregation requirements;

(3) the consolidation of accounts where no change in ownership is involved;

(4) a merger, acquisition, consolidation, or similar non-recurring transaction for a Person;

(5) the dissolution of a joint account in which the remaining Member assumes the positions of the joint account;

(6) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions;

(7) positions transferred as part of a Member's capital contribution to a new joint account, partnership, or corporation;

(8) the donation of positions to a not-for-profit corporation;

(9) the transfer of positions to a minor under the Uniform Gifts to Minors Act; or

(10) the transfer of positions through operation of law from death, bankruptcy, or otherwise.[4]

The Exchange proposes to define ''Person'' as ''an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.''[5] The proposed rule change makes clear that the transferred positions must be on, from, or to the books of a Clearing Member. The proposed rule change states that existing positions of a Member or a non-Member may be subject to an transfer, except under specified circumstances in which a transfer may only be effected for positions of a Member.[6] The Exchange notes transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations.[7] Except as explicitly provided in the proposed rule text, the proposed rule change is not intended to exempt position transfers from any other applicable rules or regulations, and proposed paragraph (h) makes this clear in the rule.

Proposed Options 6, Section (b) codifies Exchange guidance regarding certain restrictions on permissible transfers related to netting of open positions and to margin and haircut treatment, unless otherwise permitted by proposed paragraph (f). No position may net against another position

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 88424 (March 19, 2020), 85 FR 16981 (March 25, 2020) (SR–Cboe–2019–035) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Regarding Off-Floor Position Transfers).

[4] *See* Cboe Rule 6.7(a).

[5] *See* Cboe Rule 1.1.

[6] *See* proposed Options 6, Section 5(a)(5) and (7).

[7] *See* proposed Options 6, Section 5(h).

(''netting''), and no position transfer may result in preferential margin or haircut treatment.[8] Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if a Member wanted to transfer 100 long calls to another account that contained short calls of the same options series as well as other positions, even if the transfer is permitted pursuant to one of the 10 permissible events listed in the proposed Rule, the Member could not transfer the offsetting series, as they would net against each other and close the positions.[9]

However, netting is permitted for transfers on behalf of a Market Maker account for transactions in multiply listed options series on different options exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at the Clearing Corporation. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other. Options exchanges permit different naming conventions with respect to Market Maker account acronyms (for example, lettering versus numbering and number of characters), which are used for accounts at the Clearing Corporation. A Market Maker may have a nominee with an appointment in class XYZ on Phlx, and have another nominee with an appointment in class XYZ on MRX, but due to account acronym naming conventions, those nominees may need to clear their transactions into separate accounts (one for Phlx Options transactions and another for MRX transactions) at the Clearing Corporation rather into a universal account (in which account the positions may net). The proposed rule change permits transfers from these separate exchange-specific accounts into the Market Maker's universal account in this circumstance to achieve this purpose.

Transfer Price

Proposed Options 6, Section 5(c) states the transfer price, to the extent it is consistent with applicable laws, rules, and regulations, including rules of other self-regulatory organizations, and tax and accounting rules and regulations, at which an transfer is effected may be: (1) The original trade prices of the positions that appear on the books of the trading Clearing Member, in which case the records of the transfer must indicate the original trade dates for the positions; provided, transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1) must be transferred at the correct original trade prices; (2) mark-to-market prices of the positions at the close of trading on the transfer date; (3) mark-to-market prices of the positions at the close of trading on the trade date prior to the transfer date;[10] or (4) the then-current market price of the positions at the time the transfer is effected.[11]

This proposed rule change provides market participants that effect transactions with flexibility to select a transfer price based on circumstances of the transfer and their business. However, for corrections of bona fide errors, because those transfers are necessary to correct processing errors that occurred at the time of transaction, those transfers would occur at the original transaction price, as the purpose of the transfer is to create the originally intended result of the transaction.

Prior Written Notice

Proposed Options 6, Section 5(d) requires a Member and its Clearing Member (to the extent that the Member is not self-clearing) to submit to the Exchange, in a manner determined by the Exchange, written notice prior to effecting an transfer from or to the account of a Member(s).[12] The notice must indicate: The Exchange-listed options positions to be transferred; the nature of the transaction; the enumerated provision(s) under proposed paragraph (a) pursuant to which the positions are being transferred; the name of the counterparty(ies); the anticipated transfer date; the method for determining the transfer price; and any other information requested by the Exchange.[13] The proposed notice will ensure the Exchange is aware of all transfers so that it can monitor and review them (including the records that must be retained pursuant to proposed paragraph (e)) to determine whether they are effected in accordance with the Rules.

Additionally, requiring notice from the Member(s) and its Clearing Member(s) will ensure both parties are in agreement with respect to the terms of the transfer. As noted in proposed subparagraph (d)(2), receipt of notice of an transfer does not constitute a determination by the Exchange that the transfer was effected or reported in conformity with the requirements of proposed Section 10(b). Notwithstanding submission of written notice to the Exchange, Members and Clearing Members that effect transfers that do not conform to the requirements of proposed Section 10(b) will be subject to appropriate disciplinary action in accordance with the Rules.

Records

Similarly, proposed Options 6, Section 5(e) requires each Member and each Clearing Member that is a party to a transfer must make and retain records of the information provided in the written notice to the Exchange pursuant to proposed subparagraph (e)(1), as well as information on the actual Exchange-listed options that are ultimately transferred, the actual transfer date, and the actual transfer price (and the original trade dates, if applicable), and any other information the Exchange may request the Member or Clearing Member provide.[14]

Presidential Exemption

Proposed paragraph (f) provides exemptions approved by the Exchange's Chief Executive Officer or President (or senior-level designee). Specifically, this provision is in addition to the exemptions set forth in proposed paragraph (a). The Exchange proposes that the Exchange Chief Executive Officer or President (or senior-level designee) may grant an exemption from the requirement of this proposed Rule, on his or her own motion or upon application of the Member (with respect to the Member's positions) or a Clearing Member (with respect to positions carried and cleared by the Clearing Members). The Chief Executive Officer, the President or his or her designee, may permit a transfer if necessary or appropriate for the maintenance of a fair

[8] For example, positions may not transfer from a customer, joint back office, or firm account to a Market Maker account. However, positions may transfer from a Market Maker account to a customer, joint back office, or firm account (assuming no netting of positions occurs).

[9] *See* Cboe Rule 6.7(b).

[10] For example, for a transfer that occurs on a Tuesday, the transfer price may be based on the closing market price on Monday.

[11] *See* Cboe Rule 6.7(c).

[12] This notice provision applies only to transfers involving a Member's positions and not to positions of non-Member parties, as they are not subject to the Rules. In addition, no notice would be required to effect transfers to correct bona fide errors pursuant to proposed subparagraph (a)(1).

[13] *See* Cboe Rule 6.7(d).

[14] *See* Cboe Rule 6.7(e).

and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances. For example, an exemption may be granted if the market value of the Person's positions would be compromised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or when, in the judgment of the Chief Executive Officer, President or his or her designee, market conditions make trading on the Exchange impractical.[15]

Routine, Recurring Transfers

The Exchange proposes within Options 6, Section 5(g) that the transfer procedure set forth in Options 6, Section 5 is intended to facilitate non-routine, nonrecurring movements of positions.[16] The transfer procedure is not to be used repeatedly or routinely in circumvention of the normal auction market process.

Exchange-Listed Options

The Exchange proposes within Options 6, Section 5(h) notes that the transfer procedure set forth in Options 6, Section 5 is only applicable to positions in options listed on the Exchange. Transfers of positions in Exchange-listed options may also be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations. Transfers of non-Exchange listed options and other financial instruments are not governed by this Rule.[17]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] 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.

Specifically, the Exchange believes the proposed transfer rule is consistent with the Section 6(b)(5)[20] 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 the Section 6(b)(5)[21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that permitting transfers under new Options 6, Section 5 in very limited circumstances is reasonable to allow a Member to accomplish certain goals efficiently. The proposed rule permits transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a Member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a Member that is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a Member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are non-recurring situations where the transferor continues to maintain some ownership interest or manage the positions transferred. By contrast, repeated or routine transfers between entities or accounts—even if there is no change in beneficial ownership as a result of the transfer—is inconsistent with the purposes for which the proposed rule was adopted. Accordingly, the Exchange believes that such activity should not be permitted under the rules and thus, seeks to adopt language in proposed paragraph (f) to proposed Options 6, Section 5 that the transfer of positions procedures set forth the proposed rule are intended to facilitate non-recurring movements of positions.

The proposed rule change will provide market participants that experience these limited, non-recurring events with an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which maintain cost bases in accordance with normal accounting practices and removes impediments to a free and open market.

The proposed rule change which requires notice and maintenance of records will ensure the Exchange is able to review transfers for compliance with the Rules, which prevents fraudulent and manipulative acts and practices. The requirement to retain records is consistent with the requirements of Rule 17a–3 and 17a–4 under the Act.

Similar to Cboe Rule 6.7, the Exchange would permit a presidential exemption. The Exchange believes that this exemption is consistent with the Act because the Exchange's Chief Executive Officer or President (or senior-level designee) would consider an exemption in very limited circumstances. The transfer process is intended to facilitate non-routine, nonrecurring movements of positions and, therefore, is not to be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(f) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer if it is necessary or appropriate for the maintenance of a fair and orderly market and the protection of investors and is in the public interest, including due to unusual or extraordinary circumstances such as the market value of the Person's positions will be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, when in the judgment of President or his or her designee, market conditions make trading on the Exchange impractical. These standards within proposed Options 6, Section 5(f) are intended to provide guidance concerning the use of this exemption which is intended to provide the Exchange with the ability to utilize the exemption for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption is consistent with the Act because it would allow the Exchange's Chief Executive Officer or President (or senior-level designee) to act in certain situations which comply with the guidance within Options 6, Section 5(f) which are intended to protect investors and the general public. While Cboe grants an exemption to the President (or senior-level designee),[22] the Exchange has elected to grant an exemption to Exchange's Chief Executive Officer or President (or senior-level designee), who are similarly situated with the organization as senior-level individuals.

[15] *See* Cboe Rule 6.7(f).

[16] *See* Cboe Rule 6.7(g).

[17] *See* Cboe Rule 6.7(h).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See* Cboe Rule 6.7(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose an undue burden on intra-market competition as the transfer procedure may be utilized by any Member and the rule will apply uniformly to all Members. Use of the transfer procedure is voluntary, and all Members may use the procedure to transfer positions as long as the criteria in the proposed rule are satisfied. With this change, a Member that experiences limited permissible, non-recurring events would have an efficient and effective means to transfer positions in these situations. The Exchange believes the proposed rule change regarding permissible transfer prices provides market participants with flexibility to determine the price appropriate for their business, which determine prices in accordance with normal accounting practices and removes impediments to a free and open market. The Exchange does not believe the proposed notice and record requirements are unduly burdensome to market participants. The Exchange believes the proposed requirements are reasonable and will ensure the Exchange is aware of transfers and would be able to monitor and review the transfers to ensure the transfer falls within the proposed rule.

Adopting an exemption, similar to Cboe Rule 6.7, to permit the Exchange's Chief Executive Officer or President (or senior-level designee) to grant an exemption to Options 6, Section 5(a) prohibition if, in his or her judgment, does not impose an undue burden on competition. Circumstances where, due to unusual or extraordinary circumstances such as the market value of the Person's positions would be comprised by having to comply with the requirement to trade on the Exchange pursuant to the normal auction process or, would be taken into consideration in each case where, in the judgment of the Exchange's Chief Executive Officer or President (or senior-level designee), market conditions make trading on the Exchange impractical.

The Exchange does not believe the proposed rule change will impose an undue burden on inter-market competition. The proposed position transfer procedure is not intended to be a competitive trading tool. The proposed rule change permits, in limited circumstances, a transfer to facilitate non-routine, nonrecurring movements of positions. As provided for in proposed Options 6, Section 5(g), it would not be used repeatedly or routinely in circumvention of the normal auction market process. Proposed Options 6, Section 5(a) specifically provides within the rule text that the Exchange's Chief Executive Officer or President (or senior-level designee) may in his or her judgment allow a transfer for the maintenance of a fair and orderly market and the protection of investors and is in the public interest. The Exchange believes that the exemption does not impose an undue burden on competition as the Exchange's Chief Executive Officer or President (or senior-level designee) would apply the exemption consistent with the guidance within Options 6, Section 5(f). Additionally, as discussed above, the proposed rule change is similar to Cboe Rule 6.7. The Exchange believes having similar rules related to transfer positions to those of other options exchanges will reduce the administrative burden on market participants of determining whether their transfers comply with multiple sets of rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [25] 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. The Commission notes that waiver of the operative delay would provide Members with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange, similar to Cboe.[26] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[27]

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–MRX–2020–10 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–MRX–2020–10. 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/*

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* CBOE Rule 6.7.

[27] 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).

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–MRX–2020–10 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08490 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88666; File No. SR–NASDAQ–2020–020]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the First Trust Tactical High Yield ETF

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 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, II, and III below, which Items have been principally 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 a rule change relating to the First Trust Tactical High Yield ETF (formerly known as the First Trust High Yield Long/Short ETF) (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust''), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading of Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release.

The Fund is an actively-managed exchange-traded fund (''ETF''). The Shares are offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the ''1940 Act''), has filed a registration statement on Form N–1A (''Registration Statement'') relating to the Fund with the Commission.[4] The Fund is a series of the Trust. The Adviser is the investment adviser to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian, and fund accounting and transfer agent to the Fund.

The purpose of this proposed rule change is (1) to expand the Fund's ability to hold certain fixed income, equity and equity-like securities, positions and interests, and (2) to expand the Fund's ability to invest in derivatives.

(1) Proposed Changes To Expand the Fund's Ability To Hold Certain Fixed Income, Equity and Equity-Like Securities, Positions and Interests

As described in the 2013 Order, under normal market conditions, the Fund invests at least 80% of its net assets (plus the amount of any borrowing for investment purposes) in high-yield debt securities that are rated below investment grade at the time of purchase, commonly referred to as ''junk'' bonds, or unrated securities deemed by the Adviser to be of comparable quality (collectively referred to as ''Primary Investments'') (the ''80% Requirement'').[5] In addition to Primary Investments, the Fund may invest up 20% of its net assets (in the aggregate)

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Commission previously approved the listing and trading of the Shares of the Fund. *See* Securities Exchange Act Release Nos. 68581 (January 4, 2013), 78 FR 2295 (January 10, 2013) (''2013 Notice'') and 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (''2013 Order'' and, together with the 2013 Notice, the ''2013 Release'') (SR–NASDAQ–2012–147). Subsequently, the Commission approved a proposed rule change relating to the Fund in order to modify the description of the measures First Trust Advisors L.P. (the ''Adviser'') would use to implement the Fund's investment objectives and to modify certain representations included in the 2013 Release. *See* Securities Exchange Act Release Nos. 71473 (February 4, 2014), 79 FR 7728 (February 10, 2014) (''2014 Notice'') and 72141 (May 9, 2014), 79 FR 27944 (May 15, 2014) (''2014 Notice and Order'' and, together with the 2014 Notice, the ''2014 Release'') (SR–NASDAQ–2014–009). The 2013 Release, together with the 2014 Release, are referred to collectively as the ''Prior Release''.

[4] *See* Post-Effective Amendment No. 170 to Registration Statement on Form N–1A for the Trust, dated February 28, 2020 (File Nos. 333–174332 and 811–22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement, as amended. The Adviser represents that it will not implement the changes described herein until the instant proposed rule change is operative.

[5] *See infra* under the heading ''(2) Proposed Changes to Expand the Fund's Ability to Invest in Derivatives'' regarding the 80% Requirement in relation to proposed changes to the Fund's ability to invest in derivatives.

in certain other permitted investments as described in the Prior Release (''Non-Primary Investments''). Going forward, the Exchange is proposing that the Fund's ability to hold certain fixed income, equity and equity-like securities, positions and interests be expanded as described below.

Under the heading ''Other Investments,'' the 2013 Order stated that the Fund may receive equity, warrants, corporate bonds, and ''other such securities'' (*i.e.,* equity and fixed income securities; and ''equity, warrants, corporate bonds, and other such securities'' are, collectively, ''Received Instruments'' [6]) as a result of the restructuring of the debt of an issuer, or a reorganization of a bank loan or bond, or as part of a package of securities acquired together with a high-yield bond or senior loan(s) of an issuer. Further, the 2013 Order stated that such investments (*i.e.,* the Received Instruments) would be subject to the Fund's investment objectives, restrictions and strategies, as described therein. The Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the 2013 Order may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer.[7] However, the Adviser's overall approach to managing the Fund (which, as described in the 2013 Order, incorporates a combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments) would not change.

To provide the Fund with additional flexibility with respect to its ability to retain Received Instruments, going forward, the Exchange is proposing that certain restrictions set forth in the 2013 Order be modified, as described below.[8] The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described below. In this regard, the Exchange notes the Adviser's expectation that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments (as defined below) (which means that significantly less than 20% of the Fund's net assets are expected to be comprised of instruments that do not satisfy the ''ISG Restriction'' (as defined below)).

Going forward, the Exchange is proposing that the definition of Received Instruments be modified to allow the Fund to receive equity, warrants, corporate bonds, and other such securities received (a) in conjunction with the restructuring or reorganization, as applicable, of an issuer or any debt issued by an issuer, whether accomplished within or outside of a bankruptcy proceeding under 11 U.S.C. 101 *et seq.* (or any other similar statutory restructuring or reorganization proceeding) or (b) together with (*i.e.,* as part of a unit or package that includes) one or more Primary Investments (or other debt instruments) of an issuer.[9] The Fund's ability to retain Received Instruments would be subject to the Fund's investment objectives, restrictions and strategies, as described in the Prior Release, subject to the modifications set forth in this filing. The Fund's aggregate holdings in Equity-Based Received Instruments (as defined below) would continue to not qualify as Primary Investments and, accordingly, together with other Non-Primary Investments, would be limited to 20% of the Fund's net assets.

The 2013 Order stated that the equity securities in which the Fund may invest (including any that have converted from convertible debt) would be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange (the ''ISG Restriction''). In light of the many types of interests that may be received and variations in nomenclature, the Exchange is proposing that, going forward, the Fund may retain, without regard to the ISG Restriction, equity and equity-like securities, positions and interests that would be Received Instruments (''Equity-Based Received Instruments'').[10] For the avoidance of doubt, for purposes of this filing, such Equity-Based Received Instruments shall mean any one or more of the following (whether received individually or as part of a unit or package of securities and/or other instruments): (i) Common and preferred equity interests in corporations; (ii) membership interests (*e.g.,* in limited liability companies), partnership interests, and interests in other types of entities (*e.g.,* state law business trusts and real estate investment companies); (iii) warrants; (iv) Tax Receivable Agreement (TRA) rights; (v) claims (generally, rights to payment, which can come in various forms, including without limitation claims units and claims trusts); (vi) trust certificates representing an interest in a trust established under a confirmed plan of reorganization; (vii) interests in liquidating, avoidance or other types of trusts; (viii) interests in joint ventures; and (ix) rights to acquire any of the Equity-Based Received Instruments described in clauses (i) through (viii).[11]

Except as described in this filing, the Fund's ability to retain Received Instruments would continue to be subject to the Fund's investment objectives, restrictions and strategies, as described in the Prior Release. As indicated above, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments

[6] For the avoidance of doubt, ''Equity-Based Received Instruments'' (as defined below) are included within the meaning of the term ''Received Instruments.''

[7] For example, a situation may arise where in lieu of a bond, loan, or other debt instrument that the Adviser originally selected, the Fund would be presented with new equity of or relating to the applicable issuer, but, in light of certain restrictions and representations in the 2013 Order, would be precluded from retaining the instrument and would therefore be required to dispose of the instrument despite its perceived benefit to shareholders of the Fund, in order to maintain compliance with the continued listing standards of the Exchange.

[8] The Exchange notes that the Commission has previously approved a similar proposal with respect to another ETF for which the Adviser serves as investment adviser. *See* Securities Exchange Act Release No. 84425 (October 15, 2018), 83 FR 53124 (October 19, 2018) (SR–NASDAQ–2018–050) (relating to the First Trust Senior Loan Fund) (the ''Senior Loan Fund Approval'').

[9] For example, incidental to the Fund's purchase of a Primary Investment, the Fund may from time to time receive warrants and/or other equity securities as part of a unit or package combining a Primary Investment and such warrants and/or other equity securities.

[10] For the avoidance of doubt, the Fund may also hold U.S. and non-U.S. Received Instruments that are not Equity-Based Received Instruments. Further, Received Instruments may include both Primary Investments and Non-Primary Investments but, as mentioned above, Equity-Based Received Instruments would not qualify as Primary Investments and, together with other Non-Primary Investments, would be limited to 20% of the Fund's net assets.

[11] The Fund may be entitled to acquire additional Equity-Based Received Instruments by exercising warrants (included in clause (iii)) and/or rights (included in clause (ix)). For the avoidance of doubt, the Fund's ability to retain Equity-Based Received Instruments that it acquires by exercising such warrants and/or rights will be the same as its ability to retain Equity-Based Received Instruments that it otherwise receives. In addition, for the avoidance of doubt, Received Instruments may include convertible securities and Equity-Based Received Instruments may include positions and interests resulting from the conversion of convertible securities.

(among other Non-Primary Investments).[12]

(2) Proposed Changes To Expand the Fund's Ability To Invest in Derivatives

The 2013 Order included a representation that the Fund would not invest in options contracts, futures contracts or swap agreements. However, the 2014 Notice and Order deleted this representation and provided that under normal market conditions, the Fund would be permitted to invest up to 30% of the value of its net assets in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts (the ''Derivatives Provision'').[13] Going forward, the Exchange is proposing that to provide the Fund with additional flexibility, the Derivatives Provision would be deleted and, instead, the Fund would be permitted to invest in listed and over-the-counter (''OTC'') derivatives (collectively, ''Derivative Instruments'') to the extent permitted by the generic listing provisions of Nasdaq Rules 5735(b)(1)(D),[14] (E)[15] and (F)[16] (collectively, the ''Derivatives GLS''). The Adviser believes that expanding the listed derivatives in which the Fund may invest and permitting it to invest in OTC derivatives may enhance the Fund's ability to utilize derivatives for the purposes set forth in the 2014 Notice and Order.[17] Further, for purposes of complying with the 80% Requirement, in addition to investing directly in Primary Investments, going forward, the Fund would be permitted to invest in Derivative Instruments with economic characteristics that are comparable to those of Primary Investments.[18]

The Exchange does not believe that the proposed changes regarding the Fund's ability to invest in derivatives should raise concerns given that, going forward, the Fund would invest in Derivative Instruments in accordance with the parameters of the Derivatives GLS. In addition, certain related representations included in the 2014 Notice and Order would continue to apply.[19]

The 2014 Notice and Order indicated that the derivative instruments specified therein would typically be valued at the closing price in the market where such instruments are principally traded. Going forward, exchange-listed Derivative Instruments would typically be valued at the closing price in the market where such instruments are principally traded and OTC Derivative Instruments would typically be valued using information provided by independent pricing services.

Availability of Information

The Fund's Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), would include the Received Instruments and Derivative Instruments held by the Fund. Intra-day executable price quotations for the Received Instruments held by the Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchanges on which

[12] In this regard, however, the Adviser expects that, generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments. In addition, for the avoidance of doubt, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement.

[13] The Derivatives Provision also included footnote 15 of the 2014 Notice and Order which stated, among other things, that the Fund would limit its direct investments in futures and options on futures to the extent necessary for the Adviser to claim the exclusion from regulation as a ''commodity pool operator'' with respect to the Fund under Rule 4.5 promulgated by the Commodity Futures Trading Commission (''CFTC''), as such rule may be amended from time to time, and described certain related tests.

[14] Under Nasdaq Rule 5735(b)(1)(D), a portfolio may hold listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing. There shall be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements: (i) In the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG, from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. (For purposes of calculating this limitation (referred to herein as the ''90% Requirement''), a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and (ii) the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). In light of the 90% Requirement, the provision set forth in the 2014 Notice and Order requiring that at least 90% of the Fund's net assets that are invested in the derivative instruments specified therein would be invested in derivative instruments that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange would be deleted.

[15] Nasdaq Rule 5735(b)(1)(E) provides that a portfolio may hold OTC derivatives, including forwards, options, and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[16] Nasdaq Rule 5735(b)(1)(F) provides that to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rules 5735(b)(1)(A) and 5735(b)(1)(B), respectively.

[17] In this regard, the 2014 Notice and Order indicated that the use of the derivative instruments specified therein may allow the Fund to seek to enhance return, to hedge some of the risks of its investments in securities, to substitute derivatives for a position in an underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, to preserve capital, or to manage its foreign currency exposures. For the avoidance of doubt, the Fund's use of derivatives would not be limited to the foregoing purposes.

[18] As indicated above, the Fund would comply with the Derivatives GLS.

[19] First, although the Fund's investments in Derivative Instruments could potentially be used to enhance leverage, the Fund's investments in Derivative Instruments would be consistent with the Fund's investment objectives and would not be used to seek to achieve a multiple or inverse multiple of an index. Second, investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies. Third, the Fund would continue to comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in Derivative Instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund would continue to earmark or set aside cash, U.S. government securities, high-grade liquid debt securities, and/or other liquid assets in a segregated custodial account in the amount prescribed. Fourth, the Fund would continue to include appropriate risk disclosure in its offering documents, including leveraging risk. As indicated in footnote 17 of the 2014 Notice and Order, to mitigate leveraging risk, the Fund would continue to segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

they are traded). Intra-day price information for the Received Instruments would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services. Pricing information for Derivative Instruments would be available from major broker-dealer firms and/or through subscription services and, if applicable, from the exchanges on which they are traded. Further, for the Fund, an estimated value, defined in Nasdaq Rule 5735(c)(3) as the ''Intraday Indicative Value'' that reflects an estimated intraday value of the Fund's portfolio, including, among other things, Received Instruments and Derivative Instruments, would continue to be disseminated.[20]

Surveillance

The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the exchange-listed Equity-Based Received Instruments (if any) and exchange-listed Derivative Instruments held by the Fund with other markets and other entities that are members of ISG.[21] The Exchange may also obtain information regarding trading such exchange-listed instruments held by the Fund from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, with respect to Received Instruments that are fixed income securities, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for such securities held by the Fund to the extent reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').[22]

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

The Adviser represents that there would be no change to the Fund's investment objectives. Except as provided herein, all representations made in the Prior Release regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules (collectively, ''Prior Release Continued Listing Representations'') would remain unchanged.[23] Except for the generic listing provisions of Nasdaq Rule 5735(b)(1) (the ''generic listing standards'')[24] and as otherwise provided in this filing, the Fund and the Shares would comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The purposes of the proposed rule change are (1) to expand the Fund's ability to hold certain fixed income, equity and equity-like securities, positions and interests, and (2) to expand the Fund's ability to invest in derivatives. Except as provided herein, the Prior Release Continued Listing Representations would remain unchanged. Except for the generic listing standards and as otherwise provided in this filing, the Fund and the Shares would comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to Nasdaq Rule 5735. FINRA, on behalf of the Exchange, or the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the exchange-listed Equity-Based Received Instruments (if any) and exchange-listed Derivative Instruments held by the Fund with other markets and other entities that are members of ISG. The Exchange may also obtain information regarding trading in such exchange-listed instruments held by the Fund from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, with respect to Received Instruments that are fixed income securities, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for such securities held by the Fund to the extent reported to FINRA's TRACE. Further, the Exchange notes that although the proposed changes in this filing would permit the Fund to retain, without regard to the ISG Restriction, Equity-Based Received Instruments, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments (which would not be taken into account for purposes of compliance with the 80% Requirement), and the Adviser expects that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the

[20] With respect to the Fund's other permitted investments, statements regarding availability of pricing information included in the Prior Release would continue to apply.

[21] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] With respect to trading information relating to the Fund's other permitted investments, statements regarding surveillance included in the Prior Release would continue to apply.

[23] Certain provisions of the Prior Release, however, were based on information as of a particular date and there has not been an undertaking to update such information for purposes of this filing. In addition, the Exchange notes that the current name of the Fund's benchmark (defined in the 2013 Order as the ''Index'') is ICE BofA US High Yield Constrained Index.

[24] In particular, the Fund may not meet the criteria of Nasdaq Rule 5735(b)(1)(B). Additionally, the Fund's investments in equity securities are not generally expected to meet the criteria set forth in Nasdaq Rule 5735(b)(1)(A) and, to the extent the Fund invests in cash equivalents, such investments may not necessarily satisfy the criteria set forth in Nasdaq Rule 5735(b)(1)(C) (for example, the requirement that maturities be less than three months). As described in this filing, the Fund's investments in Derivative Instruments would meet the criteria set forth in the Derivatives GLS. For the avoidance of doubt, Equity-Based Received Instruments (including without limitation warrants and rights referenced above in footnote 11 and the accompanying text) will not be considered to be options or any other type of derivative.

public interest in that the Adviser represents that the primary purpose of the proposed changes is to provide it with greater flexibility in meeting the Fund's investment objectives by modifying certain provisions in the Prior Release. Notwithstanding the proposed changes, however, the Adviser's overall approach to managing the Fund (which, as described in the 2013 Order, incorporates a combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments) would not change. Additionally, the Fund would continue to invest 85% or more of its portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance and, in addition, the Adviser would continue to monitor portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained.

With respect to the proposed changes relating to Received Instruments, the Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the 2013 Order may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described above. As indicated above, the Fund's aggregate holdings in Equity-Based Received Instruments would continue to not qualify as Primary Investments and, accordingly, together with other Non-Primary Investments, would be limited to 20% of the Fund's net assets. Additionally, the Exchange notes the Adviser's expectation that generally, over time, significantly less than 20% of the Fund's net assets would be comprised of Equity-Based Received Instruments (which means that significantly less than 20% of the Fund's net assets are expected to be comprised of instruments that do not satisfy the ISG Restriction). Further, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement. Based on the foregoing, the Exchange does not believe that the proposed changes will adversely affect investors or Exchange trading.

With respect to the proposed changes relating to the Fund's ability to invest in derivative instruments, the Exchange does not believe that the proposed changes raise concerns under Section 6(b) of the Act given that, going forward, the Fund would invest in Derivative Instruments in accordance with the parameters of the Derivatives GLS.

In addition, a large amount of information would continue to be publicly available regarding the Fund and the Shares, thereby promoting market transparency. For example, the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service, would continue to be widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund would continue to disclose on the applicable website [25] the Disclosed Portfolio that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day. In addition, the Fund's Disclosed Portfolio would include the Received Instruments and Derivative Instruments held by the Fund. Intra-day executable price quotations for the Received Instruments held by the Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchanges on which they are traded). Intra-day price information for the Received Instruments would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services. Pricing information for Derivative Instruments would be available from major broker-dealer firms and/or through subscription services and, if applicable, from the exchanges on which they are traded.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance its ability to meet the Fund's investment objectives, to the benefit of investors. In addition, consistent with the Prior Release, NAV per Share would continue to be calculated daily, and NAV and the Disclosed Portfolio would continue to be made available to all market participants at the same time. Further, as noted above and/or in the Prior Release, investors would continue to have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would provide the Adviser with additional flexibility, thereby helping the Fund to achieve its investment objectives. As such, it is expected that the Fund may become a more attractive investment product in the marketplace and, therefore, 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.

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 [26] and Rule 19b–4(f)(6) thereunder.[27]

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

[25] *www.ftportfolios.com.*

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 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.

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–2020–020 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–2020–020. 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–2020–020 and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08488 Filed 4–21–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88673; File No. SR–CBOE–2020–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Renew an Existing Pilot Program Until November 2, 2020

April 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to renew an existing pilot program until November 2, 2020. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.13. Series of Index Options

(a)–(d) No change.

(e) Nonstandard Expirations Pilot Program.

(1)–(2) No change.

(3) Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through [May 4]*November 2,* 2020.

* * * * *

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

On September 14, 2010, the Securities and Exchange Commission (the ''Commission'') approved a Cboe Options proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.[5] On January 14, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Wednesday of month, other than those that coincide with an EOM.[6] On August 10, 2016, the Commission approved a Cboe Options proposal to expand the pilot program to allow P.M.-settled options on broad-based indexes to expire on any Monday of month, other than those that coincide with an EOM.[7] Under the terms of the Nonstandard Expirations Pilot Program (''Program''), Weekly Expirations and EOMs are permitted on any broad-based index that is eligible for regular options

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075).

[6] *See* Securities Exchange Act Release 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR–CBOE–2015–106).

[7] *See* Securities Exchange Act Release 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR–CBOE–2016–046).

trading. Weekly Expirations and EOMs are cash-settled and have European-style exercise. The proposal became effective on a pilot basis for a period of fourteen months that commenced on the next full month after approval was received to establish the Program [8] and was subsequently extended.[9] Pursuant to Rule 4.13(e)(3),[10] the Program is scheduled to expire on May 4, 2020. The Exchange believes that the Program has been successful and well received by its Trading Permit Holders and the investing public during that the time that it has been in operation. The Exchange hereby proposes to extend the Program until November 2, 2020. This proposal does not request any other changes to the Program.

Pursuant to the order approving the establishment of the Program, two months prior to the conclusion of the pilot period, Cboe Options is required to submit an annual report to the Commission, which addresses the following areas: Analysis of Volume & Open Interest, Monthly Analysis of Weekly Expirations & EOM Trading Patterns and Provisional Analysis of Index Price Volatility. The Exchange has submitted, under separate cover, the annual report in connection with the present proposed rule change. Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Program is consistent with the Exchange Act. The Exchange makes public all data and analyses previously submitted to the Commission under the Program,[11] and will make public any data and analyses it makes to the Commission under the Program in the future.

If, in the future, the Exchange proposes an additional extension of the Program, or should the Exchange propose to make the Program permanent (which the Exchange currently intends to do), the Exchange will submit an annual report (addressing the same areas referenced above and consistent with the order approving the establishment of the Program) to the Commission at least two months prior to the expiration date of the Program. The Exchange will also make this report public. Any positions established under the Program will not be impacted by the expiration of the Program.

The Exchange believes there is sufficient investor interest and demand in the Program to warrant its extension. The Exchange believes that the Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the Program has been successful to date and states that it has not encountered any problems with the Program. The proposed rule change allows for an extension of the Program for the benefit of market participants. Additionally, the Exchange believes that there is demand for the expirations offered under the Program and believes that that Weekly Expirations and EOMs will continue to provide the investing public and other market participants increased opportunities to better manage their risk exposure.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

[8] *Id.*

[9] *See* Securities Exchange Act Release 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011) (immediately effective rule change extending the Program through February 14, 2013). *See also* Securities Exchange Act Release 68933 (February 14, 2013), 78 FR 12374 (February 22, 2013) (immediately effective rule change extending the Program through April 14, 2014); 71836 (April 1, 2014), 79 FR 19139 (April 7, 2014) (immediately effective rule change extending the Program through November 3, 2014); 73422 (October 24, 2014), 79 FR 64640 (October 30, 2014) (immediately effective rule change extending the Program through May 3, 2016); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (extending the Program through May 3, 2017); 80387 (April 6, 2017), 82 FR 17706 (April 12, 2017) (extending the Program through May 3, 2018); 83165 (May 3, 2018), 83 FR 21316 (May 9, 2018) (SR–CBOE–2018–038) (extending the Program through November 5, 2018); 84534 (November 5, 2019), 83 FR 56119 (November 9, 2018) (SR–CBOE–2018–070) (extending the Program through May 6, 2019); 85650 (April 15, 2019), 84 FR 16552 (April 19, 2019) (SR–CBOE–2019–022) (extending the Program through November 4, 2019); and 87462 (November 5, 2019), 84 FR 61108 (November 12, 2019) (SR–CBOE–2019–104) (extending the Program through May 4, 2020).

[10] The Exchange recently relocated prior Rule 24.9, containing the provision which governs the Program, to current Rule 4.13. *See* SR–CBOE–2019–092 (October 4, 2019), which did not make any substantive changes to prior Rule 24.9 and merely relocated it to Rule 4.13.

[11] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/non-standard-expiration-data.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–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,

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Program prior to its expiration on May 4, 2020, and maintain the status quo, thereby reducing market disruption. 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 Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Program. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change 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 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–2020–035 on the subject line. HD2≤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–2020–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–035, and should be submitted on or before May 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08494 Filed 4–21–20; 8:45 am]

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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 also has 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).

DEPARTMENT OF STATE

[Public Notice: 11097]

Notice of Renewal of the Advisory Committee on International Law Charter

The Department of State has renewed the charter of the Advisory Committee on International Law. The Committee is composed of former Legal Advisers of the Department of State and up to 30 individuals appointed by the Legal Adviser or a Deputy Legal Adviser. Through the Committee, the Department of State will continue to obtain the views and advice of outstanding members drawn from a cross section of the legal profession. The Committee follows procedures prescribed by the Federal Advisory Committee Act (FACA). Its meetings are open to the public unless a determination is made in accordance with the FACA and 5 U.S.C. 552b(c) that a meeting or portion of a meeting should be closed to the public. Notice of each meeting will be published in the **Federal Register** at least 15 days prior to the meeting, unless extraordinary circumstances require shorter notice.

FOR FURTHER INFORMATION CONTACT: Alison Welcher, Executive Director, Advisory Committee on International Law, Department of State, at 202–647–1646 or *welcherar@state.gov.*

Alison R. Welcher,

Attorney-Adviser, Office of the Legal Adviser, Department of State.

[FR Doc. 2020–08465 Filed 4–21–20; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 11098]

Notice of Charter Renewal for the Cultural Property Advisory Committee

SUMMARY: The Charter of the Department of State's Cultural Property Advisory Committee has been renewed for an additional two years. The Department of State has renewed the Charter of the Cultural Property Advisory Committee. The Committee was established by the Convention on Cultural Property Implementation Act of 1983, to provide recommendations regarding requests for assistance from foreign governments under the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* The Presidentially appointed members include individuals representing the interests of museums; experts in the fields of archaeology,

anthropology, or related areas; experts in the international sale of archaeological, ethnological, and other cultural property; and individuals who represent the interests of the general public. The renewed Charter was filed with Congress on March 26.

FOR FURTHER INFORMATION CONTACT: Cultural Heritage Center, U.S. Department of State, Bureau of Educational and Cultural Affairs, 2200 C Street NW, Washington, DC 20522. Telephone: (202) 632–6301; Email *culprop@state.gov.*

Allison R. Davis,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2020–08515 Filed 4–21–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Burlington International Airport, South Burlington, Vermont

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Burlington International Airport under the provisions of the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act,'' and by the City of Burlington. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for Burlington International Airport were in compliance with applicable requirements, effective September 26, 2019. The proposed noise compatibility program will be approved or disapproved on or before October 11, 2020.

DATES: The effective date of the start of FAA's review of the noise compatibility program is April 14, 2020. The public comment period ends June 13, 2020.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region Airports Division, 1200 District Ave., Burlington, MA 01803. Phone: 781–238–7613. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Burlington International Airport which will be approved or disapproved on or before October 11, 2020. This notice also announces the availability of this program for public review and comment. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Burlington International Airport, effective on April 17, 2020. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 11, 2020.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program can be viewed online at the airport's website: *www.btvsound.com,* by contacting the airport via the website: *www.btvsound.com/contact/,* or by calling 802–863–2874.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on April 17, 2020.

Julie Seltsam-Wilps,

Deputy Director, Airports Division, FAA New England Region.

[FR Doc. 2020–08527 Filed 4–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0387]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Domestic and International Flight Plans

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves extracting flight data such as aircraft, routing speed, etc. from domestic and international flights. FAA Form 7233–1, Flight Plan: Domestic flight plan information is used to govern the flight of aircraft for the protection and identification of aircraft and property and persons on the ground. The information is used by air traffic controllers, search and rescue (SAR) personnel, flight standards inspectors, accident investigators, military, law enforcement, and the Department of Homeland Security. FAA Form 7233–4, International Flight Plan: International flight plan information is used for the same purposes as domestic flight plans; in addition, it is used by Customs and international controllers.

DATES: Written comments should be submitted by June 22, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Aldwin E. Humphrey, 8th Floor, Room 8407 I St. NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Aldwin Humphrey by email at:

aldwin.humphrey@faa.gov; phone: 214–687–8924.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0026.

Title: Domestic and International Flight Plans.

Form Numbers: FAA form 7233–1 Flight Plan, FAA form 7233–4 International Flight Plan.

Type of Review: Renewal of an information collection.

Background: The Federal Aviation Administration (FAA) is authorized and directed by Title 49, United States Code, paragraph 40103(b), to prescribe air traffic rules and regulations governing the flight of aircraft for the protection and identification of aircraft and property and persons on the ground. Title 14, CFR, Part 91, Subchapter F, prescribes flight rules governing the operation of aircraft within the United States. These rules govern the operation of aircraft (other than moored balloons, kites, unmanned rockets and unmanned free balloons) within the United States and for flights across international borders. Paragraphs 91.153 and 91.169, address flight plan information requirements. Paragraph 91.173 states requirements for when an instrument flight rules (IFR) flight plan must be filed. International Standards Rules of the Air, Annex 2 to the Convention on International Civil Aviation paragraph 3.3 states requirements for filing international flight plans. In addition, a Washington, District of Columbia (DC) Special Flight Rules Area (SFRA) was implemented requiring pilots operating within a certain radius of Washington, DC to follow special security flight rules. The SFRA also includes three (3) general aviation airports in Maryland (College Park, Clinton/Washington Executive/Hyde Field, and Friendly/Potomac Airfield) where pilots are required to file a flight plan regardless of whether they are flying under visual flight rules (VFR) or IFR. This collection of information supports the Department of Homeland Security and the Department of Defense in addition to the normal flight plan purposes.

Almost 100 percent of flight plans are filed electronically. However, as a courtesy to the aviation public, flight plans may be submitted in paper form. Flight plans may be filed in the following ways:

- Air carrier and air taxi operations, and certain corporate aviation departments, have been granted authority to electronically file flight plans directly with the FAA. The majority of air carrier and air taxi flights are processed in this manner.
- Air carrier and air taxi operators may submit pre-stored flight plan information on scheduled flights to Air Route Traffic Control Centers (ARTCC) to be entered electronically at the appropriate times.
- Pilots may call 1–800–WX–BRIEF (992–7433) and file flight plans with a flight service station specialist who enters the information directly into a computer system that automatically transmits the information to the appropriate air traffic facility. Pilots calling certain flight service stations have the option of using a voice recorder to store the information that will later be entered by a specialist.
- Private and corporate pilots who fly the same aircraft and routes at regular times may prestore flight plans with flight service stations. The flight plans will then be entered automatically into the air traffic system at the appropriate time.
- Pilots who visit a flight service station in person may choose to a file flight plan by using a paper form. The data will then be entered into a computer and filed electronically. The pilot will often keep the paper copy for his/her record.

Respondents: Air carrier and air taxi operations, and certain corporate aviation departments, General Aviation Pilots.

Frequency: On occasion.

Estimated Average Burden per Response: 2.5 minutes per flight plan.

Estimated Total Annual Burden: 718,618 hours.

Issued in Washington, DC, on April 13, 2020.

Aldwin E. Humphrey,

Air Traffic Control Specialist, Office of Flight Service Safety and Operations, AJR–B.

[FR Doc. 2020–08474 Filed 4–21–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the State Route 241 and State Route 91 Tolled Express Lanes Connector Project from the County of Orange (12–ORA–241 p.m. 36.1/39.1 and 12–ORA 91 p.m. 14.7/18.9) to the County of Riverside (08–RIV–91 p.m. 0.0/1.5), in the State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 21, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Smita Deshpande, Generalist Branch Chief, Caltrans—District 12, 1750 East Fourth Street, Suite 100, Santa Ana, California 92705, weekdays 9:00 a.m. to 3:00 p.m., telephone (657) 328–6000, email *D12TolledExpressLanesConnector@dot.ca.gov.* For FHWA: David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 241/State Route 91 (SR–241/SR–91) Express Lanes Connector Project (FHWA Project No. 120020097), which would construct a median-to- median connector between SR–241 and the tolled lanes in the median of SR–91 (91 Express Lanes). The Proposed Project proposes to

improve access and reduce congestion at the SR–241/SR–91 interchange by providing a direct connector between SR–241 and the 91 Express Lanes. The Propose Project, located at the junction of SR–241 and SR–91 in the cities of Anaheim, Yorba Linda, and Corona and the counties of Orange and Riverside, would provide improved access between SR–241 and SR–91 and is proposed to be a tolled facility is proposed to be a tolled facility with a total length of approximately 8.7 miles (mi). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Supplemental Environmental Impact Statement (Final Supplemental EIS) for the project, approved on January 7, 2020 in the FHWA Record of Decision (ROD) issued on March 12, 2020 and in other documents in the FHWA project records. The Final Supplemental EIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. E.O. 12372, Intergovernmental Review;
2. E.O. 11990, Protection of Wetlands;
3. E.O. 12088, Pollution Control Standards;
4. E.O. 13112, Invasive Species;
5. E.O. 11988, Floodplain Management;
6. Council on Environmental Quality regulations;
7. National Environmental Policy Act (NEPA);
8. Department of Transportation Act of 1996;
9. Federal Aid Highway Act of 1970;
10. Clean Air Act Amendments of 1990;
11. Department of Transportation Act of 1966; Section 4(f);
12. Clean Water Act of 1977 and 1987;
13. Endangered Species Act of 1973;
14. Migratory Bird Treaty Act;
15. National Historic Preservation Act of 1966, as amended; and
16. Historic Sites Act of 1935.
1.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 14, 2020.

Rodney D. Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2020–08530 Filed 4–21–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–8]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) abstracted below. Before submitting these ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before June 22, 2020.

ADDRESSES: Submit written comments on the ICRs activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–XXXX,'' (the relevant OMB control number for each ICR is listed below) and should also include the title of the ICR. Alternatively, comments may be faxed to 202–493–6216 or 202–493–6497, or emailed to Ms. Wells at *hodan.wells@dot.gov,* or Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Locomotive Cab Sanitation.

OMB Control Number: 2130–0552.

Abstract: FRA's locomotive cab sanitation standards, 49 CFR 229.137 and 229.139, prescribe minimum standards for the locomotive cab sanitation compartment, including the toilet facility. FRA uses the information collection associated with these provisions to promote rail safety and locomotive crew member health by ensuring crew member access to a functioning and sanitary toilet facility and that railroads timely repair defective and unsanitary conditions in the sanitation compartment.

Type of Request: Extension without change of a currently approved information collection.

Affected Public: Businesses (railroads).

Form(s): N/A.

Respondent Universe: 746 railroads.

Frequency of Submission: One-time.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent
229.137(d)—Defective, unsanitary toilet facility; use in trailing position—Tagging.	746 railroads	11,700 tags	90 seconds	293	$22,268
229.137(e) Defective, sanitary toilet facility; use in switching, transfer service—Tagging.	746 railroads	7,956 tags	90 seconds	199	15,124
229.139(d) Switching or transfer service—defective locomotive toilet facility—Notation on daily inspection report.	746 railroads	93,600 notations	30 seconds	780	59,280
Total	746 railroads	113,256 responses	N/A	1,272	96,672

Total Estimated Annual Responses: 113,256.

Total Estimated Annual Burden: 1,272 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $96,672.

Title: Locomotive Crashworthiness.

OMB Control Number: 2130–0564.

Abstract: Under 49 CFR part 229, subpart D, FRA prescribes minimum crashworthiness standards for locomotives. These crashworthiness standards are intended to help protect locomotive cab occupants in the event of a train collision or derailment. FRA uses this collection of information to ensure railroads operate locomotives that meet the prescribed minimum performance standards and design load requirements for newly manufactured and re-manufactured locomotives.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses/Public/Interested Parties.

Form(s): N/A.

Respondent Universe: 746 railroads/4 locomotive manufacturers.

Frequency of Submission: On occasion; one-time.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent
229.207(b)—Petitions for FRA approval of new locomotive crashworthiness design standards.	746 railroads/4 locomotive manufacturers.	2 petitions	50 hours	100	$7,600
—(c) Petition for FRA approval of substantive changes to FRA-approved locomotive crashworthiness design standard.	746 railroads/4 locomotive manufacturers.	1 petition	50 hours	50	3,800
—(d) Petition for FRA approval of non-substantive changes to existing FRA approved locomotive crashworthiness design standard.	746 railroads/4 locomotive manufacturers.	1 petition	50 hours	50	3,800
229.209(b)—Alternative locomotive crashworthiness designs—Petition for FRA approval.	746 railroads/4 locomotive manufacturers.	1 petition	50 hours	50	3,800
229.211(b)(3)—Processing petitions—Additional information for FRA to appropriately consider the petition.	746 railroads/4 locomotive manufacturers.	1 hearing	24 hours	24	1,824
229.213(a)(3)—Locomotive manufacturing information: retention by railroads.	746 railroads	500 records/stickers/badge plates.	2 minutes	16.7	1,269
229.215—(a) Retention and inspection of designs—Retention of records—Original designs.	4 locomotive manufacturers.	24 records	8 hours	192	14,592
—(b) Repairs and modifications—Records	746 railroads	6 records	4 hours	24	1,824
—(c) Inspection of records	746 railroads	10 records	2 minutes	.3	23
Total	746 railroads	546 responses	N/A	507	38,532

Total Estimated Annual Responses: 546.

Total Estimated Annual Burden: 507 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $38,532.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–08516 Filed 4–21–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Statements to Recipients of Dividend Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the statements used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement (IRA).

DATES: Written comments should be received on or before June 22, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Ronald J. Durbala, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Rachel Martinen (253)-591–6631 (not a toll-free number), at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Rachel.Martinen@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statements to recipients of dividend payments.

OMB Number: 1545–0747.

Form Number: 5498.

Abstract: Form 5498 is used by trustees and issuers to report contributions to, and the fair market value of, an individual retirement arrangement (IRA). The information on the form will be used by IRS to verify compliance with the reporting rules under regulation section 1.408–5 and to verify that the participant in the IRA has made the contribution that supports the deduction taken.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses: 118,858,000.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 48,731,780.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–08499 Filed 4–21–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0576]

Agency Information Collection Activity: Certification of Affirmation of Enrollment Agreement Correspondence Course

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VBA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0576'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3686(b); 38 U.S.C. 3323(a); 10 U.S.C. 16136(b), and 38 CFR 21.74256(b).

Title: Certification of Affirmation of Enrollment Agreement Correspondence Course.

OMB Control Number: 2900–0576.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses information from the current collection to pay education benefits for correspondence training. This information allows VA to determine if the claimant has been informed of the 5-day reflection period required by law.

Affected Public: Individuals and households.

Estimated Annual Burden: 3 hours.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 69.

By direction of the Secretary:

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–08453 Filed 4–21–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Scientific Evaluation Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on July 15, 2020 at 20F Conference Center, 20 F Street NW, Washington, DC 20001. The meeting will begin at 8:30 a.m. and end at 3:30 p.m.

The Committee advises the Chief Research and Development Officer on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will not accept oral comments from the public for the open portion of the meeting. Those who plan to attend or wish additional information should contact Grant Huang, MPH, Ph.D., Director, Cooperative Studies Program (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov.* Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: April 16, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–08452 Filed 4–21–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERAN AFFAIRS

Delegation of Authority

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: On March 13, 2020, the President declared a national emergency recognizing the threat that the ongoing outbreak of COVID–19, the disease caused by the novel (new) coronavirus known as SARS-CoV–2 (''the virus''), poses to the Nation's healthcare systems. On April 10, 2020, the President of the United States issued a Memorandum for the Secretary of Veterans Affairs, ''Authorizing the Exercise of Authority under Public Law 85–804.'' The Memorandum authorizes the Secretary to exercise authority with respect to contracts performed in support of efforts by the Department of Veterans Affairs to combat COVID–19. The President authorized and directed the Secretary of Veterans Affairs to publish this memorandum in the **Federal Register**. The text of the memorandum is set out below.

SUPPLEMENTARY INFORMATION:

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Performing the Delegable Duties of the Deputy Secretary, Department of Veterans Affairs, approved this document on April 16, 2020, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

MEMORANDUM FOR THE SECRETARY OF VETERANS AFFAIRS

SUBJECT: Authorizing the Exercise of Authority Under Public Law 85–804

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. On March 13, 2020, I declared a national emergency recognizing the threat that the ongoing outbreak of COVID–19, the disease caused by the novel (new) coronavirus known as SARS-CoV–2 (''the virus''), poses to the Nation's healthcare systems. I also determined on the same day that the COVID–19 outbreak constitutes an emergency, of nationwide scope, pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)). On March 18, 2020, I declared that health and medical resources needed to respond to the spread of COVID–19 meet the criteria specified in section 101(b) of the Defense Production Act of 1950 (50 U.S.C. 4511(b)), including that they are essential to the national defense.

Sec. 2. The Secretary of Veterans Affairs is authorized to exercise authority under Public Law 85–804, as amended (50 U.S.C. 1431 *et seq.*), to the same extent and subject to the same conditions and limitations as the head of an executive department or agency listed in section 21 of Executive Order 10789 of November 14, 1958 (Authorizing Agencies of the Government to Exercise Certain Contracting Authority in Connection with National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority), as amended, with respect to contracts performed in support of efforts by the Department of Veterans Affairs to combat the virus. This authority may only be exercised with regard to transactions directly responsive to the COVID–19 national emergency.

Sec. 3. The Department of Veterans Affairs is exercising functions in connection with the national defense in the course of contributing to the Nation's response to the ongoing outbreak of COVID–19. I deem that the authorization provided in this memorandum and actions taken pursuant to that authorization would facilitate the national defense.

Sec. 4. This memorandum shall terminate on September 30, 2020.

Sec. 5. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) The authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural,

enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. You are authorized and directed to publish this memorandum in the **Federal Register**.

DONALD J. TRUMP

[FR Doc. 2020–08441 Filed 4–21–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 78 April 22, 2020

Part II

Library of Congress

U.S. Copyright Office

37 CFR Part 210

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment; Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective; Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator; Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information; Proposed Rules

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–5]

Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding information to be provided by digital music providers pursuant to the new compulsory blanket license to make and deliver digital phonorecords of musical works established by title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. The law establishes a new blanket license, to be administered by a mechanical licensing collective, and to become available on January 1, 2021. Having solicited public comments through a previous notification of inquiry, through this notice, the Office is proposing regulations concerning notices of license, data collection and delivery efforts, and reports of usage and payment by digital music providers. The Office is also proposing regulations concerning notices of nonblanket activity and reports of usage by significant nonblanket licensees, as well as language addressing data collection efforts by musical work copyright owners.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on May 22, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/mma-notices-reports/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

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

SUPPLEMENTARY INFORMATION:

I. Background

This notice of proposed rulemaking (''NPRM'') is being issued subsequent to a notification of inquiry, published in the **Federal Register** on September 24, 2019, that describes in detail the legislative background and regulatory scope of the present rulemaking proceeding.[1] The Copyright Office assumes familiarity with that document, and encourages anyone reading this NPRM who has not reviewed it to do so before continuing.

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'') which, among other things, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] It does so by switching from a song-by-song licensing system to a blanket licensing regime that will become available on January 1, 2021 (the ''license availability date''), and be administered by a mechanical licensing collective (''MLC'') designated by the Copyright Office. Digital music providers (''DMPs'') will be able to obtain the new compulsory blanket license to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license), subject to compliance with various requirements, including reporting obligations.[3] DMPs may also continue to engage in those activities through voluntary, or direct licensing with copyright owners, in which case the DMP may be considered a significant nonblanket licensee (''SNBL'') under the statute, subject to separate reporting obligations.

As detailed in the previous notification of inquiry, the statute specifically directs the Copyright Office to adopt a number of regulations to govern the new blanket licensing regime and vests the Office with broad general authority to adopt such regulations as may be necessary or appropriate to effectuate the new blanket licensing structure.

Having solicited public comments through the notification of inquiry, the Office is preparing multiple notices of proposed rulemaking to address various subjects presented in the notification. This NPRM specifically addresses notices of license, notices of nonblanket activity, data collection and delivery efforts, and reports of usage and payment, which were among those topics requested by various commenters to be prioritized because they relate to core information needed by both DMPs and the MLC to prepare and ready their operations in advance of the blanket license becoming available.[4] Notices addressing confidentiality, the musical works database, and accounting statements to copyright owners are being published simultaneously with this NPRM, and the Office will continue to consider whether further rulemakings are appropriate. For example, the Office is separately engaged in a policy study regarding best practices that the MLC may consider to reduce the incidence of unclaimed accrued royalties. A notification of inquiry seeking comment regarding that study will be forthcoming in connection with considerations of potential regulatory activity related to the distribution of such royalties by the MLC to musical work copyright owners identified in the musical works database in years following the license availability date.[5]

The MMA significantly altered the complex music licensing landscape after careful congressional deliberation following extensive input from, and negotiations between, a variety of stakeholders.[6] In this NPRM, as well as

[1] 84 FR 49966 (Sept. 24, 2019). All rulemaking activity, including public comments, as well as legislative history and educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001.* Related *ex parte* letters are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* References to these comments and letters are by party name (abbreviated where appropriate), followed by ''Initial,'' ''Reply,'' or ''*Ex Parte* Letter'' as appropriate.

[2] Public Law 115–264, 132 Stat. 3676 (2018).

[3] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the Copyright Royalty Judges (''CRJs'') and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions. 17 U.S.C. 115(d)(5)(B); 84 FR 32274 (July 8, 2019); *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[4] DLC Reply at 1; MLC Initial at 2; Future of Music Coalition (''FMC'') Reply at 3.

[5] More information about the unclaimed royalties study can be found at *https://www.copyright.gov/policy/unclaimed-royalties/.*

[6] *See, e.g., Music Policy Issues: A Perspective from Those Who Make It: Hearing on H.R. 4706, H.R. 3301, H.R. 831 and H.R. 1836 Before H. Comm.*

the other notices published concurrently, the Copyright Office has endeavored to build upon that foundation and propose a reasonable regulatory framework for the MLC, DMPs, copyright owners and songwriters, and other interested parties to operationalize the various duties and entitlements set out by statute.[7] The subjects of this proposed rule, as much as any the MMA charges the Office with implementing, have made it necessary to propose regulatory language that navigates convoluted nuances of the music data supply chain and differing expectations of the MLC, DMPs, and other stakeholders, while remaining cognizant of the potential effect upon varied business practices across the digital music marketplace.[8] While the Office's task was aided by receipt of numerous helpful and substantive comments representing interests from across the music ecosystem, in many cases, the comments also uncovered divergent assumptions and expectations as to the shouldering and execution of relevant duties assigned by the MMA.

In proposing the following rule, where comments diverged sharply, the Office has proposed regulatory language that it believes best reflects the statutory language and its animating goals in light of the record before it.[9] As the Office previously noted, the ''MLC has a tight deadline to become fully operational,'' and it encourages continued dialogue to expeditiously resolve or refine areas of disagreement among interested stakeholders.[10] Accordingly, the Office also welcomes parties to file joint comments on issues of common agreement and consensus.[11] If parties disagree with aspects of the Office's proposal, they are encouraged to provide specific alternative regulatory language for the Office to consider.[12]

The Office seeks public comments on all aspects of this NPRM, but asks that any comments directed at other subjects discussed in the notification of inquiry be reserved for the appropriate notice of proposed rulemaking. In recognition of the significant changes brought by the MMA, and challenges both in setting up a fully functional MLC and for DMPs to adjust their internal practices, the Office also invites comment on whether it would be beneficial to adopt the proposed rule on an interim basis. If necessary, based on feedback received, the Office would make appropriate adjustments to the regulatory language before the rule is finalized, and following the license availability date. This approach would allow the Office more flexibly to make necessary modifications in response to new evidence, unforeseen issues, or where something is otherwise not functioning as intended.

II. Proposed Rule

Having reviewed and considered all relevant comments received in response to the notification of inquiry, and having engaged in a number of *ex parte* communications with commenters, the Office has weighed all appropriate legal, business, and practical implications and equities that have been raised, and proposes the following with respect to notices of license, notices of nonblanket activity, data collection and delivery efforts, and reports of usage and payment under the MMA.[13]

A. Notices of License and Nonblanket Activity

The MMA requires entities engaging in covered activities to file notice with the MLC regarding such activities. A DMP seeking a blanket license must file a notice of license (''NOL''), while an entity qualifying as an SNBL must file a notice of nonblanket activity (''NNBA''). The Copyright Office must prescribe regulations regarding the form and content for these notices.[14]

1. Notices of License

In response to the Office's notification of inquiry, the MLC and DLC offer disparate views as to what NOLs should look like and how they should operate. The DLC argues that NOLs should be relatively brief and high-level in describing the DMP's covered activities, and should only need to be filed once.[15] The MLC seeks considerably more detail about the DMP's activities, as well as an ongoing duty to file an amended NOL whenever any information changes.[16] The DLC also seeks a harmless error rule (whereby immaterial errors in an NOL would not render it invalid), while the MLC argues against one.[17] Both the MLC and DLC provide specific regulatory language for their competing views.[18] Among other commenters weighing in on the issue of NOLs, the International

On the Judiciary, 115th Cong. 4 (2018) (statement of Rep. Nadler) (''For the last few years, I have been imploring the music community to come together in support of a common policy agenda, so it was music to my ears to see—to hear, I suppose—the unified statement of support for a package of reforms issued by key music industry leaders earlier this month. . . . This emerging consensus gives us hope that this committee can start to move beyond the review stage toward legislative action.''); 164 Cong. Rec. H3522, 3537 (daily ed. Apr. 25, 2018) (statement of Rep. Collins) (''[This bill] comes to the floor with an industry that many times couldn't even decide that they wanted to talk to each other about things in their industry, but who came together with overwhelming support and said this is where we need to be.''); 164 Cong. Rec. S501, 502 (daily ed. Jan. 24, 2018) (statement of Sen. Hatch) (''I don't think I have ever seen a music bill that has had such broad support across the industry. All sides have a stake in this, and they have come together in support of a commonsense, consensus bill that addresses challenges throughout the music industry.''); 164 Cong. Rec. H3522, 3536 (daily ed. Apr. 25, 2018) (statement of Rep. Goodlatte) (''I tasked the industry to come together with a unified reform bill and, to their credit, they delivered, albeit with an occasional bump along the way.''). *See also* U.S. Copyright Office, Copyright and the Music Marketplace at Preface (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (noting ''the problems in the music marketplace need to be evaluated as a whole, rather than as isolated or individual concerns of particular stakeholders'').

[7] *See Alliance of Artists & Recording Cos.* v. *DENSO Int'l Am., Inc.,* 947 F.3d 849, 863 (D.C. Cir. 2020) (''[T]he best evidence of a law's purpose is the statutory text, and most certainly when that text is the result of carefully negotiated compromise among the stakeholders who will be directly affected by the legislation.'') (internal quotation marks, brackets, and citations omitted).

[8] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)); *see also* Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 12 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.'') (acknowledging that ''it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations'').

[9] *See* H.R. Rep. No. 115–651, at 14 (2018); S. Rep. No. 115–339, at 15 (2018); Conf. Rep. at 12 (''The Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.''); *see also* 84 FR at 49967–68.

[10] 84 FR at 32296.

[11] *See, e.g.,* Joint Comments of Dig. Media Ass'n, Nat'l Music Publishers' Ass'n, Recording Indus. Ass'n of Am., Harry Fox Agency, Inc., & Music Reports, Inc. Submitted in Response to U.S. Copyright Office's July 27, 2012, Notice of Proposed Rulemaking (Oct. 25, 2012) (regarding section 115 statement of account regulations).

[12] Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office encourages parties to refrain from requesting *ex parte* meetings on this proposed rule until they have submitted written comments. As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.

[13] In addition to these substantive topics, the rule also proposes a technical reorganization of part 210 of the Office's regulations, whereby the current subpart A and subpart B are flipped so that when final, subpart A will contain the Office's current regulations for the non-blanket section 115 license and subpart B will contain the Office's new regulations for the blanket license.

[14] *See* 84 FR at 49969.

[15] DLC Initial at 5; DLC Reply at 2–5.

[16] MLC Initial at 2–9; MLC Reply at 2–7; *see also* Nat'l Music Publishers' Ass'n (''NMPA'') Reply at 2–3 (agreeing with the MLC's position).

[17] DLC Initial at 5; MLC Reply at 8–9.

[18] DLC Reply Add. at A–2–3; MLC Reply App. A at 1–3.

Confederation of Societies of Authors and Composers (''CISAC'') & the International Organisation representing Mechanical Rights Societies (''BIEM'') and Monica Corton Consulting advocate for having a clear and sufficiently detailed description of the DMP's activities.[19] Music Reports proposes that DMPs be required to submit a concise description of their activities, and also information about the individual sound recordings made available.[20] Based on the record before it, the Office proposes the following rules for NOLs.

Name and contact information. The Office proposes requiring essentially the same name and contact information for DMPs as proposed by the MLC and DLC, which is also in general accord with the current requirements both for completing a notice of intention to obtain a compulsory license under section 115 (''NOI'')[21] and a notice of use of sound recordings under the sections 112 and 114 statutory licenses (''NOU'').[22]

Submission. The Office proposes rules governing the submission criteria for NOLs that are generally in line with the commenters' proposals and the requirements of existing Copyright Office filings, namely that NOLs be submitted in a manner reasonably determined by the MLC, that NOLs be signed by an appropriate representative of the DMP who certifies to his or her authority to make the submission and the truth of the submitted information, and the MLC confirms receipt of NOLs.[23]

Description of DMP and its covered activities. The proposed rule diverges from both the DLC and MLC proposals as to the requisite level of detail NOLs must contain to describe the DMP and its covered activities. At one end, the DLC's proposal to only provide ''[a] general description of the covered activities,'' seems inconsistent with the statute.[24] NOLs must ''specif[y] the *particular* covered activities in which the digital music provider seeks to engage.''[25] Moreover, the statute tasks the MLC not merely with ''receiv[ing]'' NOLs, but also ''review[ing], and confirm[ing] or reject[ing]'' them.[26] And one of the grounds for rejecting an NOL is if ''the *digital music provider* or notice of license does not meet the requirements of this section or applicable regulations.''[27] Taken together, the Office believes that the statute requires an NOL to contain a description that is sufficient to reasonably establish the DMP's eligibility for a blanket license and to provide reasonable notice of the manner in which the DMP seeks to engage in covered activities under the blanket license.

To that end, the rule proposes that NOLs contain a statement from the DMP that it has a good-faith belief in its eligibility for the blanket license and its ability to comply with all payments, terms, and other responsibilities under the blanket license. In specifying its particular covered activities, the Office proposes that the DMP specify or check off each applicable DPD configuration and service type from a list.[28] By DPD configuration, the Office refers to the different types of DPDs a DMP might make, such as permanent downloads, limited downloads, interactive streams, and noninteractive streams. By service type, the Office refers to the general types of offerings through which a user may receive DPDs, such as whether the service is subscription-based, part of a bundle, a locker, free to the user, and/or part of a discount plan. The proposed rule does not require that the description of the DMP's service type(s) be tied to the specific categories of activities or offerings adopted by the Copyright Royalty Judges (''CRJs'') in 37 CFR part 385 (although such information would be permitted), because such details may go beyond the more general notice function the Office understands NOLs to serve; in any event, that information will be reported in reports of usage, as discussed below.

In proposing this middle-ground approach, the Office tentatively concludes that the MLC's position bends the statute too far the other way. To the extent the MLC may need any of the more detailed information it proposes to require through NOLs to fulfill its obligations under the statute, the Office generally agrees with the DLC that it would be more appropriate for such information to be provided as part of each DMP's monthly reports of usage, addressed separately below.[29] While the MLC contends that there is value in obtaining this sort of information ahead of the DMPs' reports,[30] at least based on the current record, this potential value does not seem to outweigh the potential burden on DMPs to provide such duplicative information, especially if DMPs are required to amend NOLs with changes of practice, as the MLC proposes.

The Office is inclined, however, to make an exception for information concerning any applicable voluntary license or individual download license the DMP may be operating under concurrently with the blanket license. The Office tentatively agrees with the MLC that obtaining such information from DMPs in advance of any pertinent report of usage is beneficial, because the MLC may need to identify specific musical works subject to such licenses so that they can be carved out from the blanket license royalty calculations, which the MLC asserts will be ''very complicated and time-consuming.''[31] While the DLC requests that this not be imposed as a legal requirement in the NOL regulations themselves, the DLC does concede that, ''[i]f there is some operational need,'' this is reasonable information for the MLC to seek ''during the on-boarding process, prior to the filing of the first report of usage.''[32]

Harmless errors. In accord with the DLC's proposal, the Office proposes a harmless error rule similar to others it has previously adopted, including for section 115 notices of intention to obtain a compulsory license sent under the song-by-song licensing process.[33] Given the material consequences of being denied a blanket license that could otherwise result from a trivial deficiency in an NOL, the Office believes that such a provision is reasonable.[34] The Office is inclined to disagree with the MLC's arguments that such a provision would be ambiguous and unnecessary. While the statutory cure period[35] may lessen the need for a harmless error provision, it does not seem to obviate the need completely. As to any ambiguity, the Office is not aware of any difficulties with applying the Office's current harmless error rules. Moreover, such a rule would be in accord with the MMA's default and termination provision, which refers to ''*material*[ ] deficien[cies]'' and noncompliance with ''*material* term[s]

[19] CISAC & BIEM Reply at 4; Monica Corton Consulting Reply at 1.

[20] Music Reports Initial at 2–3.

[21] *See* 37 CFR 201.18(d)(1)(i) and (ii).

[22] *See id.* at § 370.2(b)(1) through (4).

[23] *See, e.g., id.* at §§ 201.18(c), (d)(3), and (e), 201.35(f)(3), and 370.2(c).

[24] *See* DLC Reply Add. at A–2.

[25] 17 U.S.C. 115(d)(2)(A) (emphasis added).

[26] *Id.* at 115(d)(3)(F)(i).

[27] *Id.* at 115(d)(2)(A)(iii)(I) (emphasis added).

[28] *See* MLC Initial at 9 (proposing that information be provided ''through a simple 'check the box' method''). This is also somewhat similar to how the current NOU form works.

[29] *See* DLC Reply at 4.

[30] *See* MLC *Ex Parte* Letter Jan. 29, 2020 (''MLC *Ex Parte* Letter #1'') at 3–4.

[31] *See* MLC *Ex Parte* Letter Feb. 26, 2020 (''MLC *Ex Parte* Letter #2'') at 2; *see also* MLC Reply at 3–4.

[32] *See* DLC Reply at 5.

[33] *See* 37 CFR 201.18(h); *see also id* at § 201.10(e) (notices of termination).

[34] *See* 66 FR 45241, 45243 (Aug. 28, 2001) (''[P]otential licensees should not be denied the use of the license if such errors do not affect the legal sufficiency of the notice.'').

[35] 17 U.S.C. 115(d)(2)(A)(iv).

or condition[s] of the blanket license.'' [36]

Amendments. In accord with the MLC's proposal, the rule proposes requiring DMPs to amend their NOLs within 45 days of any information changing. Given the notice function NOLs are supposed to serve, it does not strike the Office as unreasonable to require DMPs to amend NOLs when DMPs make significant changes to how they are engaging, or seeking to engage, in covered activities or when their contact information changes. Having considered the DLC's arguments on this matter, the Office concludes that the following reasons support an amendment requirement. First, the statute expressly provides for ''an amended notice of license'' in the context of curing deficiencies in a rejected NOL.[37] Second, there would seem to be little meaning behind the requirement that NOLs ''specif[y] the particular covered activities in which the digital music provider seeks to engage,'' if DMPs never need to provide notice of changes to those particulars.[38] Third, the statute requires the MLC to ''maintain a *current,* publicly accessible list of blanket licenses that includes contact information for the licensees and the effective dates of such licenses.'' [39] The Office has previously adopted an amendment requirement pursuant to a similarly worded statutory provision, and believes one is reasonable in this context as well so as to ensure that the contact information the MLC is required to make publicly available is always kept up to date.[40] Fourth, although section 115 NOIs have no such amendment requirement, NOUs do,[41] meaning that services operating under sections 112 and 114 are already complying with a similar requirement. Finally, between the reasonable amount of information the Office proposes be required, the statutory notice and cure mechanism, and the proposed inclusion of a harmless error rule, the amendment requirement would not be unduly burdensome or amount to a ''trap for the unwary'' as the DLC contends.[42] The Office proposes that information about voluntary licenses and individual download licenses be subject to their own amendment requirement, separate from NOL amendments.

Delegation of authority to the MLC. The Office generally agrees with the DLC that the MLC need not have authority, delegated by regulation, to require additional substantive information from DMPs with respect to NOLs.[43] If, in the course of establishment, the MLC identifies a legitimate need for additional information, the Office will make adjustment to the regulatory language. Of course, the MLC may ask DMPs for additional information, which DMPs may voluntarily elect to provide. The Office believes that certain matters, such as the precise format and method of submission of NOLs, are best left flexible and subject to the MLC's commercially reasonable discretion and business judgment.[44]

Reporting sound recordings. The Office disagrees with Music Reports' proposal that NOLs contain a list of all sound recordings made available to the public for substantially the same reasons as set forth by the DLC.[45]

Transition to blanket licenses. The rule proposes that DMPs obtaining the blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) must still submit valid NOLs.

Public access. To govern the MLC's obligations under 17 U.S.C. 115(d)(3)(F)(i), and for transparency in how the MLC confirms or rejects NOLs, and terminates blanket licenses, the rule proposes that the MLC be required to maintain a current, free, and publicly accessible and searchable online list of all blanket licenses, including various details, such as information from NOLs, whether an NOL has been rejected and why, and whether a blanket license has been terminated and why.

2. Notices of Nonblanket Activity

Based on the record before it, the Office generally agrees with commenters that NOLs and NNBAs should not differ substantially, as they serve similar purposes.[46] Thus, the Office proposes that the regulations for NNBAs generally mirror the requirements for NOLs, with conforming adjustments reflecting appropriate distinctions between the two types of notices.

B. Data Collection and Delivery Efforts

While the MLC is ultimately tasked with the core project of matching musical works to sound recordings embodying those works, and identifying and locating the copyright owners of those works (and shares thereof), the MMA outlines roles for certain DMPs and copyright owners to facilitate this task by collecting and providing related data to the MLC. DMPs using the blanket license must ''engage in good-faith, commercially reasonable efforts to obtain'' various sound recording and musical work information from sound recording copyright owners and other licensors of sound recordings made available through the DMP's service.[47] As the Office observed in the notification of inquiry, this obligation is directly connected to the reports of usage discussed below. The MMA also obligates musical work copyright owners with works that are listed in the MLC's database to ''engage in commercially reasonable efforts to deliver'' to the MLC for the database, if not already listed, ''information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.'' [48] In the notification of inquiry, the Office asked whether it is appropriate to promulgate regulations concerning these provisions.[49]

1. Efforts by Digital Music Providers

Most comments received by the Office concerning data collection and delivery efforts pertain to requirements for DMPs under the blanket license; the MLC and DLC each propose specific regulatory language. The MLC's proposal is expansive.[50] First, it would require DMPs to collect and provide ''all identifying information'' about relevant sound recordings and musical works from ''the record label or other entity furnishing rights to the sound recording'' that is ''in the entity's

[36] *See id.* at 115(d)(4)(E)(i) (emphasis added).

[37] *See id.* at 115(d)(2)(A)(iv).

[38] *See id.* at 115(d)(2)(A); *see also* MLC Reply at 5–6.

[39] *Id.* at 115(d)(3)(F)(i) (emphasis added).

[40] *See* 37 CFR 201.38(c)(3) (a requirement to ''timely updat[e] information when it has changed,'' adopted under 17 U.S.C. 512(c)(2), which states that the Copyright Office ''shall maintain a current directory of agents available to the public for inspection'').

[41] *Id.* at § 370.2(e).

[42] *Cf.* 81 FR 75695, 75704 (Nov. 1, 2016) (with respect to adopting a renewal requirement for online service providers to keep current their designations with the Copyright Office for purposes of the section 512 safe harbor, the Office concluded that ''[n]or does the rule create 'a trap for the unwary' as some opponents allege,'' because ''[i]f, after [receiving] multiple reminders, a service provider fails to renew its designation, it can hardly be said to have let its designation lapse unwittingly'').

[43] *See* DLC Reply at 6.

[44] *See* SoundExchange Initial at 15–16.

[45] *See* DLC Reply at 6.

[46] *See* DLC Initial at 3; MLC Initial at 10–11; MLC Reply at 8; Music Reports Initial at 2–3; CISAC & BIEM Reply at 4.

[47] 17 U.S.C. 115(d)(4)(B).

[48] *Id.* at 115(d)(3)(E)(iv).

[49] *See* 84 FR at 49969–70.

[50] *See* MLC Reply App. B at 7–8; *see also* MLC Reply at 10 (''[T]he DMPs' existing mechanisms for obtaining sound recording information have been insufficient, resulting in numerous recordings that cannot be matched to musical compositions, which led to the MMA specifically requiring greater efforts from the DMPs.''); NMPA Reply at 3–4 (same); FMC Reply at 3 (''Clear and robust guidelines are necessary to ensure that licensees are making aggressive efforts to get the data as complete and accurate as possible.'').

possession.'' [51] Second, DMPs would have to undertake ''all reasonable steps'' to ensure collection of this information, ''including affirmatively requiring'' the entity to provide it ''whether through contract or otherwise.'' [52] Third, it would require a DMP to also provide ''all information that is in its possession concerning sound recording[s] and musical work[s] used on its service,'' regardless of when, how, or from where it was obtained.[53] Fourth, it would require all collected information to be provided to the MLC promptly after being received and contemporaneously with monthly reports of usage.[54] Fifth, the information would have to be delivered to the MLC in the same format with the same content as it was delivered to the DMP, without any revisions, re-titling, or other modifications to the information.[55] Sixth, DMPs would have to provide timely updates to all such information.[56] Lastly, DMPs would have to certify as to their compliance with these requirements.[57]

The DLC strongly opposes the MLC's proposal, arguing that DMPs' obligations should be limited to providing whatever information can be obtained from record labels and distributors, and passing that information on to the MLC.[58] The DLC contends that DMPs have no ability to compel record labels and distributors to provide them with information, and further asserts that DMPs are only obligated to provide information to the MLC via their reports of usage.[59] The DLC's competing proposal essentially restates the statute as to what is required of DMPs, but further proposes that DMPs can satisfy their obligations under section 115(d)(4)(B) ''by collectively arranging for the [MLC] to obtain'' the required information from SoundExchange,[60] ''which shall provide this information at reasonable or no cost.'' [61]

Two particular issues surrounding these proposals were discussed at length in the comments and during several *ex parte* communications. The first is the DLC's proposal for DMPs to be able to satisfy their section 115(d)(4)(B) obligations by arranging for the MLC to receive data from SoundExchange. Several commenters assert that the record labels themselves are the best source of authoritative sound recording data, and that it is important that the MLC's sound recording information come from an authoritative source.[62] The DLC and others (including A2IM, RIAA, and industry standards consultant Paul Jessop [63]) further argue that a single, aggregated, unaltered, regularly updated, and verified feed of this information from SoundExchange (which is sourced directly from sound recording copyright owners) would be ideal, and avoid the possibility that different DMPs would submit disparate and potentially contradictory data that the MLC would need to expend time and resources to reconcile.[64] The DLC also argues that under this proposal, the MLC could rely on only a single or limited number of data fields from DMPs' reports of usage (*e.g.,* international standard recording code (''ISRC'')) to find the sound recording to engage in matching efforts.[65]

The MLC, while acknowledging that it ''intends to use SoundExchange as a valuable source of information for sound recording identifying information,'' opposes this proposal.[66] A main argument of the MLC is that even if the DMPs were to provide the MLC with access to SoundExchange's data to satisfy their data collection obligations, it would not be a substitute for their reporting obligations because the DMPs are the only ones with the authoritative data as to what they actually streamed.[67] The MLC also says that receiving only ISRCs from DMPs, as the DLC suggests, would be insufficient for proper sound recording identification, contending that ''[t]here is no comprehensive, authoritative, central database for matching ISRC codes with other metadata fields, there are incorrect ISRC codes in use, and attempting to match streaming uses based on ISRC reporting alone would be unreliable, unprecedented and highly inappropriate.'' [68]

The second issue concerns the MLC's proposal to require DMPs to provide the MLC with the information provided by sound recording copyright owners and licensors in the original, unmodified form in which it is received by the DMP, without any revisions, re-titling, or other edits or changes. The MLC and others explain that DMPs alter some amount of sound recording data, generally titles, artist names, and versions for display purposes in their public-facing service (*e.g.,* changing ''Hello'' to ''Hello (Radio Edit),'' or changing ''Puff Daddy,'' ''P. Diddy,'' and ''Puffy'' all to ''Diddy''), and suggest that merely passing on the modified data to the MLC would frustrate matching efforts.[69] The MLC also argues that, in connection with the proposal to permit DMPs to provide access to SoundExchange's data to avoid having to report unaltered data, having to match the DMPs' reports against SoundExchange's data in an attempt to recapture what was originally delivered to the DMPs by record labels and distributors is ''unworkable and wildly inefficient.'' [70]

On the other hand, to support their position that the MLC should obtain authoritative sound recording data from a single source for its database, A2IM & RIAA point out that their ''member labels vary the metadata they send the different DMPs in order to meet the services' idiosyncratic display requirements. Even if the DMPs were to pass on those feeds to the MLC unaltered, the MLC would still receive conflicting data that it will have to spend time and resources reconciling.'' [71] Music Reports similarly points out that ''a row of sound recording metadata provided by one DMP in relation to a discrete sound recording may differ from the row of metadata a second DMP provides in relation to the same sound recording, with additional or different data fields

[51] MLC Reply App. B at 7.

[52] *Id.* at 7; *see also* Barker Initial at 10 (proposing that DMPs not release sound recordings unless and until they receive appropriate data from the record label); CISAC & BIEM Reply at 6 (agreeing with the MLC that DMPs should take ''all reasonable steps'').

[53] MLC Reply App. B at 7.

[54] *Id.* at 7.

[55] *Id.* at 8.

[56] *Id.*

[57] *Id.*

[58] DLC Initial at 7; DLC Reply at 6–11.

[59] DLC Reply at 8–9.

[60] SoundExchange is the collective designated by the CRJs to collect and distribute royalties under the section 112 and section 114 statutory licenses concerning noninteractive digital audio transmissions of sound recordings.

[61] DLC Reply Add. at A–4; *see also* DLC Reply at 10–11.

[62] *See* Recording Industry Association of America, Inc. (''RIAA'') Initial at 4; American Association of Independent Music (''A2IM'') & RIAA Reply at 2–3; Jessop Initial at 2–3; Recording Academy Initial at 2.

[63] Mr. Jessop, a former U.S. and U.K. recording association executive, has participated in the development or revision of various relevant standards bodies or individual codes, including ISRC, ISWC, and ISNI. Jessop Initial at 1–2.

[64] DLC Reply at 10; RIAA Initial at 4–5; A2IM & RIAA Reply at 2–3 (also noting that record labels vary their own data sent to different DMPs to meet different DMP requirements); Jessop Reply at 2; *see also* Universal Music Group (''UMG'') & RIAA *Ex Parte* Letter at 2 (''SoundExchange gets the same data feeds as the DMPs . . . but then it dedupes and deconflicts the data.''); Sony Music (''Sony'') & RIAA *Ex Parte* Letter at 2.

[65] DLC Reply at 10.

[66] MLC Reply at 11 n.7.

[67] MLC *Ex Parte* Letter #2 at 5, 7; *see* MLC *Ex Parte* Letter #1 at 2.

[68] MLC Reply at 16 n.9; MLC *Ex Parte* Letter #2 at 5; MLC *Ex Parte* Letter Apr. 3, 2020 (''MLC *Ex Parte* Letter #4'') at 9.

[69] MLC Reply at 11; RIAA Initial at 3, 5–6; Sony & RIAA *Ex Parte* Letter at 2 (Dec. 9, 2019); MLC *Ex Parte* Letter #1 at 2; MLC *Ex Parte* Letter #2 at 5–6; MLC *Ex Parte* Letter #4 at 8–9; Jessop Initial at 2–3; A2IM & RIAA Reply at 2–3, 3 n.1.

[70] MLC *Ex Parte* Letter #2 at 5–6.

[71] A2IM & RIAA Reply at 2.

or identifiers unique to that DMP.'' [72] The MLC does not address this issue in its comments.

The DLC readily acknowledges that individual DMPs may alter certain data fields, characterizing it as necessarily cleaning and fixing the data so that information related to a recording's artist name, title, or other listener-facing fields are normalized.[73] The DLC asserts that it would be highly burdensome for DMPs to retain and report unaltered data, because for many services, usage reporting pipelines have been designed to pull data from product databases that feature the ''corrected'' fields; it suggests that the MLC's proposal would require an unnecessary maintaining of a parallel archive of data that may entail material engineering efforts.[74] The DLC also argues that providing each of these fields unaltered is unlikely to palpably improve the MLC's matching efforts, because other data fields that remain unaltered, in particular the ISRC (which both the DLC and MLC seem to agree exists for over 99% of reported tracks), are far better for identifying sound recordings.[75] The DLC also states that alteration happens relatively infrequently, citing that for at least two DMPs, fewer than 1% of track titles are modified, and that alterations are minor, such that any reasonably sophisticated matching algorithm should not be stymied.[76]

The MMA was designed in part to address challenges related to data delivery in the digital supply chain, and after analyzing the comments and conducting repeated meetings with the MLC, DLC, and recording company and publishing interests, it is apparent to the Copyright Office that abstruse business complexities and misunderstandings persist. As discussed further below, it is not clear that the relevant parties agree on exactly which fields reported from sound recording owners or distributors to DMPs are most useful to pass through to the MLC, which fields the MLC should be expected or does expect to materially rely upon in conducting its matching efforts, or which fields are typical or commercially reasonable for DMPs to alter, such as in the course of arranging for all songs by the same artist (*e.g.,* ''Diddy'') to be retrieved in an organized fashion in response to an end user's search. And while the Office reached out to the MLC and DLC shortly after these entities were designated to encourage cooperation on these business-specific questions in anticipation of the significant prospective regulatory work, and understands they have engaged in dialogue, particularly after the submission of initial comments, it does not appear that discussions have yet bridged these areas of difference.[77]

To a certain extent, the MLC and DLC also appear to advance positions that go somewhat further than necessary even under their preferred approaches. For example, although the MLC does not intend to use every required or requested field in its matching processes,[78] its proposed language would require every reportable sound recording field to be provided in unaltered form.[79] Similarly, the Office understands that DMPs may typically alter only a few fields (*e.g.,* titles, artist names, and versions) relevant to its consumer-facing platform fronts, yet the DLC has proposed language that would not restrict services from editing even universal identifiers. Relatedly, both parties may somewhat underestimate certain business realities that drive the other's positions: It seems reasonable to the Office both that different streaming services may choose to display the same artist or recording title in a different way as a competitive or data architecture matter (*e.g.,* ''I Feel Good'' vs. ''I Got You (I Feel Good)'') and have designed reporting systems around the fields as used on their products, and also that such discrepancies in artist or title names may add complexity to the MLC's efforts to match sound recordings to underlying musical works. Based on the record, it thus appears that the MLC's matching efforts will need to involve analysis of multiple fields (*i.e.,* not just ISRCs), and also that the MLC will need to reconcile certain sound recording information against its database.

In light of these disagreements and areas of uncertainty, and the considerable, yet non-exhaustive,[80] information submitted in this rulemaking, the Office sought to craft a reasonable approach that satisfies the main concerns of the most interested parties. Based on the record before it, the Office proposes the following rules with respect to DMP data collection and delivery efforts.

Relationship to reports of usage. The MMA's data collection efforts and reports of usage provisions are best read together, with section 115(d)(4)(B) describing the appropriate efforts DMPs must engage in to acquire the information to be reported to the MLC in reports of usage under section 115(d)(4)(A). Section 115(d)(4)(B) only refers to ''[c]ollecti[ng]'' and ''obtain[ing]'' information, while section 115(d)(4)(A) refers to ''reporting'' and expressly requires that certain information ''acquired'' by the DMP, ''including pursuant to [section 115(d)(4)(B)],'' be reported.[81] Consequently, the rule proposes that the data collected pursuant to section 115(d)(4)(B) be delivered to the MLC in DMPs' reports of usage in accordance with the rules governing such reports (discussed below). This would not foreclose the MLC from seeking information from DMPs outside of their

[72] Music Reports Initial at 3.

[73] DLC Reply at 9–10; DLC *Ex Parte* Letter Feb. 14, 2020 (''DLC *Ex Parte* Letter #1) Presentation at 15 (discussing ''Hello (Radio Edit)'' example; explaining that a DMP may receive information from different sources listing a band name in various fashions such as ''Cure,'' ''The Cure,'' and ''Cure, The'' which would be reconciled into ''The Cure'' for display on the service's platform).

[74] *See* DLC *Ex Parte* Letter #1 Presentation at 15.

[75] DLC *Ex Parte* Letter Mar. 4, 2020 (''DLC *Ex Parte* Letter #3'') at 2.

[76] DLC *Ex Parte* Letter #3 at 2 (discussing MediaNet and YouTube, and noting that all of MediaNet's alterations are made at the request of the record labels).

[77] *See* MLC Initial at 1 n.2 (''While the MLC and the [DLC] have not collaborated on the submission of initial comments in this proceeding, collaboration has been discussed and is anticipated in connection with reply comments, with the intent to provide supplemental information in reply comments as to any areas of common agreement.''); DLC Initial at 2 n.3 (''While the MLC and DLC have not collaborated on the submission of initial comments in this proceeding, collaboration has been discussed and is anticipated in connection with reply comments, with the intent to provide supplemental information in reply comments as to any areas of common agreement.''); MLC Reply at 1 n.2 (''Following the filing of the initial comments, the DLC and the MLC have engaged in a concerted effort to reach compromise on regulatory language. While the complexity of the issues has made it difficult to reach compromise, the DLC and the MLC plan to continue discussions and will revert back to the Office with any areas of compromise.''); DLC Reply at 1 n.3 (''Following the filing of the initial comments, DLC and MLC have engaged in a concerted effort to reach compromise on regulatory language. While the complexity of the issues has made it difficult to reach compromise, the DLC and MLC plan to continue discussions and will revert back to the Office with any areas of compromise.''). To the Office's knowledge, the MLC and DLC were not able to reach agreement on any areas.

[78] MLC *Ex Parte* Letter #4 at 10–11 (noting that the MLC ''does not anticipate'' the ''sound recording copyright owner'' or ''producer'' fields ''being utilized in matching,'' and contemplates using ''some, but not all'' of other specific fields for matching).

[79] *See* MLC Reply App. C at 11.

[80] For example, while all were discussed at length in concept, the Office did not receive a full listing of which fields in the ERN specification any of the parties wish to be passed through, a comparison to licensable fields in the SoundExchange database, or certain ''information concerning the use in the DDEX DSRF format of different metadata fields related to identification of sound recordings and musical works identification.'' *See* MLC *Ex Parte* Letter #3 at 3. At this stage, commenters remain encouraged to submit additional data, but along with a clear explanation of why such data might support a change in the proposed regulatory language.

[81] *See* 17 U.S.C. 115(d)(4)(A)–(B).

reports of usage on a voluntary basis, or even potentially that, upon a different showing, a different rule requiring delivery of certain information outside of reports of usage could be appropriate.

Appropriate efforts. At least on the record before it, the Office declines to propose a one-size-fits-all approach as to what constitutes ''good-faith, commercially reasonable efforts to obtain,'' and so is disinclined to adopt a rule as strict as the MLC proposes. First, what may be commercially reasonable for one DMP may not be commercially reasonable for another, and even for the same DMP, a commercially reasonable action with respect to one sound recording copyright owner may not be commercially reasonable with respect to another. Second, the MMA did not impose a data delivery burden on sound recording copyright owners and licensors, so any rule compelling their compliance would seem to be at odds with Congress's intent. DMPs must make genuine efforts to attempt to collect information from record labels and other distributors, but if those parties ultimately refuse, it does not necessarily mean that the DMP has not satisfied its collection effort obligations. Thus, the Office is wary of proposals mandating DMPs to require delivery of information from sound recording copyright owners and licensors through contractual or other means. Third, while it is important for DMPs to genuinely and fruitfully engage in appropriate collection and reporting efforts, the primary tasks of matching and data curation are assigned to the MLC, and the DMPs must fully fund the MLC's undertaking of these critical tasks. Fourth, it does not appear that DMPs are necessarily required by the statute to deliver all pertinent information known to them or in their possession. For example, section 115(d)(4)(B) only refers to information obtained specifically ''from sound recording copyright owners and other licensors of sound recordings,'' and the musical work information required to be reported under section 115(d)(4)(A)(ii)(I)(bb) is limited to information ''acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities.'' [82]

With these observations in mind, the Office proposes to codify a minimal floor requirement that should not unduly burden DMPs, but which will still constitute a continuous and ongoing obligation to attempt to collect relevant data. The Office also proposes, in accord with the DLC's proposal, to adopt a rule providing that a DMP may satisfy its obligations under section 115(d)(4)(B) by arranging for the MLC to receive appropriate data from an authoritative source, such as SoundExchange. Though, as explained further below, this would not obviate the need to report data to the MLC in reports of usage.

Under the proposed floor requirement, where a DMP has not obtained all applicable sound recording and musical work information from sound recording copyright owners and licensors, the DMP will have a continuous and ongoing obligation to formally request such information in writing on a quarterly basis. The rule further proposes that DMPs request updates for obtained data periodically and at the MLC's request. This proposal is to ensure that DMPs make ongoing active efforts to get missing and outdated information from record labels and distributors without burdening DMPs or sound recording copyright owners and licensors in ways the statute does not seem to intend.

The Office is generally inclined to agree with commenters regarding provision of access to the SoundExchange database, and proposes that it be an option for interested DMPs. Based on all of the comments, it seems efficient for the MLC to have access to an aggregated, regularly updated, and verified feed of the applicable data sourced directly from copyright owners, rather than consistently need to sort through potentially contradictory DMP-provided label data—especially where the Office has been told that labels sometimes provide different data for the same works to different DMPs, and that labels themselves sometimes send updates that alter previously-reported fields.[83] To be clear, DMPs would not be required to arrange for the MLC to have access to SoundExchange's data; it would just be one option for complying with their data collection obligations. And the MLC would not be required to rely on these data; it would also receive data from monthly reports of usage and from musical work copyright owners, and would remain free to gather data from other sources to build and supplement its database as well. In sum, the record suggests that access to such a sound recording database can be expected to provide the MLC with more authoritative sound recording ownership data than it may otherwise get from individual DMPs engaging in separate efforts to coax additional information from entities that are under no obligation to provide it for purposes of the section 115 license.

In particular, SoundExchange's repertoire database appears to be a reasonable analog for the data DMPs might otherwise obtain from sound recording copyright owners and licensors through the collection efforts mandated by section 115(d)(4)(B). In its role as administrator under the section 112 and section 114 licenses, SoundExchange appears to receive largely the same record label and distributor data feeds that the DMPs receive.[84] And its database appears to be robust:

> SoundExchange has worked for years and spent many millions of dollars to develop its repertoire database, an authoritative repository of information identifying approximately 30 million sound recordings, all of which was sourced directly from the copyright owners of the recordings. . . . This database collects about 50 fields of information on each recording in the database, and includes [ISRCs] for all of those recordings. . . . To keep this database up to date with information about new releases, SoundExchange receives electronic data feeds directly from record companies and distributors that together cover more than 100 rights owners. This real-time data covers almost all commercially-significant U.S. recordings, and a large number of foreign-origin recordings as well. We have also received repertoire information in other forms from more than 20,000 other rights owners.[85]

The Office is, however, inclined to agree with the MLC that DMPs are the only authoritative source for what they actually used, and no amount of data from other sources can tell the MLC what was truly played on the DMP's service. Therefore, the proposed rule makes clear that while DMPs may satisfy their section 115(d)(4)(B) collection obligations in this manner, it does not excuse DMPs from their reporting obligations under section 115(d)(4)(A) (discussed below). DMPs would still have to report all required information, subject to the applicable qualifications (*e.g.,* having been acquired in the metadata provided to the DMP by sound recording copyright owners). There would just not be any further obligation to take affirmative steps to obtain additional information beyond what the DMP otherwise

[82] *See id.* at 115(d)(4)(A)–(B).

[83] *See* A2IM & RIAA Reply at 2; DLC *Ex Parte* Letter #3 at 2.

[84] *See, e.g.,* UMG & RIAA *Ex Parte* Letter at 2 (Dec. 6, 2019) (''SoundExchange gets the same data feeds as the DMPs. . . . SoundExchange receives data from approximately 3400 labels, including certain independent distributors (*e.g.,* CdBaby).'').

[85] SoundExchange Initial at 2–3.

acquires in the ordinary course of engaging in covered activities.

The Office's proposed rule makes other additional adjustments to the DLC's proposal. First, the source of the data could be another similarly authoritative source with a database size similar to SoundExchange; it would not specifically have to be SoundExchange. Second, the proposed rule would not require the authoritative source to provide its data at ''reasonable or no cost.'' As discussed above, the statute does not impose reporting burdens on sound recording copyright owners and, by extension, SoundExchange. Third, the Office proposes that if the DMP knows that a specific sound recording or set of recordings is not in the database, then provision of access to that database is insufficient and the DMP must, for such recording(s), formally request information in writing on a quarterly basis from the label or other distributor who supplied the recording, as described above.

Appropriate information. The Office is inclined to disagree with the breadth of the MLC's proposal to require the collection of ''all identifying information.'' The statute specifically enumerates information that is required to be collected, which is connected with the list of information required to be reported.[86] Thus, the rule instead proposes that collection efforts extend to the statutorily enumerated information and any additional information required by the Copyright Office to be included in reports of usage (discussed below).

With respect to the question of whether DMPs must provide the applicable information in unaltered form, the Office proposes a compromise approach. The Office notes that the proposed regulatory language addresses this in the section on reports of usage, rather than data collection, but since this issue was mostly raised by commenters in the context of data collection efforts, it is discussed here instead of below. The Office has essentially been told by the DLC that retaining and reporting unaltered data is generally burdensome and unhelpful for matching, while the MLC and others argue that it is generally needed and helpful for matching. Both positions seem to have at least some degree of merit with respect to certain aspects. The Office therefore offers what it believes to be a reasonable middle ground to balance these competing concerns.

Instead of requiring DMPs to always report unaltered data or permitting DMPs to never report it, the rule proposes that a DMP can satisfy its reporting obligations by reporting either the originally acquired version of data within a specific field or the modified version, but subject to important limitations.

First, the DMP would have to report the unaltered data in any of the following three cases: (1) Where the MLC has adopted a nationally or internationally recognized standard, such as DDEX, that is being used by the particular DMP, and either the unaltered version or both versions are required to be reported under that standard; (2) where either the unaltered version or both versions are reported by the particular DMP pursuant to any voluntary license or individual download license; or (3) where either the unaltered version or both versions were periodically reported by the particular DMP to its licensing administrator or to copyright owners directly prior to the license availability date. The first scenario tethers the requirement to provide unaltered data to whether a recognized standard setting body, for a standard the DMP uses, concludes that the information is important enough to be required. In such cases, it seems reasonable to require DMPs to undertake such burdens as may be necessary to comply with that decision.[87] The second and third scenarios connect the requirement to provide unaltered data to the capabilities of the DMP's systems. If a DMP was reporting the unaltered version, or both versions, prior to the license availability date or reports the unaltered version, or both versions, under other licenses, the DMP must similarly report such data to the MLC. The Office is also contemplating a fourth scenario for commenters to consider: Where the unaltered version or both versions are/were commonly reported in the industry by a majority of DMPs of comparable size and sophistication to the particular DMP either currently or prior to the license availability date.

The second limitation would be that DMPs would not be permitted to only report modified versions of any unique identifier, playing time, or release date. The record does not suggest that DMPs typically adjust these particular items, but to the extent they do or might consider it in the future, it would seem to be particularly harmful to the MLC's matching efforts. The DLC itself acknowledges the primacy of unique identifiers like ISRCs. And playing time and release date seem to be particularly helpful for matching, especially when distinguishing between different recorded versions of a song by the same artist. The Office invites comment on this aspect of the proposed rule, including whether ''release date'' should be further qualified as ''release year.''

Third, a DMP would not be permitted to only report modified versions of information belonging to categories that the DMP was not periodically altering prior to the license availability date. That would ensure that to the extent a DMP makes changes to its systems to alter new types of data, the DMP would need to retain the ability to report the unaltered versions.

Certification. The Office is inclined to agree with the MLC's proposal to require DMPs to certify as to their compliance with their section 115(d)(4)(B) obligations, and proposes that such a certification be included in DMPs' reports of usage. Such a requirement would be analogous to other related certification requirements.[88]

2. Efforts by Copyright Owners

Only a few commenters spoke to the collection efforts of copyright owners; the MLC and DLC each propose specific regulatory language. The MLC's proposed language essentially restates the statute.[89] The MLC argues that what constitutes commercially reasonable efforts for all musical work copyright owners cannot be defined because of the broad spectrum of musical work copyright owners, ranging from multinational publishing companies to individual do-it-yourself singer-songwriters.[90] The MLC's comments characterize its proposal as imposing an obligation on musical work copyright owners ''to provide information in their possession, custody or control,'' ensuring ''that large music publishers with detailed records of sound recordings embodying their musical compositions will be obligated to provide such information to the MLC, while still allowing for individual songwriters to comply with the regulation without undue hardship.'' [91] The MLC also asserts that DMPs are better positioned to collect sound recording data because they deal directly with sound recording copyright

[86] *See* 17 U.S.C. 115(d)(4)(A)–(B).

[87] *See* DLC *Ex Parte* Letter #3 at 4 (''DDEX has an extensive and rigorous process of evaluating the fields that are required to be reported to assist with matching.'').

[88] *See* 17 U.S.C. 115(d)(10)(B)(iv)(III)(aa); 37 CFR 201.18(d)(1)(vi).

[89] MLC Reply App. B at 8.

[90] MLC Initial at 15.

[91] MLC Reply at 12.

owners and licensors, whereas the existence of the compulsory license makes it so that many musical work copyright owners have no relationship with sound recording copyright owners or licensors, and so it would be inappropriate to require them to seek out and deliver information they do not already have.[92]

The DLC's proposal would require musical work copyright owners to engage in commercially reasonable efforts to collect all available information about the applicable sound recordings, including at least the title, featured artist, and, if available, ISRC.[93] The DLC's proposal would also require copyright owners to provide the MLC with all available information related to performing rights societies through which performance rights in each musical work are licensed.[94] The DLC asserts that copyright owners are best positioned to provide the relevant information and disagrees with the MLC's characterization, stating that musical work copyright owners can obtain sound recording information in a variety of ways.[95]

A2IM & RIAA also commented on this issue, related to their overall viewpoint that the MLC should get sound recording data from a single authoritative source, rather than from DMPs and musical work copyright owners.[96] They further suggest that publishers should have to provide sufficient information to unambiguously identify sound recordings, which they say would generally entail a title, featured artist, and ISRC.[97]

Based on the record before it, the Office proposes the following rules with respect to musical work copyright owner data collection and delivery efforts.

Appropriate efforts. The Office agrees with the MLC that the wide variety of musical work copyright owners makes it challenging to adopt a one-size-fits-all approach as to what constitutes ''commercially reasonable efforts to deliver.'' Consequently, the Office proposes to codify a minimal floor requirement that should not unduly burden less-sophisticated musical work copyright owners—similar in approach to the minimal floor requirement discussed above for DMPs. The rule proposes that musical work copyright owners periodically monitor the MLC's database for missing and inaccurate sound recording information relating to their musical works, and if an issue is discovered, then the copyright owner must provide the pertinent sound recording information to the MLC if the information is known to the copyright owner or, as the MLC proposes, is otherwise within the copyright owner's possession, custody, or control. By limiting the obligation in this manner, musical work copyright owners would not have to affirmatively seek out information from sound recording copyright owners or licensors they may have no relationship with, but would have to provide information that may be contained in some of the sources the DLC discusses (*e.g.,* royalty statements under the compulsory license and reporting from performing rights organizations). As to the proposal from A2IM & RIAA, the statute imposes a requirement on musical work copyright owners—not the MLC—so the Office does not interpret this provision to encompass requiring the MLC to obtain sound recording data from certain sources.

Appropriate information. The Office is inclined to agree with the DLC and A2IM & RIAA that more than just the sound recording title should be provided. Section 115(d)(3)(E)(iv) refers to ''*information regarding* the names of the sound recordings,'' while in other places, the MMA only refers to ''the name of the sound recording'' or ''sound recording name.''[98] Moreover, as the RIAA points out, in most cases, sound recordings are likely to share the same name as the underlying musical work, making a requirement limited to the sound recording's title largely meaningless.[99] Thus, the rule proposes, in accord with the comments of the DLC and A2IM & RIAA, that sound recording titles, including alternative and parenthetical titles, featured artists, and ISRCs should all be provided (subject to the appropriate efforts discussed above). The Office does not agree with the DLC's proposal regarding performing rights organization information for musical works, as that information does not seem to fit within the meaning of ''information regarding the names of *the sound recordings.*''[100]

C. Reports of Usage and Payment—Digital Music Providers

As discussed in the notification of inquiry, DMPs operating under the blanket license must report their usage of musical works and pay applicable royalties to the MLC. The statute contains two relevant reporting and payment provisions, sections 115(c)(2)(I) and 115(d)(4)(A), and the Copyright Office is to prescribe regulations pursuant to both.[101] These regulations are to cover matters such as the form, content, delivery, certification, and adjustment of reports of usage and payment, as well as requirements under which records of use must be maintained and made available to the MLC by DMPs.[102]

Various commenters spoke to issues concerning reports of usage in responding to the notification of inquiry, and the MLC, DLC, and Music Reports provided proposed regulatory language.

In promulgating reporting and payment rules for the section 115 license, the Copyright Office has long followed a ''guiding principle'' that ''the regulations should preserve the compulsory license as a workable tool, while at the same time assuring that copyright owners will receive full and prompt payment for all phonorecords made and distributed.''[103] The Office has ''accordingly evaluated proposed regulatory features using 'three fundamental criteria' '': (1) '' 'the accounting procedures must not be so complicated as to make use of the compulsory license impractical;' '' (2) '' 'the accounting system must insure full payment, but not overpayment;' '' and (3) '' 'the accounting system must insure prompt payment.' ''[104] The Office has also previously stressed that ''transparency is critical where copyright owners are compelled by law to license their works.''[105] Today, the Office reaffirms these conclusions, which the Office has carefully considered in formulating this proposed rule. The Office also credits Congress's intention that, under the MMA, reports of usage ''should be consistent with then-current industry practices regarding how . . . limited downloads and interactive streams are tracked and reported.''[106]

[92] MLC Initial at 16; MLC Reply at 13.

[93] DLC Reply Add. at A–4.

[94] *Id.* at A–5.

[95] DLC Initial at 8; DLC Reply at 12, Add. A–5.

[96] A2IM & RIAA Reply at 2; *see also* RIAA Initial at 9 (proposing that ''commercially reasonable efforts'' be defined as requiring the MLC to leverage existing industry infrastructure, including DDEX, SoundExchange's ISRC lookup service, and SoundExchange's Music Data Exchange).

[97] A2IM & RIAA Reply at 12–13; *see also* RIAA Initial at 7–9.

[98] *Compare* 17 U.S.C. 115(d)(3)(E)(iv) (emphasis added) *with id.* at 115(d)(3)(E)(ii)(IV)(bb), (d)(3)(E)(iii)(I)(dd), (d)(4)(A)(ii)(I)(aa).

[99] *See* RIAA Initial at 8–9; *see also* DLC Initial at 8.

[100] *See* 17 U.S.C. 115(d)(3)(E)(iv) (emphasis added).

[101] *See* 84 FR at 49970–71.

[102] *See id.*

[103] 79 FR 56190, 56190 (Sept. 18, 2014) (internal quotation marks omitted) (quoting 45 FR 79038, 79039 (Nov. 28, 1980)).

[104] *Id.* (internal brackets omitted) (quoting 45 FR 79038, 79039 (Nov. 28, 1980)).

[105] 79 FR at 56201.

[106] *See* H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 13; Conf. Rep. at 10; *see also* U.S.

Based on the record before it, and with these guiding principles in mind, the Office proposes the following rules with respect to reports of usage and payment to be delivered to the MLC by DMPs under the blanket license.

General operation and timing. The rule proposes a general scheme whereby DMPs operating under the blanket license must report usage and pay royalties to the MLC on a monthly basis, with a cumulative annual report due each year, and an ability to make adjustments to monthly and annual reports and related royalty payments, including to correct errors and replace estimated inputs with finally determined figures.

As required by section 115(d)(4)(A)(i), the rule proposes that monthly reports of usage and related royalty payments must be delivered to the MLC within 45 day of the end of the applicable monthly reporting period.[107] The Office disagrees with the MLC, which would read the statute as requiring royalty payments to be due within 20 days rather than within the same 45-day period as their associated reports of usage.[108] As the DLC points out, the statute and legislative history counsel that both are due within 45 days.[109] Section 115(d)(4)(A)(i) states that DMPs shall ''report and pay'' ''in accordance with'' section 115(c)(2)(I), ''except that the *monthly reporting* shall be due on the date that is 45 calendar days, rather than 20 calendar days, after the end of the monthly reporting period,'' while section 115(c)(2)(I) states that ''[e]xcept as provided in paragraph[] (4)(A)(i) . . . of subsection (d), *royalty payments* shall be made on or before the twentieth day of each month.'' [110] Given that one provision refers to ''monthly reporting'' and the other refers to ''royalty payments,'' in order to give meaning to the ''except'' language, it would seem that both provisions must be read as referring to both reporting and payment. The legislative history confirms this intent.[111] And it is in accord with the Office's longstanding interpretation of section 115.[112]

Under the proposed rule, an annual report of usage would be due on the 20th day of the sixth month after the end of the DMP's fiscal year—the same timing as currently required for annual statements of account under the non-blanket section 115 license, and the same timing as proposed by Music Reports.[113] The Office is inclined to disagree with the DLC that the statute does not require annual reporting certified by a certified public accountant (''CPA'').[114] The Office has reasonably considered the DLC's various arguments on this subject, but the plain language of section 115(c)(2)(I) seems to clearly state that ''detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for *every* compulsory license under subsection (a).'' [115] Even if that were not the case, the Office tentatively concludes that requiring CPA certification of annual reporting, pursuant to the Office's broad regulatory authority, is reasonable and appropriate. While, as the DLC notes, the MMA creates a new triennial audit right, copyright owners remain unable to directly audit DMPs—they can only audit the MLC, which may, but is not required to, audit DMPs.[116] And certified annual reporting may diminish the need to initiate the same level of audits of individual DMPs by the MLC; as the DLC is well-aware, DMPs effectively fund such audits through the administrative assessment. An annual CPA certification would also occur more frequently than these triennial audits, to the extent audits occur at all.[117] Thus, requiring an annual CPA-certified report would ensure that copyright owners continue to be given at least as much comfort in the accuracy of DMP reporting as before the MMA.[118] The MMA is intended to increase transparency, not diminish it.[119]

Regarding adjustments, the rule proposes that a report adjusting a monthly report of usage can be delivered to the MLC any time between delivery of the monthly report being adjusted and delivery of the annual report covering that monthly report. The rule would also permit a DMP, at its option, to forego filing a separate report of adjustment and instead combine it with the applicable annual report. The latter option is similar to how adjustments to monthly statements currently operate under the non-blanket section 115 license,[120] and the former option, allowing adjustments to be made at an earlier point in time, is something both the MLC and DLC propose and that the Office believes reasonably provides additional flexibility and may facilitate more prompt and accurate payments to copyright owners.[121] In accord with the DLC's proposal, and as is the case currently for monthly accounting statements under the non-blanket section 115 license, this effectively would require any adjustment to a monthly report of usage to be made within six months [122] of the end of the relevant annual period covering that monthly report (which, as discussed above, is the proposed deadline for delivering the annual report).[123]

The Office is inclined to agree with both the MLC and DLC that certain items may still need to be adjusted after the end of this six-month period,[124] as is permitted currently in connection with performance royalty estimates under the non-blanket section 115 license.[125] The Office thus proposes that an annual report of usage may be adjusted within six months (the same

Copyright Office, Copyright and the Music Marketplace at 30–31 (noting that pre-MMA, mechanical licenses were overwhelmingly administered through direct licenses).

[107] *See* 17 U.S.C. 115(d)(4)(A)(i).

[108] *See* MLC Reply at 23.

[109] *See* DLC *Ex Parte* Letter #1 Presentation at 2–3.

[110] 17 U.S.C. 115(c)(2)(I), (d)(4)(A)(i) (emphasis added).

[111] *See* H.R. Rep. No. 115–651, at 27 (''Subparagraph A identifies the data that must be reported to the collective by a digital music provider *along with* its royalty payments due 45 calendar days after the end of a monthly reporting period.'') (emphasis added); S. Rep. No. 115–339, at 24 (same); Conf. Rep. at 20 (same).

[112] *See* 37 CFR 201.19(b)(5) (1978) (''Each Monthly Statement of Account shall be served . . . *together with* the total royalty . . . on or before the twentieth day of the immediately succeeding month.'') (emphasis added).

[113] *See id.* at § 210.17(g)(1); Music Reports Initial at 18.

[114] *See* DLC Initial at 9–12; DLC Reply at 22 n.97.

[115] *See* 17 U.S.C. 115(c)(2)(I) (emphasis added).

[116] *See id.* 115(d)(3)(L), (d)(4)(D).

[117] *See* MLC *Ex Parte* Letter #2 at 4 (noting that the MLC is not funded at a level necessary to audit every DMP every three years).

[118] *See* 79 FR at 56203 (''[T]he purpose of the CPA certification requirement is to give the copyright owner firm assurance that it is receiving all the royalties to which it is entitled.'').

[119] As the DLC points out, the audit right was adopted in part upon the recommendation of the Copyright Office; this recommendation was not made with a corresponding suggestion to decrease the potential reliability of indicia provided in licensee annual statements. *See* DLC Initial at 11 (citing U.S. Copyright Office, Copyright and the Music Marketplace at 173–74). *See also, e.g.,* 164 Cong. Rec. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Sen. Hatch) (''I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill's oversight and transparency provisions.''); 164 Cong. Rec. S501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Coons) (''This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.''); Proposal of DLC Submitted in Response to U.S. Copyright Office's Dec. 21, 2018, Notice of Inquiry, Ex. C at 2 (Mar. 21, 2019) (recognizing ''the goals of the MMA to provide licensing efficiency and transparency'').

[120] *See* 37 CFR 210.16(d)(3)(i), 210.17(d)(2)(ii).

[121] *See* DLC Reply at 21–22, Add. A–10–11; MLC Initial at 19–20; MLC Reply at 27, App. C at 14.

[122] Technically the 20th day of the sixth month.

[123] *See* DLC Reply at 21–22, Add. A–10–11. While the MLC proposes a different deadline, the MLC seems to concede that the DLC's proposed timing would be reasonable. *See* MLC Reply at 27.

[124] *See* DLC Reply at 22, Add. A–10–11; MLC Initial at 19–20; MLC Reply App. C at 14.

[125] *See* 37 CFR 210.17(d)(2)(iii) (describing amended annual statements of account).

timing as is currently permitted in connection with performance royalty estimates [126]) of any one of the following occurrences, which are drawn from both the MLC and DLC proposals and strike the Office as being reasonable: (1) Exceptional circumstances; (2) when adjusting a previously estimated input after the input becomes finally established (see below); (3) following an audit; or (4) in response to a change in applicable rates or terms under 37 CFR part 385.[127]

Processing, invoices, and response files. A significant issue raised by the DLC throughout the rulemaking proceeding is that there must be a back-and-forth process through which DMPs receive royalty invoices and response files [128] from the MLC after delivering monthly reports of usage, but before royalty payments are made or deducted from a DMP's account with the MLC. The DLC states that this process is an industry-standard practice for many DMPs that use third-party vendors to calculate and process their royalty payments.[129] The DLC is specifically concerned with the handling of voluntary licenses, explaining that because such licenses are often procured through blanket deals covering all musical works in a publisher's catalog, the DMP usually does not know which specific musical works are covered, and will be reliant on the MLC to make that determination based on its statutorily directed matching efforts; this in turn affects the amount of royalties the DMP owes under the blanket license.[130] The DLC seems especially worried that if invoices and response files are not required, DMPs will be effectively compelled to also use the MLC to administer their voluntary licenses (compared to a DMP processing in-house or through an alternate vendor) because the DMPs will not otherwise be able to properly account to copyright owners under these direct deals.[131] At bottom, the DLC ostensibly seeks to retain the status quo for these deliverables whereby the MLC, in fulfilling the matching and calculation role previously performed by DMPs and their vendors, would provide the royalty invoices and response files DMPs either generated or received from their vendors under the pre-MMA regime.[132]

To this end, the DLC proposes that DMPs first deliver their monthly reports of usage to the MLC, and that the MLC then use the reported data to match reported sound recordings to musical works and their copyright owners, confirm uses subject to voluntary licenses and the corresponding amounts to be deducted from royalties otherwise due under the blanket license, calculate royalties owed under the blanket license, and deliver an invoice to the DMP setting forth the royalties owed along with a response file.[133] The DLC proposes not to prescribe when a DMP must deliver its report of usage, so long as it is before the statutory 45-day deadline, but would require the MLC to provide invoices and the response file within 15 days of receiving a monthly report of usage.[134]

The MLC does not seem to generally disagree with this choreography and ultimately states that it intends to provide DMPs with both invoices and response files, but argues that such matters, particularly with respect to timing, are not ripe for rulemaking.[135] The MLC further states that to be logistically workable, there must be a fixed DMP reporting deadline, to provide the MLC with predictability in its staffing and resources.[136] It proposes that, to the extent the Office adopts a rule, DMPs be required to deliver reports within 15 days after the end of the monthly reporting period and believes it can process them within 25 days, which would then allow 5 days to remit payment (or have the MLC charge a DMP's account) before the statutory 45-day deadline expires.[137]

Having carefully considered this issue, the Office proposes a process that would require the MLC to provide invoices and response files generally along the outlines of the DLC's proposal.[138] The Office, however, generally proposes to adopt the timing deadlines that the MLC indicates would be acceptable to its operations. Given that the current non-blanket section 115 license requires monthly reporting and payment within 20 days, and commenters state that DMPs generally report to their vendors within 10 days or less,[139] the proposed 15-day deadline should not be burdensome. To the extent it is, it is optional; a DMP could take the full 45 days permitted under the statute, but it would not be entitled to an invoice if it does, absent special arrangement with the MLC (see ''Voluntary agreements to alter process'' below). The rule further proposes that response files must be requested by DMPs, in which case they must be delivered by the MLC within the same 25-day period the MLC will have to process reports.[140] The Office believes the proposed rule is a reasonable approach to ensuring that DMPs that need invoices and response files can get them, while providing the MLC the time it needs to generate them. The proposed rule is intended to further the Office's longstanding policy objective that the compulsory license should be a realistic and practical alternative to voluntary licensing. The Office appreciates the MLC's position requesting the Office refrain from issuing a rule on this matter for the time being, but tentatively agrees with the DLC that a rule would ultimately be valuable to build reliance that DMPs can obtain these items. The Office is not opposed to revisiting the precise choreography at a later date.

Content of monthly reports of usage. In addition to basic information like the covered period and the name of the DMP and its associated services, the rule proposes that monthly reports of usage contain a detailed statement covering the royalty payment and accounting information and sound recording and musical work information discussed below. Such information would be required for each sound recording embodying a musical work

[126] *See id.*

[127] *See* DLC Reply at 22, Add. A–10–11; MLC Reply App. C at 14.

[128] The DLC describes ''response files'' as detailing the results of the matching process and essentially serving as the ''backup'' to the invoice, confirming where royalties are being paid, DLC Reply at 16, and including such information as song title, vendor-assigned song code, composer(s), publisher name, publisher split, vendor-assigned publisher number, publisher/license status, and royalties per track, DLC *Ex Parte* Letter #1 Presentation at 11.

[129] *See* DLC Initial at 13–14; DLC Reply at 13–16; DLC *Ex Parte* Letter Feb. 14, 2020 (''DLC *Ex Parte* Letter #1'') at 1–2; DLC *Ex Parte* Letter #1 Presentation at 3–13; DLC *Ex Parte* Letter #3 at 4.

[130] DLC Initial at 13–14; DLC Reply at 13–16; DLC *Ex Parte* Letter #1 Presentation at 3–13.

[131] DLC *Ex Parte* Letter #1 Presentation at 3–13.

[132] DLC Reply at 16.

[133] *Id.* at Add. A–9; *see also id.* at 15–16.

[134] *Id.* at Add. A–9; DLC *Ex Parte* Letter #3 at 4; *see also* DLC *Ex Parte* Letter #1 at 1–2 (''[D]ifferent services have different internal accounting and payment practices, and imposing a rigid interim reporting deadline on all services will impede rather than accommodate those different practices.'').

[135] MLC *Ex Parte* Letter #2 at 2–3.

[136] *Id.* at 2.

[137] The MLC addressed planned timing with the Office during its February 21, 2020, *ex parte* communication. *See generally* MLC *Ex Parte* Letter #2 at 2.

[138] The Office is inclined to disagree with the DLC's proposal that the MLC provide the DMP with the amount of royalties owed under voluntary licenses. *See* DLC Reply Add. at A–9. That seems more like something the MLC would only be obligated to calculate and provide if it is privately engaged as the DMPs administrator for such voluntary licenses. *See* 17 U.S.C. 115(d)(3)(C)(iii); *see also* MLC *Ex Parte* Letter #2 at 3.

[139] *See* Music Reports Initial at 7; MLC *Ex Parte* Letter #2 at 2.

[140] The rule also proposes that a DMP may request a response file even when it is not entitled to an invoice because the information may still be of use to the DMP, such as for its voluntary licenses. In such cases, the MLC would have 25 days from the end of the 45-day reporting deadline to deliver the response file.

that is used by the DMP in covered activities during the applicable monthly reporting period.[141] As required by the statute, this would cover ''usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses.'' [142] The rule proposes, in accord with the proposals of the MLC and DLC, that information be reported in such a manner as from which the MLC may separate the reported information for each different applicable activity or offering, including each different applicable activity and offering defined by the CRJs in 37 CFR part 385.[143] This seems necessary for the MLC to be able to properly confirm DMP royalty payments considering that different activities and offerings are subject to different rate calculations under part 385, and part 385 specifically provides that ''royalties must be calculated separately with respect to *each* Offering taking into consideration Service Provider Revenue and expenses associated with *each* Offering.'' [144] Monthly reports would also have to contain appropriate information about applicable voluntary licenses and individual download licenses to the extent not otherwise provided separately as discussed above with respect to NOLs.[145]

The MLC asks the Office to clarify ''that offerings with different consumer price points are different offerings to be reported separately.'' [146] The DLC disagrees.[147] This issue does not seem appropriate for the Office to opine on one way or the other. The CRJs in part 385 use the terms ''Licensed Activity'' and ''Offering,'' and provide definitions for both, which are relevant to the rate calculations.[148] Any concerns should be addressed to the CRJs.

The Office is inclined to disagree with the MLC with respect to requiring DMPs to report usage for non-music content (*e.g.,* podcasts).[149] Such information seems only relevant if somehow necessary for calculating statutory royalties, in which case, the proposed rule would cover it. The Office, at least on the record before it, is not persuaded by the MLC's more general argument that nascent DMPs may not understand the difference between section 115 offerings and non-section 115 offerings.[150]

As with NOLs discussed above, the Office is also not inclined to provide the MLC with authority to require additional substantive information from DMPs in connection with their reports of usage, as the MLC proposes, although such information could be provided permissively.[151] Particularly if issued on an interim basis, the Office will consider adjusting the relevant rule in the future if necessary.

The Office is also not inclined to adopt a default rule entitling DMPs to provide various required information to the MLC separately from their reports, as the DLC proposes.[152] The Office has concerns about potential logistical challenges it could create for the MLC, but has no objection to DMPs doing this if the MLC agrees (see ''Voluntary agreements to alter process'' below).

Royalty payment and accounting information. With respect to specific accounting information and royalty calculation details required to be reported, the Office proposes to essentially retain the current rule governing non-blanket section 115 licenses, but with two paths to account for whether the DMP delivering the report is entitled to an invoice or not (which in turn, depends upon the date on which the DMP's report is delivered to the MLC).[153] Where the DMP will receive an invoice, it would be required to report all information necessary for the MLC to compute the royalties payable under the blanket license, in accordance with part 385, and all information necessary to enable the MLC to provide a detailed and step-by-step accounting of the calculation of such royalties, sufficient to allow each applicable copyright owner, in turn, to assess the manner in which the MLC, using the DMP's information, determined the royalty owed and the accuracy of the royalty calculations. Where the DMP is not entitled to an invoice, it would be required to make its own calculations and provide the same detailed and step-by-step accounting of the calculation of such royalties, sufficient for the MLC to assess their accuracy. In both cases, the DMP would be required to report the number of payable units (*e.g.,* permanent downloads, plays, constructive plays) for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license. In neither case would the DMP be expected to calculate or estimate per-work royalty allocations.

In proposing to carry forward the current regulatory construct, the Office observes that the MMA does not appear to require any specific accounting or calculation details beyond the number of DPDs,[154] and, as noted above, the MMA's legislative history suggests that Congress did not intend for such reporting details to necessarily change.[155] The Office, therefore, is not inclined to substantially deviate from its existing rule.

The MLC and DLC sharply disagree on this matter. The MLC argues that the current level of accounting detail in reporting is insufficient and opaque, and proposes that the regulations remedy this by enumerating a considerable amount of detailed royalty accounting calculation and background information that DMPs must be required to report.[156] The DLC objects to the MLC's purported need for much of this information, and argues that compiling that level of information into monthly reports would be operationally burdensome and ''will be a substantial engineering challenge.'' [157] The DLC further argues that it would be more appropriate for the information sought by the MLC to be obtained via the

[141] *See* MLC Reply App. C at 9–10; DLC Reply Add. at A–6.

[142] *See* 17 U.S.C. 115(d)(4)(A)(ii).

[143] *See* MLC Initial at 18; MLC Reply App. C at 9; DLC Reply Add. at A–6.

[144] *See* 37 CFR 385.21(b) (emphasis added).

[145] *See* 17 U.S.C. 115(d)(4)(A)(ii)(II).

[146] MLC *Ex Parte* Letter #2 at 4; *see* MLC *Ex Parte* Letter Mar. 24, 2020 (''MLC *Ex Parte* Letter #3'') at 2.

[147] DLC *Ex Parte* Letter #3 at 3 (''The rates established by the Copyright Royalty Board, however, are not based on customer price points, which is why reporting based on those distinctions should not be required.'').

[148] *See* 37 CFR 385.2, 385.21, 385.22, 385.31.

[149] *See* MLC Reply App. C at 12.

[150] *See* MLC Initial at 5, 18–19; *see also* DLC Reply at 20 (opposing the MLC's proposal).

[151] *See* MLC Reply App. C at 10, 12; *see also* DLC Reply at 20 (opposing the MLC's proposal).

[152] *See* DLC Reply at 17, Add. A–7.

[153] *See* 37 CFR 210.16(c)(2); *see also* MLC Initial at 18 (supporting retention); Music Reports Initial at 11 (same).

[154] *See* 17 U.S.C. 115(d)(4)(A)(ii); *see also* Music Reports Initial at 4 (observing that the MMA has ''a glaring gap'' that ''omits any requirement that DMPs deliver to the MLC . . . any of the underlying information that would be required to show how the DMPs have calculated their royalty payments'').

[155] *See* H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 13; Conf. Rep. at 10.

[156] *See* MLC Initial at 19; MLC Reply at 14, 19–20, App. C at 9–12; MLC *Ex Parte* Letter #2 at 3. Some examples of what the MLC seeks include information regarding how the DMP calculates service revenue and total cost of content (including *e.g.,* categories of revenue, subscription prices, deductions from revenue, and the types of consideration expensed for obtaining sound recording rights), information about bundles, discounts, free trials, and promotional offerings (including *e.g.,* family and student plan data, which products/services constitute a bundle, and bundle component pricing), and information about DPDs for which the DMP does not pay royalties.

[157] DLC *Ex Parte* Letter #1 at 2; DLC *Ex Parte* Letter #1 Presentation at 14 (''The MLC has not explained why it needs this data to perform its core matching, collection, and distribution activities. Moreover, these changes will be a substantial engineering challenge. For instance, the inputs into determining the prices of the elements of a bundle are not data that is stored in a format amenable to reporting.''); DLC Reply at 17–20.

statutorily permitted audits.[158] The MLC contends that these triennial audits are insufficient.[159]

Regardless of whatever the current reporting situation may be, the Office tentatively concludes that the MLC should have access to much of the information it seeks, but that it may be appropriate for some of this underlying backup information to be made available separate from monthly reports of use. As previously noted, ''transparency is critical where copyright owners are compelled by law to license their works,'' [160] and so it seems appropriate for the MLC to have access to as much information as is reasonably necessary for it to ''engage in efforts to . . . confirm proper payment of royalties due.'' [161] That the scope of that information may be cumbersome for DMPs is a product of the complexity of the rate structure adopted by the CRJs (which presumably could be changed in future ratemakings). The Office, however, is also mindful of other previously noted guiding principles, that the compulsory license must remain a ''workable tool'' and that ''the accounting procedures must not be so complicated as to make use of the compulsory license impractical.'' [162] To appropriately balance these competing concerns, the Office proposes a compromise approach whereby DMPs must make much of the information proposed by the MLC available to the MLC as part of their records of use.[163] As discussed below in more detail, the Office proposes to clarify its recordkeeping rule with enumerated examples of the types of records DMPs must retain and make available.

The MLC and DLC both acknowledge the practical reality that reporting will need to use estimates in certain circumstances,[164] as is permitted for performance royalties under the current rules governing the non-blanket section 115 license.[165] While the MLC proposes that estimates be limited to performance royalties,[166] the DLC proposes a broader provision covering any royalty calculation ''input that is unable to be finally determined.'' [167] The DLC asserts that this expansion is appropriate because there are other royalty calculation inputs, such as the applicable consideration expensed for sound recording rights, that may not be established when an applicable report may be due.[168]

The rule proposes that a reasonable estimate be permitted for any royalty calculation input that is unable to be finally determined at the time the report is delivered to the MLC, if the reason the input cannot be finally determined is outside the DMP's control. It seems reasonable to permit such estimations, but only where the DMP cannot unilaterally finalize the input. The proposed rule would allow use of an estimate where an input remains uncertain because of a bona fide dispute between the DMP and another party. But using an estimate because of a purely internal tracking or accounting issue, for example, would not be acceptable. The rule would require the DMP to deliver a report of adjustment after any estimated input becomes finally determined. The Office also proposes to specifically permit DMPs to calculate their total royalties owed under the blanket license by using a reasonable estimate of the amount to deduct for usage subject to voluntary licenses and individual download licenses, where the DMP is not entitled to an invoice but still dependent on the MLC to confirm such usage. The rule would require the DMP to deliver a report of adjustment after the MLC confirms such usage.

The Office is not inclined to adopt the DLC's proposal to clarify that making any adjustments to these estimates would not be a basis for charging late fees, terminating a blanket license, or requiring payment of audit fees.[169] Any applicable late fees are governed by the CRJs, and any clarification should come from them. Whether or not payment of audit fees is incurred is governed by 17 U.S.C. 115(d)(4)(D). And whether or not the license can be terminated is governed by 17 U.S.C. 115(d)(4)(E).

Sound recording and musical work information. With respect to the specific information required to be reported for purposes of identifying each sound recording embodying a musical work used by a DMP, the proposed rule is derived from the statute, current regulations, and the public comments (including the specific proposals of the MLC and DLC). In alignment with the statute, the proposed rule essentially has three tiers of information: (1) Sound recording information that must always be reported (*e.g.,* sound recording name and featured artist); (2) sound recording information that must be reported ''to the extent acquired by the [DMP] in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to [section 115(d)(4)](B)'' (*e.g.,* sound recording copyright owner, producer, and ISRC); (3) and associated musical work information that must be reported ''to the extent acquired by the [DMP] in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to [section 115(d)(4)](B)'' (*e.g.,* songwriter, publisher, and international standard musical work code (''ISWC'')).[170]

In addition to the statutorily enumerated information, the Office is proposing certain additional data fields that the record indicates are likely to be beneficial to the MLC's key function of engaging in matching efforts to identify reported sound recordings, the musical works embodied in them, and the related copyright owners due royalties. For example, within the first tier described above—that must always be reported—the Office proposes including playing time [171] and any unique identifier assigned by the DMP (including any code that can be used to locate and listen to the sound recording on the DMP's service).[172] Besides being helpful for matching, particularly where there are multiple versions of a recording, playing time can be necessary for computing royalties.[173]

Regarding DMP identifiers, at this time, the Office is inclined to agree with the DLC's proposal that DMPs provide these in lieu of the audio links the MLC requests.[174] The MLC argues that these links may be critical to properly match and pay royalties because the audio is ''the only truly authoritative evidence of the digital use,'' and claims that it would not be burdensome for DMPs to provide them.[175] Specifically, it points out that audio links have been provided by certain DMPs in connection with past settlements related to unclaimed

[158] DLC Reply at 17; DLC *Ex Parte* Letter #1 at 2.

[159] MLC *Ex Parte* Letter #2 at 4.

[160] 79 FR at 56201.

[161] *See* 17 U.S.C. 115(d)(3)(G)(i)(I)(cc).

[162] 79 FR at 56190.

[163] *See* 17 U.S.C. 115(d)(4)(A)(iii), (iv)(I).

[164] *See* DLC Reply at 16, Add. A–8; MLC Reply App. C at 13.

[165] *See* 37 CFR 210.16(d)(3)(i).

[166] MLC Reply App. C at 13.

[167] DLC Reply Add. at A–8.

[168] DLC Reply at 16; *see also* DLC Initial at 15–16.

[169] *See* DLC Reply at 16–17, Add. A–8; *see also* MLC *Ex Parte* Letter #2 at 7–8 (opposing the DLC's proposal).

[170] *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa)–(bb).

[171] *See* 37 CFR 210.16(c)(3)(v); Music Reports Initial at 12; DLC Reply Add. at A–7; MLC Reply App. C at 11; RIAA Initial at 6; Recording Academy Initial at 3; FMC Reply at 4.

[172] *See* 37 CFR 210.16(c)(3)(iii)(C); Music Reports Initial at 12.

[173] *See id.* at § 385.11(a) and 385.21(c).

[174] *See* DLC *Ex Parte* Letter #1 Presentation at 15; DLC *Ex Parte* Letter #2 at 3; MLC Initial at 20; MLC Reply at 18–19, App. C at 10.

[175] MLC Reply at 18–19; *see also* MLC *Ex Parte* Letter #1 at 2–3; MLC *Ex Parte* Letter #4 at 5.

royalties, and suggests that audio links would be particularly useful to reduce the incidence of unclaimed royalties and ownership disputes.[176] The DLC contends that it would be burdensome to require ''all digital music providers to engineer their systems'' to provide active links in monthly reporting, and suggests that identifiers serve as a workable alternative, stating that, at least for Amazon, Apple, Google, Pandora, and Spotify, these identifiers would be sufficient for the MLC to locate and listen to a particular track using the search feature on each DMP's consumer-facing service.[177]

The Office understands the MLC to believe that audio links will be most useful not in connection with automated matching efforts, but rather to feature on its online claiming portal, similar to claiming portals used in connection with class settlements over unclaimed royalties or collective management organizations that operate claims-based systems.[178] It is not clear whether links might be featured for all sound recordings embodying musical works listed in the database, or only those with missing or incomplete ownership information. Either way, while the planned inclusion of audio links is commendable, the record to date does not establish that the method by which the MLC receives audio links should be a regulatory issue, rather than an operational matter potentially resolved by MLC and DLC members, including through the MLC's operations advisory committee.

For example, while the DLC suggests that inclusion of audio links for every recording reported on a monthly basis by each DMP would be burdensome, a few DLC members suggested in passing to the Office that they could just provide the MLC with a free monthly subscription in lieu of such reporting. It is not clear to what extent the parties have engaged on such logistical discussions to determine if this, or other operational solutions, may serve as a workable alternative. The Office declines at this time to propose a rule including audio links in monthly reporting, but encourages the parties, including individual DLC members, to further collaborate upon a solution for the MLC portal to include access to specific tracks (or portions thereof) when necessary, without cost to songwriters or copyright owners. The Office hopes that this matter can be resolved after the parties confer further, but remains open to adjusting this aspect of the proposed rule if developments indicate it is necessary.

In the second tier described above—sound recording information that must only be reported to the extent acquired—the rule proposes to include version,[179] release date,[180] album title,[181] label name,[182] distributor,[183] and other unique identifiers beyond ISRC, including catalog number,[184] universal product code,[185] and any distributor-assigned identifier.[186]

In the third tier described above—related musical work information that must only be reported to the extent acquired in the metadata provided by sound recording copyright owners and licensors—the rule proposes to include musical work name,[187] musical work copyright owner,[188] and international standard name identifier (''ISNI'') and interested parties information code (''IPI'') for each songwriter, publisher, and musical work copyright owner.[189]

The Office disagrees with the MLC's proposal that the musical work information enumerated in the statute be required ''to the extent otherwise known by the [DMP].'' [190] This seems directly at odds with the statute, which states that such information shall be provided ''to the extent acquired by the [DMP] in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to [section 115(d)(4)](B).'' [191] As the Office previously cautioned, ''while the Office's regulatory authority is relatively broad, it is obviously constrained by the law Congress enacted; the Office can fill statutory gaps, but will not entertain proposals that conflict with the statute.'' [192]

In addition to establishing the three tiers described above, the Office further proposes that certain information, primarily that covered by the second and third tiers, must only be reported to the extent ''practicable,'' a term defined in the proposed rule. Similar to the arguments made with respect to the collection and reporting of unaltered data discussed above, the DLC asserts that it would be burdensome from an operational and engineering standpoint for DMPs to report additional categories of data not currently reported, and that DMPs should not be required to do so unless it would actually improve the MLC's matching ability.[193] The record suggests that all of the data categories described above possess some level of utility, although, as noted above, there is disagreement as to the particular degree of usefulness of each. It would seem that different data points may be of varying degrees of helpfulness depending on what other data points for a work may or may not be available.

The proposed rule therefore defines ''practicable'' in a very specific way. First, the proposed definition would always require reporting of the expressly enumerated statutory categories (*e.g.,* sound recording copyright owner, producer, ISRC, songwriter, publisher, ownership share, and ISWC must always be reported, to the extent appropriately acquired, regardless of any associated DMP burden). Second, it would require reporting of any other applicable categories of information (*e.g.,* catalog number, version, release date, ISNI, etc.) under the same three scenarios discussed above with respect to unaltered data, and for the same reasons discussed above: (1) Where the MLC has adopted a nationally or internationally recognized standard, such as DDEX, that is being used by the particular DMP, and the information belongs to a category of information required to be reported under that standard; (2) where the information belongs to a category of information that is reported by the

[176] MLC *Ex Parte* Letter #1 at 2–3.

[177] *See* DLC *Ex Parte* Letter #2 at 3; *see also* DLC Reply at 17–18; DLC *Ex Parte* Letter #1 Presentation at 15. The MLC disputes the utility and widespread existence of such identifiers. MLC *Ex Parte* Letter #2 at 6; MLC *Ex Parte* Letter #4 at 5.

[178] *See* MLC *Ex Parte* Letter #4 at 5 (''[I]t would be unfair, and economically infeasible for many songwriters, to require the purchase of monthly subscriptions to each DMP service in order to fully utilize the statutorily-mandated claiming portal.'').

[179] *See* DLC Reply Add. at A–7; MLC Reply App. C at 11; RIAA Initial at 6; Recording Academy Initial at 3; FMC Reply at 4.

[180] *See* DLC Reply Add. at A–7; MLC Reply App. C at 11; RIAA Initial at 6; Recording Academy Initial at 3; FMC Reply at 4.

[181] *See* DLC *Ex Parte* Letter #1 Presentation at 15; MLC *Ex Parte* Letter #4 at 11.

[182] *See* 37 CFR 210.16(c)(3)(iii)(A); Music Reports Initial at 12; MLC *Ex Parte* Letter #4 at 11.

[183] *See* DLC Reply Add. at A–7; MLC Reply App. C at 10.

[184] *See* 37 CFR 210.16(c)(3)(iii)(A); Music Reports Initial at 12; MLC *Ex Parte* Letter #4 at 11.

[185] *See* 37 CFR 210.16(c)(3)(iii)(B); Music Reports Initial at 12; DLC *Ex Parte* Letter #1 Presentation at 15; MLC *Ex Parte* Letter #4 at 11.

[186] *See* 37 CFR 210.16(c)(3)(iii)(C); Music Reports Initial at 12.

[187] *See* 37 CFR 210.16(c)(3)(i); Music Reports Initial at 12.

[188] Though the statute already requires songwriter, publisher, and respective ownership share, the publisher may not always be the copyright owner, and in some cases, the owner may be neither the publisher nor the songwriter.

[189] *See* 37 CFR 210.16(c)(3)(vii); Music Reports Initial at 12; MLC *Ex Parte* Letter #4 at 11.

[190] *See* MLC Reply App. C at 11; *see also* MLC Initial at 17 n.7.

[191] *See* 17 U.S.C. 115(d)(4)(A)(ii)(I)(bb); *see also* DLC Reply at 18 (disagreeing with the MLC's proposal for the same reason).

[192] 84 FR at 49968 (citations omitted).

[193] *See* DLC *Ex Parte* Letter #1 at 2; DLC *Ex Parte* Letter #3 at 2.

particular DMP pursuant to any voluntary license or individual download license; or (3) where the information belongs to a category of information that was periodically reported by the particular DMP to its licensing administrator or to copyright owners directly prior to the license availability date. The Office is also contemplating a fourth scenario for commenters to consider: Where the information belongs to a category of information that is/was commonly reported in the industry by a majority of DMPs of comparable size and sophistication to the particular DMP either currently or prior to the license availability date. As with the rules about whether a DMP needs to provide unaltered data, the Office's proposed compromise seeks to appropriately balance the need for the MLC to receive detailed reporting with the burden that more detailed reporting may place on certain DMPs.[194]

With respect to the term ''producer,'' the Office agrees with commenters that it may be confusing and warrants definition.[195] The Office proposes to adopt the proposal to use the Recording Academy's Producers and Engineers Wing definition.[196]

With respect to the term ''sound recording copyright owner,'' A2IM & RIAA raise concerns over the reporting of this information and its use by the MLC, asserting that there is a disconnect between the use of the term in the statute and the actual information included in the digital supply chain about different parties associated with a given sound recording.[197] In light of this discussion, the Office proposes that DMPs may satisfy their obligations to report sound recording copyright owner information by reporting the three DDEX fields identified by A2IM & RIAA as being most relevant (to the extent such data is provided to DMPs by sound recording copyright owners or licensors): DDEX Party Identifier (DPID), LabelName, and PLine.[198]

Server fixation date and termination. With respect to the MLC's proposal to require DMPs to report the date on which each sound recording is first reproduced by the DMP on its server, the rule proposes an alternative approach. As a result of the new blanket licensing system, the MLC contends that the server fixation date is ''required to determine which rights owner is to be paid where one or more grants pursuant to which a musical work was reproduced in a sound recording has been terminated pursuant to Section 203 or 304 of the [Copyright] Act.'' [199] The Copyright Act permits authors or their heirs, under certain circumstances and within certain windows of time, to terminate the exclusive or nonexclusive grant of a transfer or license of an author's copyright in a work or of any right under a copyright.[200] The statute, however, contains an exception with respect to derivative works, stating that ''[a] derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.'' [201]

As the MLC explains it, ''because the sound recording is a derivative work, it may continue to be exploited pursuant to the 'panoply of contractual obligations that governed pre-termination uses of derivative works by derivative work owners or their licensees.' '' [202] The MLC contends that the section 115 compulsory license can be part of this ''panoply,'' and therefore, if the compulsory license ''was issued before the termination date, the pre-termination owner is paid. Otherwise, the post-termination owner is paid.'' [203] The MLC further explains that ''under the prior NOI regime, the license date for each particular musical work was considered to be the date of the NOI for that work,'' but ''[u]nder the new blanket license, there is no license date for each individual work.'' [204] Thus, the MLC believes that ''the date that the work was fixed on the DMP's server—which is the initial reproduction of the work under the blanket license—is the most accurate date for the beginning of the license for that work.'' [205]

The MLC argues that including the server date in reports of usage should not be burdensome for DMPs because they currently possess and report this information.[206] The DLC disagrees, stating that not all DMPs store this information, let alone report it.[207] The DLC also attacks the merits of the MLC's reason for wanting the server date, but at a relatively high-level.[208] No other commenter directly spoke to this issue, though one commenter with experience in music publishing administration suggests concurrence with the MLC's position.[209]

The MLC's interpretation of the derivative works exception seems at least colorable, and no publisher or songwriter (or representative organization) submitted comments disagreeing with what the MLC characterizes as industry custom and understanding.[210] Under the MMA, the MLC's dispute resolution committee will establish policies and procedures to address ownership disputes (though not resolve legal claims), and, at least where there is no live controversy between parties, practices regarding the default payee pursuant to the derivative works exception is an area where the MLC may need to adopt a policy for handling in the ordinary course.[211] Of course, any songwriter or publisher (or other relevant party) disagreeing with the

[194] *See also* 17 U.S.C. 115(d)(4)(E)(i)(III) (one of the conditions of default is where a DMP provides a report ''that, on the whole, is . . . materially deficient as a result of inaccurate, missing, or unreadable data, where the correct data was available to the [DMP] and required to be reported'').

[195] *See* RIAA Initial at 11; Recording Academy Initial at 3; *see also* MLC Reply at 34–35 (explaining the MLC's own confusion over the term).

[196] *See* RIAA Initial at 11; Recording Academy Initial at 3.

[197] *See* A2IM & RIAA Reply at 8–9. Because the main of those concerns centers around the potential for confusion in the MLC's public database, the Office has addressed this issue in more depth in connection with a separately-issued notification of inquiry. *See* U.S. Copyright Office, Notification of Inquiry, *Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[198] *See* A2IM & RIAA Reply at 8–9 (explaining the details of these different fields and asserting that ''each may assist the MLC in different ways with its task of associating sound recordings with musical works''); *see also* MLC *Ex Parte* Letter #4 at 10.

[199] MLC Reply at 19; *see also* MLC Initial at 20; MLC *Ex Parte* Letter #2 at 6–7; MLC *Ex Parte* Letter #4 at 6–7.

[200] *See* 17 U.S.C. 203, 304(c).

[201] *Id.* at 203(b)(1), 304(c)(6)(A).

[202] MLC Reply at 19 (quoting *Woods* v. *Bourne Co.,* 60 F.3d 978, 987 (2d Cir. 1995)); *see also* MLC *Ex Parte* Letter #2 at 6–7; MLC *Ex Parte* Letter #4 at 6–7.

[203] *See* MLC *Ex Parte* Letter #2 at 6–7; MLC *Ex Parte* Letter #4 at 6–7.

[204] MLC *Ex Parte* Letter #4 at 6–7.

[205] MLC *Ex Parte* Letter #2 at 6–7.

[206] *See* MLC Reply at 19; MLC *Ex Parte* Letter #1 at 3; MLC *Ex Parte* Letter #2 at 6–7 (''Server Fixation Date is currently a mandatory field that is reported on the License Request Form from HFA.''); MLC *Ex Parte* Letter #4 at 6–7 (''[A]ll file storage systems log such dates.'').

[207] DLC *Ex Parte* Letter #2 at 4; DLC *Ex Parte* Letter #3 at 5.

[208] *See* DLC *Ex Parte* Letter #2 at 4.

[209] *See* Barker Initial at 3–4 (''When [termination] occurs, the law allows the original copyright owner of the . . . terminated work to continue to collect royalties for certain uses licensed prior to the effective date of . . . termination of transfer, while the new copyright owner of the work may exclusively license all future uses, and collect royalties for those and certain earlier uses.'').

[210] *See Woods,* 60 F.3d at 986–88. The Office does not foreclose the possibility of other interpretations, but also does not find it prudent to itself elaborate upon or offer an interpretation of the scope of the derivative works exception in this particular rulemaking proceeding, which is not primarily focused on termination issues and which has thus far engendered relatively little commentary on this discrete point.

[211] *See* 17 U.S.C. 115(d)(3)(K).

MLC's approach may also challenge such practice, but to the extent the MLC's approach is not invalidated, or superseded by precedent, it seems reasonable for the MLC to want to know the applicable license date.

It is not clear to the Office, however, whether the MLC has a need for the server fixation dates of musical works licensed by DMPs prior to the license availability date, even under its legal theory. With respect to most musical works first used before the license availability date, an NOI should have been served on the copyright owner or filed with the Copyright Office, or the work should have been otherwise licensed by a voluntary agreement. In cases where the license was obtained by service of an NOI upon the copyright owner, it would seem that the MLC could continue to use the relevant NOI date for termination purposes, as it asserts has been the customary practice.[212] Since the MLC represents that this practice was working fairly well prior to the MMA, the rule does not now propose regulatory language on this issue. And for those works used via voluntary license, presumably the parties have relevant records of this agreement, but in any event, addressing issues related to the administration of such voluntary agreements may be outside the ambit of the proposed rule. The Office welcomes comment on this understanding.

In other cases, the effective date of a DMP's blanket license (which for any currently-operating DMP should ostensibly be the license availability date) would seem to be the relevant license date, including for some musical works already being used by DMPs prior to obtaining a blanket license. For those works being used by a DMP under the authority of NOIs that had been filed with the Copyright Office, the statute provides that such ''notices of intention filed before the enactment date will no longer be effective or provide license authority with respect to covered activities,'' and so the blanket license date may become a new, relevant license date.[213] Musical works may also have been previously used without a license, whether because the use qualified for a copyright exception, limitation, or safe harbor (such as section 512 or the current transition period for good faith efforts made under section 115(d)(10)), or because the use may have been infringing, including in cases where the NOI was not valid or appropriately served. For uses of those works, the effective date of the DMP's blanket license may similarly be the relevant license date for termination purposes. A record of the DMP's repertoire as of that date could be relevant to demonstrate which works were being used at the time the blanket license attached. To accommodate those instances, the rule proposes that each DMP take a snapshot of its sound recording database or otherwise make an archive as it exists immediately prior to the effective date of its blanket license.[214]

Going forward, to accommodate those musical works that subsequently become licensed pursuant to a blanket license after the effective date of a given DMP's blanket license,[215] the rule proposes that each DMP operating under a blanket license keep and retain at least one of three dates for each sound recording embodying such a musical work. First, the rule proposes including the server fixation date sought by the MLC. Because it is not clear, however, that this date is the best or only potential proxy for the relevant license date, the rule also proposes two other date options as reasonable proxies for the relevant license date: The date of the grant first authorizing the DMP's use of the sound recording and the date on which the DMP first obtains the sound recording.[216] Permitting multiple reasonable options may also help alleviate any particular operational burdens that may exist with respect to a DMP being required to track the server date specifically. The Office seeks comment specifically on this aspect of the proposed rule.

The rule proposes that the required information described above need not be reported to the MLC in monthly reports of usage. Rather, the Office proposes that such information be kept by the DMP in its records of use, which must be made available to the MLC. These particular records would be subject to the same five-year retention period proposed for other records, but since they may be pertinent to administering the blanket license decades later, the DMP would be required to provide the MLC with at least 90 days' notice and an opportunity to claim and retrieve the records before they can be destroyed or discarded.

It generally seems reasonable to expect that DMPs would track dates relevant to the licensing of sound recordings, and in the context of the blanket license, which was specifically adopted to increase transparency and better ensure that copyright owners receive their due royalties, it seems particularly reasonable to require DMPs to provide information that may bear on termination issues that are potentially clouded by the creation of the blanket license. The Office recognizes that this particular area is one of the more complicated ones in this proceeding, and additional comments are especially welcome on this topic.

Content of annual reports of usage. In general accord with the MLC's proposal, the Office proposes that annual reports contain cumulative information for the applicable fiscal year, broken down by month and by activity and offering, including the total royalty payable, the total sum paid, the total adjustments made, the total number of payable units, and to the extent applicable to calculating the royalties owed, total service provider revenue, total costs of content, total performance royalty deductions, and total subscribers.[217] Receiving these totals and having them broken down this way seems beneficial to the MLC in confirming proper royalties, while not unreasonably burdening DMPs, who would not have to re-provide all of the information contained in the monthly reports covered by the annual reporting period.

Format and delivery. The Office proposes, in accord with the MLC's proposal, that separate monthly reports of usage must be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities, and that an annual report must be delivered for each year during which at least one monthly report was required to be delivered.[218]

The Office proposes that reports of usage must be delivered to the MLC in

[212] *See id.* at 115(d)(9)(A)(''On the license availability date, a blanket license shall, without any interruption in license authority enjoyed by such digital music provider, be automatically substituted for and supersede any existing compulsory license previously obtained under this section by the digital music provider from a copyright owner to engage in 1 or more covered activities with respect to a musical work.'').

[213] *See id.* at 115(d)(9)(D)(ii).

[214] *Cf.* Music Reports Initial at 3 (proposing that DMPs be required in their NOLs ''to include lists of sound recordings they make available to the public'').

[215] *See* 17 U.S.C. 115(d)(1)(B)(i) (''A blanket license . . . covers all musical works (or shares of such works) available for compulsory licensing under this section for purposes of engaging in covered activities, except as provided in subparagraph (C) [discussing voluntary licenses and individual download licenses].''). *Cf.* U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 2310.3(C)(3) (3d ed. 2017) (''[A] transfer that predates the existence of the copyrighted work cannot be effective (and therefore cannot be 'executed') until the work of authorship (and the copyright) come into existence.'').

[216] Indeed, in many cases the Office assumes these three dates would likely be very close in time, and perhaps even be identical.

[217] *See* MLC Reply App. C at 13–14.

[218] *See id.* at 16.

a machine-readable format that is compatible with the information technology systems of the MLC as reasonably determined by the MLC, which in turn must take into consideration relevant industry standards and the potential for different degrees of sophistication among DMPs. In accord with both the MLC and DLC proposals, the Office does not propose to provide more detailed requirements in the regulations, in order to leave flexibility as to the precise standards and formats.[219] For this reason, the Office is not inclined to require that reporting must specifically utilize DDEX, as proposed by some [220]—though the Office notes that the MLC plans to support DDEX for reports of usage.[221] The Office further proposes to specifically require the MLC to offer at least two options, where one is dedicated to smaller DMPs that may not be reasonably capable of complying with the requirements that the MLC may see fit to adopt for larger DMPs. This would help ensure that all those qualifying for the blanket license can make use of it as a practical matter.[222] The Office invites comment on this aspect of the proposed rule.

To maintain appropriate flexibility, the Office also proposes that royalty payments similarly must be delivered in such manner and form as the MLC may reasonably determine. The Office further proposes a mechanism by which the MLC may modify its formatting and delivery requirements after providing appropriate notice to DMPs. The rule proposes an extended notice period for certain significant changes because of the level of effort that could potentially be involved for a DMP to comply.[223]

The Office also proposes a mechanism by which a DMP may be excused from default under the blanket license and any incurred late fees because of an untimely delivered report or payment where the reason for the untimeliness is either the MLC's fault or results from an issue with the MLC's applicable IT systems. This seems like a reasonable and equitable accommodation where DMPs are statutorily required to rely on the MLC and its systems to satisfy certain obligations.

Certifications. The Office proposes applying the current certification requirements in 37 CFR 210.16(f) and 210.17(f) for monthly and annual statements of account under the non-blanket section 115 license to monthly and annual reports of usage under the blanket license.[224] The current certification requirements were adopted in 2014 after careful consideration by the Office,[225] and the Office is disinclined to relitigate the details of these provisions unless presented with a strong showing that they are unworkable either because of something specifically to do with the changes made by the MMA or some other significant industry change that occurred after they were adopted.

Content of reports of adjustment. In general accord with both the MLC and DLC proposals, the Office proposes that reports of adjustment contain the following information: (1) An identification of the previously delivered monthly or annual report(s) being adjusted; (2) the specific change(s) to such report(s), including the monetary amount of the adjustment and a detailed description of any changes to any of the inputs upon which computation of the payable royalties depends, along with appropriate step-by-step calculations; (3) the particular sound recordings and uses to which the adjustment applies; and (4) a description of the reason(s) for the adjustment.[226] The proposed rule is also in general accord with the MLC and DLC proposals with respect to the mechanisms to account for overpayment and underpayment of royalties: an underpayment will need to accompany delivery of the report of adjustment, while an overpayment will be credited to the DMP's account by the MLC.[227] These requirements strike the Office as reasonable, and the proposed content should provide the MLC with sufficient information to confirm the adjustment and properly account for it to copyright owners.

Voluntary agreements to alter process. The Office tentatively agrees with both the MLC and DLC that it would be beneficial to permit individual DMPs and the MLC to agree to vary or supplement the particular reporting procedures adopted by the Office—such as the specific mechanics relating to adjustments or invoices and response files.[228] This would permit a degree of flexibility to help address the specific needs of a particular DMP. The Office proposes two caveats to this proposal to safeguard copyright owner interests because they would not be party to any such agreements. First, any voluntarily agreed-to changes could not materially prejudice copyright owners owed royalties under the blanket license. Second, the procedures surrounding the certification requirements would not be alterable because they serve as an important check on the DMPs that is ultimately to the benefit of copyright owners.

Documentation and records of use. The rule proposes, in accord with the MLC's proposal, to generally carry forward the current rule under the non-blanket section 115 license, whereby DMPs would be required to keep and retain all records and documents necessary and appropriate to support fully all of the information set forth in their reports of usage for a period of at least five years from the date of delivery of the particular report.[229] The Office is not inclined to shorten the retention period to three years as the DLC proposes [230] given that the Office in 2014 found it appropriate to extend the period from three years to five years.[231] If anything, the Office may consider extending the retention period to seven years to align with the statutory recordkeeping requirements the MMA places on the MLC.[232] The Office is also not inclined to adopt the DLC's proposal that recordkeeping requirements be subject to each DMP's ''generally applicable privacy and data retention policies,'' and be limited merely to the ''data included in'' the report of usage.[233] That proposal is a step in the wrong direction with respect to transparency.[234] In accordance with the MMA's requirement that records of use be ''made available to the [MLC] by [DMPs],'' the rule proposes that the

[219] *See* MLC Initial at 20; MLC Reply at 21, App. C at 16; DLC Initial at 15; DLC Reply at 21, Add. A–8; *see also* SoundExchange Initial at 16.

[220] *See* A2IM & RIAA Reply at 11; Jessop Reply at 2.

[221] MLC Reply at 21–22, 35.

[222] *See id.* at 21–22 (''While the MLC supports the use of [the DDEX] format . . . it is mindful of the varying data formats used by DMPs with varying resources.''); DLC Reply at 21 (stating that the regulations must ''ensure that the full range of licensees will be able to report their usage to the MLC without substantial upfront burdens'').

[223] The Office's proposed rule is somewhat similar to the MLC's proposal for changing data formats or standards in the context of the musical works database. *See* MLC Reply App. F at 22.

[224] *See* MLC Reply App. C at 15 (proposing retention of current monthly certification); DLC Reply Add. at A–8 (proposing a monthly certification that is substantially similar to one of the current monthly certification options); Music Reports Initial at 13, 16–17 (proposing retention of one of the current monthly certification options and one of the current annual certification options).

[225] *See* 79 FR 56190.

[226] *See* DLC Reply Add. at A–10; MLC Reply App. C at 14.

[227] *See* DLC Reply Add. at A–10; MLC Reply App. C at 14.

[228] *See* DLC Reply Add. at A–11; MLC Reply App. C at 17.

[229] *See* MLC Reply App. C at 16; 37 CFR 210.18.

[230] *See* DLC Reply at 23, Add. A–11.

[231] *See* 79 FR at 56205; *see also* MLC *Ex Parte* Letter #2 at 5 (''[T]he three-year audit period look back does not mean that documents dated more than three years earlier are not relevant to audits.'').

[232] *See* 17 U.S.C. 115(d)(3)(M)(i).

[233] *See* DLC Reply Add. at A–11.

[234] *See* MLC Reply at 25–26 (''Each DMP should not be permitted to self-determine its recordkeeping requirements.'').

MLC be entitled to reasonable access to these records and documents upon reasonable request, subject to any applicable confidentiality rules the Office may adopt (and the Office has concurrently published a notice of proposed rulemaking regarding confidentiality issues).[235]

As noted above, the Office is proposing to clarify its recordkeeping rules by enumerating several nonexclusive examples of the types of records DMPs are obligated to retain and make available to the MLC. The Office continues to generally agree with the ''minimalist approach'' it took in 2014 with respect to importing details from the CRJs' rates and terms regulations in 37 CFR part 385, and therefore the Office is not inclined to include the level of detail contained in the MLC's comments.[236] Rather, the Office proposes to more broadly articulate requirements encompassing what the MLC seeks. For example: Records accounting for non-play and other non-royalty-bearing DPDs, records of promotional and free trial uses required to be maintained under part 385, records describing each of the DMP's activities or offerings in sufficient detail to reasonably demonstrate which activities or offerings they are under part 385 and which rates and terms apply to them, records with sufficient information to reasonably demonstrate whether service revenue and total cost of content are properly calculated in accordance with part 385, records with sufficient information to reasonably demonstrate whether and how any royalty floor under part 385 does or does not apply, and records with such other information as is necessary to reasonably support and confirm all usage and calculations contained in each report of usage, including relevant information about subscriptions, bundles, devices, discount plans, and subscribers.

Each DMP operating under the blanket license will need to know this information (to the extent applicable to its services), and so the Office expects it should not be burdensome to retain and make available corresponding records.[237] While described in more generalized terms than proposed by the MLC, the Office recognizes that the above list is still fairly tailored to the CRJs' *Phonorecords III* determination; the Office will be prepared to revise these examples as necessary to align with such royalty rates and terms as the CRJs may subsequently adopt.

D. Reports of Usage—Significant Nonblanket Licensees

As discussed in the notification of inquiry, SNBLs are also required to deliver reports of usage to the MLC.[238] Although the Office asked ''how such reports may differ from the reports filed by digital music providers under the blanket license,'' the comments received in response were fairly sparse.[239] The MLC argues that reports of usage for SNBLs should be essentially the same as those of DMPs operating under the blanket license.[240] While the MLC concedes various differences between blanket licensees and SNBLs, it asserts that it needs the same information because the MLC must (1) administer the process by which unclaimed royalties are to be distributed to copyright owners identified in the records of the MLC based on market share of usage under both statutory and voluntary licenses, and (2) administer collections of the administrative assessment paid by both blanket licensees and SNBLs to fund the MLC.[241] The DLC argues that SNBL reports should be different and need not contain as much information because ''they do not need to provide information related to calculation or payment of royalties.'' [242] The DLC's proposal for SNBLs omits items contained in its proposal for blanket licensees, such as royalty calculation data, estimates, adjustments, processing, and records of use.[243] The DLC does not directly respond to the MLC's assertions. Music Reports proposes that blanket licensee and SNBL reports be substantially the same, except that SNBL reports need not contain any royalty calculation information.[244]

The statutory requirements for blanket licensees and SNBLs differ in a number of material ways. Most notably, SNBLs do not operate under the blanket license and do not pay statutory royalties to the MLC. Moreover, royalties paid under voluntary licenses are generally calculated pursuant to those private agreements, rather than being tied to particular rates and terms established by the CRJs in 37 CFR part 385. While blanket licensees must deliver reports of usage under section 115(d)(4)(A), SNBLs are ''not obligated to provide reports of usage reflecting covered activities under subsection (d)(4)(A),'' but rather report under section 115(d)(6)(A)(ii).[245] While that provision states that SNBL reports of usage are to ''contain[ ] the information described in paragraph (4)(A)(ii),'' the other requirements of section 115(d)(4), such as with respect to reporting in accordance with section 115(c)(2)(I), formatting, adjustments, and records of use, do not expressly apply.[246] By not being required to report in accordance with section 115(c)(2)(I), SNBLs are not required to deliver CPA-certified annual reports.[247] SNBLs are also not subject to data collection efforts under section 115(d)(4)(B) or audits under section 115(d)(4)(D).

With these observations in mind, it seems reasonable to fashion the proposed rule for SNBL reports of usage as an abbreviated version of the reporting provided by blanket licensees. The proposed rule for SNBLs generally tracks the proposed rule for blanket licensees, but makes several changes, somewhat along the lines of the DLC's proposal. For example, provisions about estimates, processing, and records of use are omitted. The proposed rule also omits an annual reporting requirement. In contrast to the DLC's proposal, the Office does, however, propose to require SNBLs to report their payable royalties for covered activities under relevant voluntary licenses and individual download licenses, but without reporting any underlying calculations. The proposed rule also contains an adjustments provision so that SNBLs have a mechanism to update anything if needed, such as if a play count error is discovered later on.

In light of the particularly thin record on SNBLs, the Office encourages further comment on these issues to better inform the rulemaking process. For example, do other commenters agree with the MLC that the main purposes of SNBL reporting are to assist the MLC in distributing unclaimed royalties and collecting the administrative assessment? If commenters believe that SNBL reporting should serve other purposes (for example, assisting the MLC's overall matching efforts), they should identify those additional aims, along with any adjustments to the information the rule proposes to be reported. Noting that the MLC must

[235] *See* 17 U.S.C. 115(d)(4)(A)(iii), (iv)(I); U.S. Copyright Office, Notice of Proposed Rulemaking, *Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator,* Dkt. No. 2020–7, published elsewhere in this issue of the **Federal Register**.

[236] *See* 79 FR at 56193.

[237] *See* DLC *Ex Parte* Letter #3 at 3 (noting the DLC's openness to this proposal).

[238] 84 FR at 49971.

[239] *See id.*

[240] MLC Initial at 20–21; *see* MLC Reply App. C.

[241] *See* MLC Initial at 10–11, 20–21; MLC Reply at 21.

[242] DLC Initial at 16; *see also* DLC Reply at 23.

[243] *Compare* DLC Reply Add. at A–6–11 *with id.* at A–12–14.

[244] Music Reports Initial at 4.

[245] *See* 17 U.S.C. 115(e)(31).

[246] *See id.* at 115(d)(6)(A)(ii).

[247] *See id.* at 115(c)(2)(I) (only requiring such reporting for ''compulsory license[s]'').

distribute unclaimed accrued royalties ''to copyright owners identified in the records of the collective,'' the Office also seeks comment regarding whether and to what extent the MLC anticipates incorporating SNBL-supplied information into its public database.[248]

Further, the Office solicits comment regarding whether the proposed rule appropriately prescribes reporting of information relevant to the MLC's tasks in distributing unclaimed royalties and collecting the administrative assessment. The Office specifically seeks comment as to what extent the information sought by the MLC is relevant to the administrative assessment, noting that the method for allocating the assessment among blanket licensees and SNBLs adopted by the CRJs is based solely on ''the *number* of unique and royalty-bearing sound recordings *used* per month . . . in Section 115 covered activities.'' [249] Similarly, the Office welcomes comment regarding whether the proposed rule provides adequate (or excessive) information to the MLC for purposes of the MLC calculating market share for distributing unclaimed royalties.[250] As noted above, the Office will separately consider any regulatory activity related to the distribution of such royalties in connection with its ongoing related policy study.

III. Subjects of Inquiry

The proposed rule is designed to reasonably implement a number of regulatory duties assigned to the Copyright Office under the MMA and facilitate the MLC's administration of the blanket licensing system. The Office solicits additional public comment on all aspects of the proposed rule.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 210 as follows:

[248] *Id.* at 115(d)(3)(J).

[249] *See* 37 CFR 390.1 (defining ''Unique Sound Recordings Count'') (emphasis added).

[250] For example, the MLC's proposed language seeks information specific to the part 385 calculations. Does the MLC seek to take SNBL usage data and apply the part 385 royalty rate calculations used for blanket licensees as part of determining a transparent and equitable manner of distribution?

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart A [Removed]

■ 2. Remove subpart A.

Subpart B [Redesignated as Subpart A] and §§ 210.11 Through 210.21 [Redesignated as §§ 210.1 Through 210.11]

■ 3. Redesignate subpart B as subpart A and, in newly redesignated subpart A, §§ 210.11 through 210.21 are redesignated as §§ 210.1 through 210.11.

Subpart A [Amended]

■ 4. In newly redesignated subpart A:
■ a. Remove ''§ 210.12'' and add in its place ''§ 210.2'';
■ b. Remove ''§ 210.15'' and add in its place ''§ 210.5'';
■ c. Remove ''§ 210.16'' and add in its place ''§ 210.6'';
■ d. Remove ''§ 210.17'' and add in its place ''§ 210.7''; and
■ e. Remove ''§ 210.21'' and add in its place ''§ 210.11''.
■ 5. Amend newly redesignated § 210.1 by adding a sentence after the first sentence to read as follows:

§ 210.1 General.

* * * Rules governing notices of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works are located in § 201.18. * * *

§§ 210.12 through 210.20 [Added and Reserved]

■ 6. Add reserve §§ 210.12 through 210.20.
■ 7. Add a new subpart B to read as follows:

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

Sec.
210.21 General.
210.22 Definitions.
210.23 Designation of the mechanical licensing collective and digital licensee coordinator.
210.24 Notices of blanket license.
210.25 Notices of nonblanket activity.
210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.
210.27 Reports of usage and payment for blanket licensees.
210.28 Reports of usage for significant nonblanket licensees.

§ 210.21 General.

This subpart prescribes rules for the compulsory blanket license to make and distribute digital phonorecord deliveries of nondramatic musical works pursuant to 17 U.S.C. 115(d), including rules for digital music providers, significant nonblanket licensees, the mechanical licensing collective, and the digital licensee coordinator.

§ 210.22 Definitions.

For purposes of this subpart:

(a) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 115(e).

(b) A *blanket licensee* is a digital music provider operating under a blanket license.

(c) The term *DDEX* means Digital Data Exchange, LLC.

(d) The term *GAAP* means U.S. Generally Accepted Accounting Principles, except that if the U.S. Securities and Exchange Commission permits or requires entities with securities that are publicly traded in the U.S. to employ International Financial Reporting Standards, as issued by the International Accounting Standards Board, or as accepted by the Securities and Exchange Commission if different from that issued by the International Accounting Standards Board, in lieu of Generally Accepted Accounting Principles, then an entity may employ International Financial Reporting Standards as ''GAAP'' for purposes of this section.

(e) The term *IPI* means interested parties information code.

(f) The term *ISNI* means international standard name identifier.

(g) The term *ISRC* means international standard recording code.

(h) The term *ISWC* means international standard musical work code.

(i) The term *producer* means the primary person(s) contracted by and accountable to the content owner for the task of delivering the sound recording as a finished product.

(j) The term *UPC* means universal product code.

§ 210.23 Designation of the mechanical licensing collective and digital licensee coordinator.

The following entities are designated pursuant to 17 U.S.C. 115(d)(3)(B) and (d)(5)(B). Additional information regarding these entities is available on the Copyright Office's website.

(a) Mechanical Licensing Collective, Inc., incorporated in Delaware on March

5, 2019, is designated as the mechanical licensing collective; and

(b) Digital Licensee Coordinator, Inc., incorporated in Delaware on March 20, 2019, is designated as the digital licensee coordinator.

§ 210.24 Notices of blanket license.

(a) *General.* This section prescribes rules under which a digital music provider completes and submits a notice of license to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(2)(A) for purposes of obtaining a statutory blanket license.

(b) *Form and content.* A notice of license shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the digital music provider and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the digital music provider is engaging, or seeks to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the digital music provider. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the digital music provider where an individual responsible for managing the blanket license can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the digital music provider's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the digital music provider's eligibility for a blanket license and to provide reasonable notice to the mechanical licensing collective, copyright owners, and songwriters of the manner in which the digital music provider is engaging, or seeks to engage, in any covered activity pursuant to the blanket license. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the digital music provider has a good-faith belief, informed by review of relevant law and regulations, that it:

(A) Satisfies all requirements to be eligible for a blanket license, including that it satisfies the eligibility criteria to be considered a digital music provider pursuant to 17 U.S.C. 115(e)(8); and

(B) Is, or will be before the date of initial use of musical works pursuant to the blanket license, able to comply with all payments, terms, and responsibilities associated with the blanket license.

(ii) A statement that where the digital music provider seeks or expects to engage in any activity identified in its notice of license, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the digital music provider's service(s), or expected service(s), and the manner in which it uses, or seeks to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the digital music provider is, or seeks to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the digital music provider offers, or seeks to offer, as part of its covered activities (the digital music provider may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Discounted, but not free-to-the-user, services.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the digital music provider wishes to provide.

(6) The date, or expected date, of initial use of musical works pursuant to the blanket license.

(7) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(8) A description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). This description should be provided as an addendum to the rest of the notice of license to help preserve any confidentiality it may be entitled to under regulations adopted by the Copyright Office. Such description shall be sufficient if it includes at least the following information:

(i) An identification of each of the digital music provider's services, including by reference to any applicable types of activities or offerings that may be defined in part 385 of this title, through which musical works are, or are expected to be, used pursuant to any such voluntary license or individual download license. If such a license pertains to all of the digital music provider's applicable services, it may state so without identifying each service.

(ii) The start and end dates.

(iii) The musical work copyright owner, identified by name and any known and appropriate unique identifiers, and appropriate contact information for the musical work copyright owner or for an administrator or other representative who has entered into an applicable license on behalf of the relevant copyright owner.

(iv) A satisfactory identification of any applicable catalog exclusions.

(v) At the digital music provider's option, and in lieu of providing the information listed in paragraph (b)(8)(iv) of this section, a list of all covered musical works, identified by appropriate unique identifiers.

(c) *Certification and signature.* The notice of license shall be signed by an appropriate duly authorized officer or representative of the digital music provider. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of license to the mechanical licensing collective on behalf of the digital music provider and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Except as provided by 17 U.S.C. 115(d)(9)(A), to obtain a blanket license, a digital music provider must submit a notice of license to the mechanical licensing collective. Notices of license shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of license. Upon submitting a notice of license to the mechanical licensing collective, a digital music provider shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt. The mechanical

licensing collective shall send any rejection of a notice of license to both the street address and email address provided in the notice.

(e) *Harmless errors.* Errors in the submission or content of a notice of license that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective to reject a notice or terminate a blanket license. This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A digital music provider may submit an amended notice of license to cure any deficiency in a rejected notice pursuant to 17 U.S.C. 115(d)(2)(A). A digital music provider operating under a blanket license must submit a new notice of license within 45 calendar days after any of the information required by paragraphs (b)(1) through (6) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of license submitted by a digital music provider. Where the information required by paragraph (b)(8) of this section has changed, instead of submitting an amended notice of license, the digital music provider must promptly deliver updated information to the mechanical licensing collective in an alternative manner reasonably determined by the collective. To the extent commercially reasonable, the digital music provider must deliver such updated information at least 30 calendar days before delivering a report of usage covering a period where such license is in effect.

(g) *Transition to blanket licenses.* Where a digital music provider obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and seeks to continue operating under the blanket license, a notice of license must be submitted to the mechanical licensing collective within 45 calendar days after the license availability date. In such cases, the blanket license shall continue to be effective as of the license availability date, rather than the date on which the notice is submitted to the collective.

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a digital music provider that is not required by this section, which the digital music provider may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all blanket licenses that, subject to any applicable confidentiality rules established by the Copyright Office, includes:

(1) All information contained in each notice of license, including amended and rejected notices;

(2) Contact information for all blanket licensees;

(3) The effective dates of all blanket licenses;

(4) For any amended or rejected notice, a clear indication of its amended or rejected status and its relationship to other relevant notices;

(5) For any rejected notice, the collective's reason(s) for rejecting it; and

(6) For any terminated blanket license, a clear indication of its terminated status, the date of termination, and the collective's reason(s) for terminating it.

§ 210.25 Notices of nonblanket activity.

(a) *General.* This section prescribes rules under which a significant nonblanket licensee completes and submits a notice of nonblanket activity to the mechanical licensing collective pursuant to 17 U.S.C. 115(d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(b) *Form and content.* A notice of nonblanket activity shall be prepared in accordance with any reasonable formatting instructions established by the mechanical licensing collective, and shall include all of the following information:

(1) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity.

(2) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(3) A telephone number and email address for the significant nonblanket licensee where an individual responsible for managing licenses associated with covered activities can be reached.

(4) Any website(s), software application(s), or other online locations(s) where the significant nonblanket licensee's applicable service(s) is/are, or expected to be, made available.

(5) A description sufficient to reasonably establish the licensee's qualifications as a significant nonblanket licensee and to provide reasonable notice to the mechanical licensing collective, digital licensee coordinator, copyright owners, and songwriters of the manner in which the significant nonblanket licensee is engaging, or expects to engage, in any covered activity. Such description shall be sufficient if it includes at least the following information:

(i) A statement that the significant nonblanket licensee has a good-faith belief, informed by review of relevant law and regulations, that it satisfies all requirements to qualify as a significant nonblanket licensee under 17 U.S.C. 115(e)(31).

(ii) A statement that where the significant nonblanket licensee expects to engage in any activity identified in its notice of nonblanket activity, it has a good-faith intention to do so within a reasonable period of time.

(iii) A general description of the significant nonblanket licensee's service(s), or expected service(s), and the manner in which it uses, or expects to use, phonorecords of nondramatic musical works.

(iv) Identification of each of the following digital phonorecord delivery configurations the significant nonblanket licensee is, or expects to be, making as part of its covered activities:

(A) Permanent downloads.

(B) Limited downloads.

(C) Interactive streams.

(D) Noninteractive streams.

(E) Other configurations, accompanied by a brief description.

(v) Identification of each of the following service types the significant nonblanket licensee offers, or expects to offer, as part of its covered activities (the significant nonblanket licensee may, but is not required to, associate specific service types with specific digital phonorecord delivery configurations or with particular types of activities or offerings that may be defined in part 385 of this title):

(A) Subscriptions.

(B) Bundles.

(C) Lockers.

(D) Discounted, but not free-to-the-user, services.

(E) Free-to-the-user services.

(F) Other applicable services, accompanied by a brief description.

(vi) Any other information the significant nonblanket licensee wishes to provide.

(6) Acknowledgement of whether the significant nonblanket licensee is operating under one or more individual download licenses.

(7) The date of initial use of musical works pursuant to any covered activity.

(8) Identification of any amendment made pursuant to paragraph (f) of this section, including the submission date of the notice being amended.

(c) *Certification and signature.* The notice of nonblanket activity shall be signed by an appropriate duly authorized officer or representative of the significant nonblanket licensee. The signature shall be accompanied by the name and title of the person signing the notice and the date of the signature. The notice may be signed electronically. The person signing the notice shall certify that he or she has appropriate authority to submit the notice of nonblanket activity to the mechanical licensing collective on behalf of the significant nonblanket licensee and that all information submitted as part of the notice is true, accurate, and complete to the best of the signer's knowledge, information, and belief, and is provided in good faith.

(d) *Submission, fees, and acceptance.* Notices of nonblanket activity shall be submitted to the mechanical licensing collective in a manner reasonably determined by the collective. No fee may be charged for submitting notices of nonblanket activity. Upon submitting a notice of nonblanket activity to the mechanical licensing collective, a significant nonblanket licensee shall be provided with a prompt response from the collective confirming receipt of the notice and the date of receipt.

(e) *Harmless errors.* Errors in the submission or content of a notice of nonblanket activity that do not materially affect the adequacy of the information required to serve the purposes of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the notice invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (e) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Amendments.* A significant nonblanket licensee must submit a new notice of nonblanket activity with its report of usage that is next due after any of the information required by paragraphs (b)(1) through (7) of this section contained in the notice on file with the mechanical licensing collective has changed. An amended notice shall indicate that it is an amendment and shall contain the submission date of the notice being amended. The mechanical licensing collective shall retain copies of all prior notices of nonblanket activity submitted by a significant nonblanket licensee.

(g) *Transition to blanket licenses.* Where a digital music provider that would otherwise qualify as a significant nonblanket licensee obtains a blanket license automatically pursuant to 17 U.S.C. 115(d)(9)(A) and does not seek to operate under the blanket license, if such licensee submits a valid notice of nonblanket activity within 45 calendar days after the license availability date in accordance with 17 U.S.C. 115(d)(6)(A)(i), such licensee shall not be considered to have ever operated under the statutory blanket license until such time as the licensee submits a valid notice of license pursuant to 17 U.S.C. 115(d)(2)(A).

(h) *Additional information.* Nothing in this section shall be construed to prohibit the mechanical licensing collective from seeking additional information from a significant nonblanket licensee that is not required by this section, which the significant nonblanket licensee may voluntarily elect to provide, provided that the collective may not represent that such information is required to comply with the terms of this section.

(i) *Public access.* The mechanical licensing collective shall maintain a current, free, and publicly accessible and searchable online list of all significant nonblanket licensees that, subject to any applicable confidentiality rules established by the Copyright Office, includes:

(1) All information contained in each notice of nonblanket activity, including amended notices;

(2) Contact information for all significant nonblanket licensees;

(3) The date of receipt of each notice of nonblanket activity; and

(4) For any amended notice, a clear indication of its amended status and its relationship to other relevant notices.

§ 210.26 Data collection and delivery efforts by digital music providers and musical work copyright owners.

(a) *General.* This section prescribes rules under which digital music providers and musical work copyright owners shall engage in efforts to collect and provide information to the mechanical licensing collective that may assist the collective in matching musical works to sound recordings embodying those works and identifying and locating the copyright owners of those works.

(b) *Digital music providers.* (1) Pursuant to 17 U.S.C. 115(d)(4)(B), in addition to obtaining sound recording names and featured artists and providing them in reports of usage, a digital music provider operating under a blanket license shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service(s) of such digital music provider the following information for each such sound recording embodying a musical work:

(i) The sound recording copyright owner(s), producer(s), ISRC(s), and any other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody as may be required by the Copyright Office to be included in reports of usage provided to the mechanical licensing collective by digital music providers.

(ii) With respect to the musical work embodied in such sound recording, the songwriter(s), publisher name(s), ownership share(s), ISWC(s), and any other musical work authorship or ownership information as may be required by the Copyright Office to be included in reports of usage provided to the mechanical licensing collective by digital music providers.

(2) As used in paragraph (b)(1) of this section, ''good-faith, commercially reasonable efforts to obtain'' shall include performing all of the following acts, subject to paragraph (b)(3) of this section:

(i) Where the digital music provider has not obtained from applicable sound recording copyright owners or other licensors of sound recordings (or their representatives) all of the information listed in paragraph (b)(1) of this section, or where any such information was obtained before [effective date of final rule] and is no longer in such form that the digital music provider can use it to comply with paragraph (b)(2)(iii) of this section, the digital music provider shall have an ongoing and continuous obligation to, at least on a quarterly basis, request in writing such information from applicable sound recording copyright owners and other licensors of sound recordings. Such requests may be directed to a representative of any such owner or licensor.

(ii) With respect to any of the information listed in paragraph (b)(1) of this section that the digital music provider has obtained from applicable sound recording copyright owners or other licensors of sound recordings (or their representatives), the digital music provider shall have an ongoing and continuous obligation to, on a periodic basis or as otherwise requested by the mechanical licensing collective, request in writing from such owners or licensors any updates to any such information. Such requests may be directed to a representative of any such owner or licensor.

(iii) Any information listed in paragraph (b)(1) of this section, including any updates to such information, provided to the digital music provider by sound recording copyright owners or other licensors of sound recordings (or their representatives) shall be delivered to the mechanical licensing collective in reports of usage in accordance with § 210.27(e).

(3) Notwithstanding paragraph (b)(2) of this section, a digital music provider may satisfy its obligations under 17 U.S.C. 115(d)(4)(B) with respect to a particular sound recording by arranging, or collectively arranging with others, for the mechanical licensing collective to receive the information listed in paragraph (b)(1) of this section from an authoritative source, such as the collective designated by the Copyright Royalty Judges to collect and distribute royalties under the statutory licenses established in 17 U.S.C. 112 and 114, provided that such digital music provider does not know such source to lack such information for the relevant sound recording. Satisfying the requirements of 17 U.S.C. 115(d)(4)(B) in this manner does not excuse a digital music provider from having to report sound recording and musical work information in accordance with § 210.27(e).

(4) The requirements of paragraph (b) of this section are without prejudice to what a court of competent jurisdiction may determine constitutes good-faith, commercially reasonable efforts for purposes of eligibility for the limitation on liability described in 17 U.S.C. 115(d)(10).

(c) *Musical work copyright owners.* (1) Pursuant to 17 U.S.C. 115(d)(3)(E)(iv), each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(2) As used in paragraph (c)(1) of this section, ''information regarding the names of the sound recordings'' shall include, for each applicable sound recording:

(i) Sound recording name(s), including any alternative or parenthetical titles for the sound recording;

(ii) Featured artist(s); and

(iii) ISRC(s).

(3) As used in paragraph (c)(1) of this section, ''commercially reasonable efforts to deliver'' shall include:

(i) Periodically monitoring the musical works database for missing and inaccurate sound recording information relating to applicable musical works; and

(ii) After finding any of the information listed in paragraph (c)(2) of this section to be missing or inaccurate as to any applicable musical work, promptly delivering complete and correct sound recording information to the mechanical licensing collective, by any means reasonably available to the copyright owner, if the information is known to or otherwise within the possession, custody, or control of the copyright owner.

§ 210.27 Reports of usage and payment for blanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage and payment of royalties for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a digital music provider operating under a blanket license pursuant to 17 U.S.C. 115(d). A blanket licensee shall report and pay royalties to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(c)(2)(I), 17 U.S.C. 115(d)(4)(A), and this section. A blanket licensee shall also report to the mechanical licensing collective on an annual basis in accordance with 17 U.S.C. 115(c)(2)(I) and this section. A blanket licensee may make adjustments to its reports of usage and royalty payments in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage,* unless otherwise specified, refers to all reports of usage required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by significant nonblanket licensees under 17 U.S.C. 115(d)(6)(A)(ii) and § 210.28.

(2) A *monthly report of usage* is a report of usage accompanying monthly royalty payments identified in 17 U.S.C. 115(c)(2)(I) and 17 U.S.C. 115(d)(4)(A), and required to be delivered by a blanket licensee to the mechanical licensing collective under the blanket license.

(3) An *annual report of usage* is a statement of account identified in 17 U.S.C. 115(c)(2)(I), and required to be delivered by a blanket licensee annually to the mechanical licensing collective under the blanket license.

(4) A *report of adjustment* is a report delivered by a blanket licensee to the mechanical licensing collective under the blanket license adjusting one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Monthly Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used by the blanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For any voluntary license or individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(6) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section:

(i) The total royalty payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, and including detailed information regarding how the royalty was computed, with such total royalty payable broken down by each applicable activity or offering including as may be defined in part 385 of this title; and

(ii) The amount of late fees, if applicable, included in the payment associated with the monthly report of usage.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) *Calculations.* (i) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, a detailed and step-by-step accounting of the calculation of royalties payable by the blanket licensee under the blanket license under applicable provisions of this section and part 385 of this title, sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(ii) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, all information necessary for the mechanical licensing collective to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license, and all information necessary to enable the mechanical licensing collective to provide a detailed and step-by-step accounting of the calculation of such royalties under applicable provisions of this section and part 385 of this title, sufficient to allow each applicable copyright owner to assess the manner in which the mechanical licensing collective, using the blanket licensee's information, determined the royalty owed and the accuracy of the royalty calculations, including but not limited to the number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording, whether pursuant to a blanket license, voluntary license, or individual download license.

(2) *Estimates.* (i) Where computation of the royalties payable by the blanket licensee under the blanket license depends on an input that is unable to be finally determined at the time the report of usage is delivered to the mechanical licensing collective and where the reason the input cannot be finally determined is outside of the blanket licensee's control (*e.g.,* as applicable, the amount of applicable public performance royalties and the amount of applicable consideration for sound recording copyright rights), a reasonable estimation of such input, determined in accordance with GAAP, may be used or provided by the blanket licensee. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after being finally determined.

(ii) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, and the blanket licensee is dependent upon the mechanical licensing collective to confirm usage subject to applicable voluntary licenses and individual download licenses, the blanket licensee shall compute the royalties payable by the blanket licensee under the blanket license using a reasonable estimation of the amount of payment for such non-blanket usage to be deducted from royalties that would otherwise be due under the blanket license, determined in accordance with GAAP. Royalty payments based on such estimates shall be adjusted pursuant to paragraph (k) of this section after the mechanical licensing collective confirms such amount to be deducted and notifies the blanket licensee under paragraph (g)(2) of this section. Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the blanket licensee shall not provide an estimate of or deduct such amount in the information delivered to the mechanical licensing collective under paragraph (d)(1)(ii) of this section.

(3) *Good faith.* All information and calculations provided pursuant to paragraph (d) of this section shall be made in good faith and on the basis of the best knowledge, information, and belief of the blanket licensee at the time the report of usage is delivered to the mechanical licensing collective, and subject to any additional accounting and certification requirements under 17 U.S.C. 115 and this section.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the blanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the blanket licensee's public-facing service;

(D) Playing time; and

(E) To the extent acquired by the blanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B), and to the extent practicable:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the blanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of

sound recordings of musical works to engage in covered activities, including pursuant to 17 U.S.C. 115(d)(4)(B), and to the extent practicable:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the blanket licensee, or any corporate parent or subsidiary of the blanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Subject to paragraph (e)(3) of this section, where any of the information called for by paragraph (e)(1) of this section is acquired by the blanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the blanket licensee revises, re-titles, or otherwise edits or modifies the information, it shall be sufficient for the blanket licensee to report either the originally acquired version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, unless one or more of the following scenarios apply, in which case either the unaltered version or both versions must be reported:

(i) If the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.,* DDEX) that is being used by the particular blanket licensee, and either the unaltered version or both versions are required to be reported under such standard or format.

(ii) Either the unaltered version or both versions are reported by the particular blanket licensee pursuant to any voluntary license or individual download license.

(iii) Either the unaltered version or both versions were periodically reported by the particular blanket licensee prior to the license availability date.

(3) Notwithstanding paragraph (e)(2) of this section, a blanket licensee shall not be able to satisfy its obligations under paragraph (e)(1) of this section by reporting a modified version of any information belonging to a category of information that was not periodically revised, re-titled, or otherwise edited or modified by the particular blanket licensee prior to the license availability date, and in no case shall a modified version of any unique identifier (including but not limited to ISRC and ISWC), playing time, or release date be sufficient to satisfy a blanket licensee's obligations under paragraph (e)(1) of this section.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the blanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: DDEX Party Identifier (DPID), LabelName, and PLine. Where a blanket licensee acquires this information in addition to other information identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(5) As used in paragraph (e) of this section, it is *practicable* to provide the enumerated information if:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) Where the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.,* DDEX) that is being used by the particular blanket licensee, it belongs to a category of information required to be reported under such standard or format;

(iii) It belongs to a category of information that is reported by the particular blanket licensee pursuant to any voluntary license or individual download license; or

(iv) It belongs to a category of information that was periodically reported by the particular blanket licensee prior to the license availability date.

(f) *Content of annual reports of usage.* An annual report of usage, covering the full fiscal year of the blanket licensee, shall be clearly and prominently identified as an ''Annual Report of Usage Under Compulsory Blanket License for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The fiscal year covered by the annual report of usage.

(2) The full legal name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities. If the blanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the blanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) The following information, cumulative for the applicable annual reporting period, for each month for each applicable activity or offering including as may be defined in part 385 of this title, and broken down by month and by each such applicable activity or offering:

(i) The total royalty payable by the blanket licensee under the blanket license, computed in accordance with the requirements of this section and part 385 of this title.

(ii) The total sum paid to the mechanical licensing collective under the blanket license, including the amount of any adjustment delivered contemporaneously with the annual report of usage.

(iii) The total adjustment(s) made by any report of adjustment adjusting any monthly report of usage covered by the applicable annual reporting period, including any adjustment made in connection with the annual report of usage as described in paragraph (k)(1) of this section.

(iv) The total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used, whether pursuant to a blanket license, voluntary license, or individual download license.

(v) To the extent applicable to the calculation of royalties owed by the blanket licensee under the blanket license:

(A) Total service provider revenue, as may be defined in part 385 of this title.

(B) Total costs of content, as may be defined in part 385 of this title.

(C) Total deductions of performance royalties, as may be defined in and permitted by part 385 of this title.

(D) Total subscribers, as may be defined in part 385 of this title.

(5) The amount of late fees, if applicable, included in any payment associated with the annual report of usage.

(g) *Processing and timing.* (1) Each monthly report of usage and related royalty payment must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period. Where a monthly report of usage satisfying the requirements of 17 U.S.C. 115 and this section is delivered to the mechanical licensing collective no later than 15 calendar days after the end of the applicable monthly reporting period, the blanket licensee shall be entitled to receive an invoice from the mechanical licensing collective setting forth the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, which shall be broken down by each applicable activity or offering including as may be defined in part 385 of this title.

(2) After receiving a monthly report of usage, the mechanical licensing collective shall engage in the following actions, among any other actions required of it:

(i) The mechanical licensing collective shall engage in efforts to identify the musical works embodied in sound recordings reflected in such report, and the copyright owners of such musical works (and shares thereof).

(ii) The mechanical licensing collective shall engage in efforts to confirm uses of musical works subject to voluntary licenses and individual download licenses, and, if applicable, the corresponding amounts to be deducted from royalties that would otherwise be due under the blanket license.

(iii) Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to confirm proper payment of the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, computed in accordance with the requirements of this section and part 385 of this title, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(iv) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall engage in efforts to compute, in accordance with the requirements of this section and part 385 of this title, the royalties payable by the blanket licensee under the blanket license for the applicable monthly reporting period, after accounting for, if applicable, amounts to be deducted under paragraph (g)(2)(ii) of this section.

(v) Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver such invoice to the blanket licensee no later than 40 calendar days after the end of the applicable monthly reporting period.

(vi) The mechanical licensing collective shall deliver a response file to the blanket licensee if requested by the blanket licensee. Where the blanket licensee is entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee contemporaneously with such invoice. Where the blanket licensee is not entitled to an invoice under paragraph (g)(1) of this section, the mechanical licensing collective shall deliver the response file to the blanket licensee no later than 70 calendar days after the end of the applicable monthly reporting period. In all cases, the response file shall contain such information as is common in the industry to be reported in response files, backup files, and any other similar such files provided to digital music providers by applicable third-party administrators, and shall include the results of the process described in paragraphs (g)(2)(i) through (iv) of this section on a track-by-track and ownership-share basis, with updates to reflect any new results from the previous month.

(3) Each annual report of usage and, if any, related royalty payment must be delivered to the mechanical licensing collective no later than the 20th day of the sixth month following the end of the fiscal year covered by the annual report of usage.

(4) The required timing for any report of adjustment and, if any, related royalty payment shall be as follows:

(i) Where a report of adjustment adjusting a monthly report of usage is not combined with an annual report of usage, as described in paragraph (k)(1) of this section, a report of adjustment adjusting a monthly report of usage must be delivered to the mechanical licensing collective after delivery of the monthly report of usage being adjusted and before delivery of the annual report of usage for the annual period covering such monthly report of usage.

(ii) A report of adjustment adjusting an annual report of usage must be delivered to the mechanical licensing collective no later than 6 months after the occurrence of any of the scenarios specified by paragraph (k)(6) of this section, where such an event necessitates an adjustment. Where more than one scenario applies to the same annual report of usage at different points in time, a separate 6-month period runs for each such triggering event.

(h) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective as reasonably determined by the mechanical licensing collective and set forth on its website, taking into consideration relevant industry standards and the potential for different degrees of sophistication among blanket licensees. The mechanical licensing collective must offer at least two options, where one is dedicated to smaller blanket licensees that may not be reasonably capable of complying with the requirements of a reporting or data standard or format that the mechanical licensing collective may see fit to adopt for larger blanket licensees with more sophisticated operations. Nothing in this section shall be construed as prohibiting the mechanical licensing collective from adopting more than two reporting or data standards or formats.

(2) Royalty payments shall be delivered to the mechanical licensing collective in such manner and form as the mechanical licensing collective may reasonably determine and set forth on its website. A report of usage and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of usage to the payment.

(3) The mechanical licensing collective may modify the requirements it adopts under paragraphs (h)(1) and (2) of this section at any time, provided that advance notice of any such change is reflected on its website and delivered to blanket licensees using the contact information provided in each respective licensee's notice of license. A blanket licensee shall not be required to comply with any such change before the first reporting period ending at least 30 calendar days after delivery of such notice, unless such change is a significant change, in which case, compliance shall not be required before the first reporting period ending at least 6 months after delivery of such notice. For purposes of this paragraph (h)(3), a *significant change* occurs as to a particular blanket licensee where the mechanical licensing collective changes any policy requiring information to be provided under particular reporting or data standards or formats being used by the blanket licensee, or where the mechanical licensing collective has

adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.,* DDEX) that is being used by the blanket licensee and such standard or format is modified by the standard-setting organization. Where delivery of the notice required by this paragraph (h)(3) is attempted but unsuccessful because the contact information in the blanket licensee's notice of license is not current, the grace periods established by this paragraph (h)(3) shall begin to run from the date of attempted delivery.

(4) The mechanical licensing collective shall, by no later than the license availability date, establish an appropriate process by which any blanket licensee may voluntarily make advance deposits of funds with the mechanical licensing collective against which future royalty payments may be charged.

(5) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities. An annual report of usage shall be delivered for each fiscal year during which at least one monthly report of usage was required to have been delivered. An annual report of usage does not replace any monthly report of usage.

(6) Where a blanket licensee attempts to timely deliver a report of usage and/or related royalty payment to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control), if the blanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage and/or related royalty payment to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then the mechanical licensing collective shall act as follows:

(i) The mechanical licensing collective shall fully credit the blanket licensee for any applicable late fee paid by the blanket licensee as a result of the untimely delivery of the report of usage and/or related royalty payment.

(ii) The mechanical licensing collective shall not use the untimely delivery of the report of usage and/or related royalty payment as a basis to terminate the blanket licensee's blanket license.

(i) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee; (2) I have examined this monthly report of usage; and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the blanket licensee, (2) I have prepared or supervised the preparation of the data used by the blanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the blanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly reports of usage that accurately reflect, in all material respects, the blanket licensee's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(6) A certification that the blanket licensee has, for the period covered by the monthly report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(j) *Certification of annual reports of usage.* (1) Each annual report of usage shall be accompanied by:

(i) The name of the person who is signing the annual report of usage on behalf of the blanket licensee.

(ii) A signature, which in the case of a blanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(iii) The date of signature.

(iv) If the blanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person signing the annual report of usage.

(v) The following statement: I am duly authorized to sign this annual report of usage on behalf of the blanket licensee.

(vi) A certification that the blanket licensee has, for the period covered by the annual report of usage, engaged in good-faith, commercially reasonable efforts to obtain information about applicable sound recordings and musical works pursuant to 17 U.S.C. 115(d)(4)(B) and § 210.26.

(2) Each annual report of usage shall also be certified by a licensed certified public accountant. Such certification shall comply with the following requirements:

(i) Except as provided in paragraph (j)(2)(ii) of this section, the accountant shall certify that it has conducted an examination of the annual report of usage prepared by the blanket licensee in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and has rendered an opinion based on such examination that the annual report of usage conforms with the standards in paragraph (j)(2)(iv) of this section.

(ii) If such accountant determines in its professional judgment that the volume of data attributable to a particular blanket licensee renders it impracticable to certify the annual report of usage as required by paragraph (j)(2)(i) of this section, the accountant may instead certify the following:

(A) That the accountant has conducted an examination in accordance with the attestation standards established by the American Institute of Certified Public Accountants of the following assertions by the blanket licensee's management:

(*1*) That the processes used by or on behalf of the blanket licensee, including calculation of statutory royalties, generated annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section; and

(*2*) That the internal controls relevant to the processes used by or on behalf of the blanket licensee to generate annual reports of usage were suitably designed and operated effectively during the

period covered by the annual reports of usage.

(B) That such examination included examining, either on a test basis or otherwise as the accountant considered necessary under the circumstances and in its professional judgment, evidence supporting the management assertions in paragraph (j)(2)(ii)(A) of this section, including data relevant to the calculation of statutory royalties, and performing such other procedures as the accountant considered necessary in the circumstances.

(C) That the accountant has rendered an opinion based on such examination that the processes used to generate the annual report of usage were designed and operated effectively to generate annual reports of usage that conform with the standards in paragraph (j)(2)(iv) of this section, and that the internal controls relevant to the processes used to generate annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage.

(iii) In the event a third party or third parties acting on behalf of the blanket licensee provided services related to the annual report of usage, the accountant making a certification under either paragraph (j)(2)(i) or (ii) of this section may, as the accountant considers necessary under the circumstances and in its professional judgment, rely on a report and opinion rendered by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants that the processes and/or internal controls of the third party or third parties relevant to the generation of the blanket licensee's annual reports of usage were suitably designed and operated effectively during the period covered by the annual reports of usage, if such reliance is disclosed in the certification.

(iv) An annual report of usage conforms with the standards of this paragraph (j) if it presents fairly, in all material respects, the blanket licensee's usage of the copyright owner's musical works under blanket license during the period covered by the annual report of usage, the statutory royalties applicable thereto, and such other data as are relevant to the calculation of statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(v) Each certificate shall be signed by an individual, or in the name of a partnership or a professional corporation with two or more shareholders. The certificate number and jurisdiction are not required if the certificate is signed in the name of a partnership or a professional corporation with two or more shareholders.

(3) If the annual report of usage is delivered electronically, the blanket licensee may deliver an electronic facsimile of the original certification of the annual report of usage signed by the licensed certified public accountant. The blanket licensee shall retain the original certification of the annual report of usage signed by the licensed certified public accountant for the period identified in paragraph (m) of this section, which shall be made available to the mechanical licensing collective upon demand.

(k) *Adjustments.* (1) A blanket licensee may adjust one or more previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, by delivering to the mechanical licensing collective a report of adjustment. A report of adjustment adjusting one or more monthly reports of usage may, but need not, be combined with the annual report of usage for the annual period covering such monthly reports of usage and related payments. In such cases, such an annual report of usage shall also be considered a report of adjustment, and must satisfy the requirements of both paragraphs (f) and (k) of this section.

(2) A report of adjustment, except when combined with an annual report of usage, shall be clearly and prominently identified as a ''Report of Adjustment Under Compulsory Blanket License for Making and Distributing Phonorecords.'' A report of adjustment that is combined with an annual report of usage shall be identified in the same manner as any other annual report of usage.

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly reports of usage or annual reports of usage, including related royalty payments, to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly reports of usage or annual reports of usage, including the monetary amount of the adjustment and a detailed description of any changes to any of the inputs upon which computation of the royalties payable by the blanket licensee under the blanket license depends. Such description shall include a detailed and step-by-step accounting of the calculation of the adjustment sufficient to allow the mechanical licensing collective to assess the manner in which the blanket licensee determined the adjustment and the accuracy of the adjustment. As appropriate, an adjustment may be calculated using estimates permitted under paragraph (d)(2)(i) of this section.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) In the case of an underpayment of royalties, the blanket licensee shall pay the difference to the mechanical licensing collective contemporaneously with delivery of the report of adjustment. A report of adjustment and its related royalty payment may be delivered together or separately, but if delivered separately, the payment must include information reasonably sufficient to allow the mechanical licensing collective to match the report of adjustment to the payment.

(5) In the case of an overpayment of royalties, the mechanical licensing collective shall appropriately credit or offset the excess payment amount and apply it to the blanket licensee's account.

(6) A report of adjustment adjusting an annual report of usage may only be made:

(i) In exceptional circumstances;

(ii) When making an adjustment to a previously estimated input under paragraph (d)(2)(i) of this section;

(iii) Following an audit under 17 U.S.C. 115(d)(4)(D); or

(iv) In response to a change in applicable rates or terms under part 385 of this title.

(7) A report of adjustment adjusting a monthly report of usage must be certified in the same manner as a monthly report of usage under paragraph (i) of this section. A report of adjustment adjusting an annual report of usage must be certified in the same manner as an annual report of usage under paragraph (j) of this section, except that the examination by a certified public accountant under paragraph (j)(2) of this section may be limited to the adjusted material and related recalculation of royalties payable. Where a report of adjustment is combined with an annual report of usage, its content shall be subject to the certification covering the annual report of usage with which it is combined.

(l) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation by reference of facts or information contained in other documents or records.

(m) *Documentation and records of use.* (1) Each blanket licensee shall, for

a period of at least five years from the date of delivery of a report of usage to the mechanical licensing collective, keep and retain in its possession all records and documents necessary and appropriate to support fully the information set forth in such report of usage, including but not limited to the following:

(i) Records and documents accounting for digital phonorecord deliveries that do not constitute plays, constructive plays, or other payable units.

(ii) Records and documents pertaining to any promotional or free trial uses that are required to be maintained under applicable provisions of part 385 of this title.

(iii) Records and documents identifying or describing each of the blanket licensee's applicable activities or offerings including as may be defined in part 385 of this title, including information sufficient to reasonably demonstrate whether the activity or offering qualifies as any particular activity or offering for which specific rates and terms have been established in part 385 of this title, and which specific rates and terms apply to such activity or offering.

(iv) Records and documents with information sufficient to reasonably demonstrate, if applicable, whether service revenue and total cost of content, as those terms may be defined in part 385 of this title, are properly calculated in accordance with part 385 of this title.

(v) Records and documents with information sufficient to reasonably demonstrate whether and how any royalty floor established in part 385 of this title does or does not apply.

(vi) Records and documents containing such other information as is necessary to reasonably support and confirm all usage and calculations contained in the report of usage, including but not limited to, as applicable, relevant information concerning subscriptions, devices and platforms, discount plans (including how eligibility was assessed), bundled offerings (including their constituent components and pricing information), and numbers of end users and subscribers (including unadjusted numbers and numbers adjusted as may be permitted by part 385 of this title).

(vii) Any other records or documents that may be appropriately examined pursuant to an audit under 17 U.S.C. 115(d)(4)(D).

(2) Each blanket licensee shall, for the period described in paragraph (m)(3) of this section, keep and retain in its possession the following additional records and documents:

(i) With respect to each sound recording, that embodies a musical work, first licensed or obtained for use in covered activities by the blanket licensee after the effective date of its blanket license, one or more of the following dates:

(A) The date on which the sound recording is first reproduced by the blanket licensee on its server;

(B) The date on which the blanket licensee first obtains the sound recording; or

(C) The date of the grant first authorizing the blanket licensee's use of the sound recording.

(ii) A record of all sound recordings embodying musical works in its database or similar electronic system as of immediately prior to the effective date of its blanket license.

(3) The records and documents described in paragraph (m)(2) of this section must be kept and retained for a period of at least five years from the relevant date described in paragraph (m)(2) of this section, provided that at least 90 calendar days before destroying or discarding any such records or documents the blanket licensee notifies the mechanical licensing collective in writing and provides an opportunity for the collective to claim and retrieve such records and documents. In no event shall a blanket licensee be required to keep and retain any such records or documents for more than 50 years.

(4) The mechanical licensing collective or its agent shall be entitled to reasonable access to all records and documents described in this paragraph (m) upon reasonable request, subject to any applicable confidentiality rules established by the Copyright Office. Each report of usage must include clear instructions on how to request such access to such records and documents.

(n) *Voluntary agreements with mechanical licensing collective to alter process.* Subject to the provisions of 17 U.S.C. 115, a blanket licensee and the mechanical licensing collective may agree to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraphs (i) and (j) of this section may not be altered by agreement.

§ 210.28 Reports of usage for significant nonblanket licensees.

(a) *General.* This section prescribes rules for the preparation and delivery of reports of usage for the making and distribution of phonorecords of nondramatic musical works to the mechanical licensing collective by a significant nonblanket licensee pursuant to 17 U.S.C. 115(d)(6)(A)(ii). A significant nonblanket licensee shall report to the mechanical licensing collective on a monthly basis in accordance with 17 U.S.C. 115(d)(6)(A)(ii) and this section. A significant nonblanket licensee may make adjustments to its reports of usage in accordance with this section.

(b) *Definitions.* For purposes of this section, in addition to those terms defined in § 210.22:

(1) The term *report of usage,* unless otherwise specified, refers to all reports of usage required to be delivered by a significant nonblanket licensee to the mechanical licensing collective, including reports of adjustment. As used in this section, it does not refer to reports required to be delivered by blanket licensees under 17 U.S.C. 115(d)(4)(A) and § 210.27.

(2) A *monthly report of usage* is a report of usage identified in 17 U.S.C. 115(d)(6)(A)(ii), and required to be delivered by a significant nonblanket licensee to the mechanical licensing collective.

(3) A *report of adjustment* is a report delivered by a significant nonblanket licensee to the mechanical licensing collective adjusting one or more previously delivered monthly reports of usage.

(c) *Content of monthly reports of usage.* A monthly report of usage shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Monthly Report of Usage for Making and Distributing Phonorecords,'' and shall include a clear statement of the following information:

(1) The period (month and year) covered by the monthly report of usage.

(2) The full legal name of the significant nonblanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the significant nonblanket licensee engages in covered activities. If the significant nonblanket licensee has a unique DDEX identifier number, it must also be provided.

(3) The full address, including a specific number and street name or rural route, of the place of business of the significant nonblanket licensee. A post office box or similar designation will not be sufficient except where it is the only address that can be used in that geographic location.

(4) For each sound recording embodying a musical work that is used

by the significant nonblanket licensee in covered activities during the applicable monthly reporting period, a detailed statement, from which the mechanical licensing collective may separate reported information for each applicable activity or offering including as may be defined in part 385 of this title, of all of:

(i) The royalty payment and accounting information required by paragraph (d) of this section; and

(ii) The sound recording and musical work information required by paragraph (e) of this section.

(5) For each voluntary license and individual download license in effect during the applicable monthly reporting period, the information required under § 210.24(b)(8). If this information has been separately provided to the mechanical licensing collective, it need not be contained in the monthly report of usage, provided the report states that the information has been provided separately and includes the date on which such information was last provided to the mechanical licensing collective.

(d) *Royalty payment and accounting information.* The royalty payment and accounting information called for by paragraph (c)(4)(i) of this section shall consist of the following:

(1) The mechanical royalties payable by the significant nonblanket licensee for the applicable monthly reporting period for engaging in covered activities pursuant to each applicable voluntary license and individual download license.

(2) The number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each reported sound recording.

(e) *Sound recording and musical work information.* (1) The following information must be provided for each sound recording embodying a musical work required to be reported under paragraph (c)(4)(ii) of this section:

(i) Identifying information for the sound recording, including but not limited to:

(A) Sound recording name(s), including, to the extent practicable, all known alternative and parenthetical titles for the sound recording;

(B) Featured artist(s);

(C) Unique identifier(s) assigned by the significant nonblanket licensee, if any, including any code(s) that can be used to locate and listen to the sound recording through the significant nonblanket licensee's public-facing service;

(D) Playing time; and

(E) To the extent acquired by the significant nonblanket licensee in connection with its use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(*1*) Sound recording copyright owner(s);

(*2*) Producer(s);

(*3*) ISRC(s);

(*4*) Any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(*i*) Catalog number(s);

(*ii*) UPC(s); and

(*iii*) Unique identifier(s) assigned by any distributor;

(*5*) Version(s);

(*6*) Release date(s);

(*7*) Album title(s);

(*8*) Label name(s);

(*9*) Distributor(s); and

(*10*) Other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody.

(ii) Identifying information for the musical work embodied in the reported sound recording, to the extent acquired by the significant nonblanket licensee in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, and to the extent practicable:

(A) Information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording, including but not limited to:

(*1*) Songwriter(s);

(*2*) Publisher(s) with applicable U.S. rights;

(*3*) Musical work copyright owner(s);

(*4*) ISNI(s) and IPI(s) for each such songwriter, publisher, and musical work copyright owner; and

(*5*) Respective ownership shares of each such musical work copyright owner;

(B) ISWC(s) for the musical work embodied in the sound recording; and

(C) Musical work name(s) for the musical work embodied in the sound recording, including any alternative or parenthetical titles for the musical work.

(iii) Whether the significant nonblanket licensee, or any corporate parent or subsidiary of the significant nonblanket licensee, is a copyright owner of the musical work embodied in the sound recording.

(2) Subject to paragraph (e)(3) of this section, where any of the information called for by paragraph (e)(1) of this section is acquired by the significant nonblanket licensee from sound recording copyright owners or other licensors of sound recordings (or their representatives), and the significant nonblanket licensee revises, re-titles, or otherwise edits or modifies the information, it shall be sufficient for the significant nonblanket licensee to report either the originally acquired version or the modified version of such information to satisfy its obligations under paragraph (e)(1) of this section, unless one or more of the following scenarios apply, in which case either the unaltered version or both versions must be reported:

(i) If the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.,* DDEX) that is being used by the particular significant nonblanket licensee, and either the unaltered version or both versions are required to be reported under such standard or format.

(ii) Either the unaltered version or both versions are reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license.

(iii) Either the unaltered version or both versions were periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(3) Notwithstanding paragraph (e)(2) of this section, a significant nonblanket licensee shall not be able to satisfy its obligations under paragraph (e)(1) of this section by reporting a modified version of any information belonging to a category of information that was not periodically revised, re-titled, or otherwise edited or modified by the particular significant nonblanket licensee prior to the license availability date, and in no case shall a modified version of any unique identifier (including but not limited to ISRC and ISWC), playing time, or release date be sufficient to satisfy a significant nonblanket licensee's obligations under paragraph (e)(1) of this section.

(4) Any obligation under paragraph (e)(1) of this section concerning information about sound recording copyright owners may be satisfied by reporting the information for applicable sound recordings provided to the significant nonblanket licensee by sound recording copyright owners or other licensors of sound recordings (or their representatives) contained in each of the following DDEX fields: DDEX Party Identifier (DPID), LabelName, and PLine. Where a significant nonblanket licensee acquires this information in addition to other information

identifying a relevant sound recording copyright owner, all such information must be reported to the extent practicable.

(5) As used in paragraph (e) of this section, it is *practicable* to provide the enumerated information if:

(i) It belongs to a category of information expressly required by the enumerated list of information contained in 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa) or (bb);

(ii) Where the mechanical licensing collective has adopted a particular nationally or internationally recognized reporting or data standard or format (*e.g.,* DDEX) that is being used by the particular significant nonblanket licensee, it belongs to a category of information required to be reported under such standard or format;

(iii) It belongs to a category of information that is reported by the particular significant nonblanket licensee pursuant to any voluntary license or individual download license; or

(iv) It belongs to a category of information that was periodically reported by the particular significant nonblanket licensee prior to the license availability date.

(f) *Timing.* (1) An initial report of usage must be delivered to the mechanical licensing collective contemporaneously with the significant nonblanket licensee's notice of nonblanket activity. Each subsequent monthly report of usage must be delivered to the mechanical licensing collective no later than 45 calendar days after the end of the applicable monthly reporting period.

(2) A report of adjustment may only be delivered to the mechanical licensing collective once annually, between the end of the significant nonblanket licensee's fiscal year and 6 months after the end of its fiscal year. Such report may only adjust one or more previously delivered monthly reports of usage from the applicable fiscal year.

(g) *Format and delivery.* (1) Reports of usage shall be delivered to the mechanical licensing collective in any format accepted by the mechanical licensing collective for blanket licensees under § 210.27(h). With respect to any modifications to formatting requirements that the mechanical licensing collective adopts, significant nonblanket licensees shall be entitled to the same advance notice and grace periods as apply to blanket licensees under § 210.27(h), except the mechanical licensing collective shall use the contact information provided in each respective significant nonblanket licensee's notice of nonblanket activity.

(2) A separate monthly report of usage shall be delivered for each month during which there is any activity relevant to the payment of mechanical royalties for covered activities.

(3) Where a significant nonblanket licensee attempts to timely deliver a report of usage to the mechanical licensing collective but cannot because of the fault of the collective or an error, outage, disruption, or other issue with any of the collective's applicable information technology systems (whether or not such issue is within the collective's direct control), if the significant nonblanket licensee attempts to contact the collective about the problem within 2 business days, provides a sworn statement detailing the encountered problem to the Copyright Office within 5 business days (emailed to the Office of the General Counsel at *USCOGeneralCounsel@copyright.gov*), and delivers the report of usage to the collective within 5 business days after receiving written notice from the collective that the problem is resolved, then neither the mechanical licensing collective nor the digital licensee coordinator may use the untimely delivery of the report of usage as a basis to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C).

(h) *Certification of monthly reports of usage.* Each monthly report of usage shall be accompanied by:

(1) The name of the person who is signing and certifying the monthly report of usage.

(2) A signature, which in the case of a significant nonblanket licensee that is a corporation or partnership, shall be the signature of a duly authorized officer of the corporation or of a partner.

(3) The date of signature and certification.

(4) If the significant nonblanket licensee is a corporation or partnership, the title or official position held in the partnership or corporation by the person who is signing and certifying the monthly report of usage.

(5) One of the following statements:

(i) Statement one:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee; (2) I have examined this monthly report of usage; and (3) all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

(ii) Statement two:

I certify that (1) I am duly authorized to sign this monthly report of usage on behalf of the significant nonblanket licensee, (2) I have prepared or supervised the preparation of the data used by the significant nonblanket licensee and/or its agent to generate this monthly report of usage, (3) such data is true, complete, and correct to the best of my knowledge, information, and belief, and was prepared in good faith, and (4) this monthly report of usage was prepared by the significant nonblanket licensee and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed certified public accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly reports of usage that accurately reflect, in all material respects, the significant nonblanket licensee's usage of musical works and the royalties applicable thereto.

(i) *Adjustments.* (1) A significant nonblanket licensee may adjust one or more previously delivered monthly reports of usage by delivering to the mechanical licensing collective a report of adjustment.

(2) A report of adjustment shall be clearly and prominently identified as a ''Significant Nonblanket Licensee Report of Adjustment for Making and Distributing Phonorecords.''

(3) A report of adjustment shall include a clear statement of the following information:

(i) The previously delivered monthly report(s) of usage to which the adjustment applies.

(ii) The specific change(s) to the applicable previously delivered monthly report(s) of usage.

(iii) Where applicable, the particular sound recordings and uses to which the adjustment applies.

(iv) A description of the reason(s) for the adjustment.

(4) A report of adjustment must be certified in the same manner as a monthly report of usage under paragraph (h) of this section.

(j) *Clear statements.* The information required by this section requires intelligible, legible, and unambiguous statements in the reports of usage, without incorporation by reference of facts or information contained in other documents or records.

(k) *Harmless errors.* Errors in the delivery or content of a report of usage that do not materially affect the adequacy of the information required to serve the purpose of 17 U.S.C. 115(d) shall be deemed harmless, and shall not render the report invalid or provide a basis for the mechanical licensing collective or digital licensee coordinator to engage in legal enforcement efforts under 17 U.S.C. 115(d)(6)(C). This paragraph (k) shall apply only to errors made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(l) *Voluntary agreements with mechanical licensing collective to alter process.* Subject to the provisions of 17 U.S.C. 115, a significant nonblanket licensee and the mechanical licensing collective may agree to vary or supplement the procedures described in this section, including but not limited to pursuant to an agreement to administer a voluntary license, provided that any such change does not materially prejudice copyright owners owed royalties due under a blanket license. The procedures surrounding the certification requirements of paragraph (h) of this section may not be altered by agreement.

Dated: April 15, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–08379 Filed 4–17–20; 4:15 pm]

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–6]

Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding the obligations of the mechanical licensing collective to report and distribute royalties paid by digital music providers under the blanket license to musical work copyright owners under title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. After soliciting public comments through a notification of inquiry, the Office is now proposing regulations establishing the timing, form, delivery, and certification of statements accompanying royalty distributions to musical work copyright owners. The Office solicits additional public comments on the proposed rule. This notice concerns only royalty statements and distributions regarding matched uses of musical works embodied in sound recordings and does not address issues related to the distribution of unclaimed, accrued royalties.

DATES: Written comments must be received no later than 11:59 Eastern Time on May 22, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/mma-royalty-statements.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

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

SUPPLEMENTARY INFORMATION:

I. Background

Title I of the Music Modernization Act (''MMA''), the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works available under 17 U.S.C. 115. Prior to the MMA, a compulsory license was obtained by licensees on a per-work, song-by-song basis, and required a licensee to serve a notice of intention to obtain a compulsory license (''NOI'') on the relevant copyright owner (or file the NOI with the Copyright Office if the Office's public records did not identify the copyright owner and include an address at which notice could be served) and then pay applicable royalties accompanied by accounting statements.[1]

The MMA amends this regime in multiple ways, most significantly by establishing a new blanket compulsory license that digital music providers (''DMPs'') may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams.[2] Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has been designated by the Register of Copyrights.[3] Under the MMA, compulsory licensing of phonorecords that are not DPDs (*e.g.,* CDs, vinyl, tapes, and other types of physical phonorecords) (the ''non-blanket license'') continues to operate on a per-work, song-by-song basis, the same as before.[4]

By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined, if necessary, by the Copyright Royalty Judges (''CRJs'').[5] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the CRJs and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions.[6]

A. Reporting and Payment Obligations Under Non-Blanket License

The proposed rule is informed by the preexisting section 115 regulations that still apply to non-blanket licenses. Under a non-blanket license, copyright owners receive royalties and statements of account directly from compulsory licensees. Timely payment and statements of account are a condition of the non-blanket compulsory license, and failure to comply with the requirements could lead to default.[7] Default can subject a licensee to the remedies provided by sections 502 through 506 for infringement.[8] The statute requires licensees to make monthly and annual statements of account, along with payment of royalties, in compliance with regulations promulgated by the Office.[9] Regulations covering monthly and annual statements of account prescribe, among other things, requirements regarding the content such statements

[1] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[2] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the new mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[3] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[4] 17 U.S.C. 115(b)(1); *see* H.R. Rep. No. 115–651, at 3 (noting ''[t]his is the historical method by which record labels have obtained compulsory licenses''); S. Rep. No. 115–339, at 3 (same); *see also* U.S. Copyright Office, Orrin G. Hatch-Bob Goodlatte Music Modernization Act, *https://www.copyright.gov/music-modernization/* (last visited Apr. 2, 2020).

[5] 17 U.S.C. 115(d)(7)(D).

[6] *Id.* at 115(d)(5)(B); 84 FR at 32274; *see also* 17 U.S.C.115(d)(3)(D)(i)(IV), (d)(5)(C).

[7] 17 U.S.C. 115(c)(2)(J).

[8] *Id.*

[9] *Id.* at 115(c)(2)(I). *See generally* 37 CFR 210.11.

must contain along with timing, delivery, and certification obligations.[10]

The regulations for monthly and annual statements of account for the non-blanket license were most recently amended in 2014, in response to legal and marketplace developments, ''including the Copyright Royalty Board's adoption of newer percentage-of-revenue royalty rate structures for certain digital music services, and changes in accounting and industry practice in the years since the rules were last substantially amended.'' [11] Among the changes made to payment and reporting of royalties relevant to this proceeding, the rule was amended ''to allow copyright owners and licensees to independently agree to alternative payment methods, including electronic payment''; allow a copyright owner to ''notify a licensee of its willingness to accept statements by means of electronic transmission''; permit ''copyright owners to elect the format (paper or electronic) in which they receive statements''; set a ''default minimum payment threshold of up to $5 for payments to any copyright owner''; require ''reporting of ISRCs [''International Standard Recording Code''] when that information is known''; permit ''the reporting of other unique identifiers, such as the International Standard Name Identifier (''ISNI'') of the writer, or the International Standard Musical Work Code (''ISWC'') for the musical work''; and revise the existing certification regulations.

B. Blanket License

In creating a blanket license administered by the MLC, the MMA establishes a different legal framework for the payment and accounting of royalties. Under the MMA, when the blanket license becomes available on January 1, 2021, DMPs taking advantage of the blanket license will report usage of musical works and pay royalties to the MLC—instead of directly to copyright owners—on a monthly basis.[12] The data contained in the DMP's reports of usage is governed by both the statute [13] and regulations currently being promulgated by the Office in a separate proceeding.[14] The MLC will, in turn, ''distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective.'' [15]

Because some percentage of musical works reported by blanket licensees will not be initially matched to their respective copyright owners, the MLC will also engage in ongoing matching efforts to identify copyright owners of musical works where the identity of the copyright owner is unknown and provide a mechanism for copyright owners to claim unmatched works.[16] When a copyright owner who is owed unmatched royalties becomes identified and located, the statute directs the MLC to pay applicable accrued royalties to the copyright owner, ''accompanied by a cumulative statement of account reflecting usage of such work and accrued royalties based on information provided by digital music providers to the mechanical licensing collective.'' [17] As noted below, the Office is separately addressing the issue of unclaimed accrued royalties, including through an ongoing policy study, and this proceeding does not address distribution procedures for those royalties that remain unmatched after the prescribed holding period.

Finally, as reflected in the separate rulemaking regarding reporting by DMPs, blanket licensees may at times need to make adjustments to royalties paid in prior reporting periods since it is not unusual for the exact amount of royalties owed for a particular month to be known until after the close of the month.[18] Ultimately, those adjustments will be reported to copyright owners by the MLC, along with any applicable credits or deductions to royalty distributions.

Although the MLC is obligated to collect and distribute royalties, the statute does not, as it does for the non-blanket license, prescribe specific obligations for royalty distributions or statements of account, such as form, timing, delivery, or certification requirements by the MLC. Nor does it delegate specific rulemaking authority to the Office for prescribing distribution or statement requirements specific to the MLC. Separately, though, in a general provision largely retained from the pre-MMA section 115 related to license terms and conditions, the Register is directed to prescribe regulations related to monthly payments, and that provision states that ''regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.'' [19]

There appears to be no dispute regarding the propriety or authority of the Office to promulgate regulations related to royalty statements issued by the MLC; indeed, the MLC itself has proposed regulatory language encompassing this activity.[20] But as background and to aid commenters, the Office believes it may be helpful to situate this specific proposed rule within the broader regulatory framework set out in the MMA.

The statute creates a general legal framework that supports rules regarding distribution and reporting of royalties under the blanket license. In order to establish sufficient oversight and accountability, Congress obligated the MLC to ''ensure that the policies and practices of the collective are transparent and accountable.'' [21] In furtherance of that goal, Congress vested the Register of Copyrights with the authority to periodically review the designation of the entity serving as the MLC and designate a new entity if needed.[22] The MLC is required by statute to be a nonprofit entity that ''is endorsed by, and enjoys substantial support from, musical work copyright owners'' [23] and ''is able to demonstrate to the Register of Copyrights that the entity has . . . the administrative and technological capabilities to perform the required functions of the mechanical licensing collective.'' [24]

[10] Regulations for monthly statements of account appear in 37 CFR 210.16 and annual statements of account appear in 37 CFR 210.17.

[11] 79 FR 56190 (Sept. 18, 2014).

[12] 17 U.S.C. 115(d)(4)(A)(i).

[13] *Id.* at 115(d)(4).

[14] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[15] 17 U.S.C. 115(d)(3)(G)(i)(II).

[16] The statute authorizes a number of functions related to matching works, including ''[e]ngage in efforts to identify musical works (and shares of such works) embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works (and shares of such works); [m]aintain the musical works database and other information relevant to the administration of licensing activities under this section[, and a]dminister a process by which copyright owners can claim ownership of musical works (and shares of such works), and a process by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners.'' *Id.* at 115 (d)(3)(C)(i)(III)–(V).

[17] *Id.* at 115(d)(3)(I)(ii).

[18] *See* DLC Initial at 15–16; 17 U.S.C. 115(d)(4)(A)(iv)(II) (contemplating adjustments for overpayment or underpayment).

[19] 17 U.S.C. 115(c)(2)(I). While applicability of this provision excepts requirements for reports of use and payments by blanket licensees, which are addressed separately by statute, it does not address either way whether these requirements extend to statements of account provided by the MLC.

[20] MLC Initial at 27–29.

[21] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[22] *Id.* at 115(d)(3)(B)(ii).

[23] *Id.* at 115(d)(3)(A)(ii).

[24] *Id.* at 115(d)(3)(A)(iii).

Additionally, Congress provided general authority to the Register of Copyrights to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection.'' [25] The legislative history states,

> the Register is expected to promulgate the necessary regulations required by the legislation in a manner that balances the need to protect the public's interest with the need to let the new collective operate without over-regulation. The Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee during the drafting of this legislation. Although the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation. The Office is expected to use its best judgement in determining the appropriate steps in those situations.[26]

It is the Office's judgment that it is consistent with the larger goals of the MMA to prescribe specific royalty reporting and distribution requirements through regulation, that the Register of Copyrights has the authority to promulgate these rules under the general rulemaking authority in the MMA, and it can take into consideration how well the MLC carried out those obligations when reviewing the designation.[27] Regulations establish a baseline for transparency and accountability, and the rulemaking process allows all stakeholders—particularly musical work copyright owners and songwriters—to communicate the specific transparency and accountability obligations they expect of the MLC.[28]

C. Transitional Period

The MMA created a transitional period between its date of enactment and January 1, 2021, the date when the blanket license first becomes available (the ''license availability date'').[29] On December 7, 2018, the Office issued interim regulations, directed at that transition period, that amended existing regulations pertaining to the compulsory license to conform to the new law, including with respect to the operation of notices of intention and statements of account.[30] Of relevance here, the interim rule detailed the requirements for DMPs to report and pay royalties regarding previously unmatched works for purposes of eligibility for the limitation on liability for making unauthorized DPDs during the transition period before the blanket license becomes available. The interim regulations largely restated the statutory requirements, specifying that the DMP must pay royalties and provide cumulative statements as if they were a compulsory licensee under the non-blanket license. The interim rule also required DMPs to identify the total period covered by the cumulative statement and the total royalty payable for the period. Finally, the interim rule also required that such cumulative statements be certified in the same manner as monthly statements of account under existing Office regulations for the non-blanket license.[31] The Office welcomed ''public comment on these amendments and any other specific technical amendments that stakeholders would like the Office to consider.'' [32] It received no comments.

D. Music Modernization Act Implementing Regulations for the Blanket License for Digital Uses and Mechanical Licensing Collective Notification of Inquiry

On September 24, 2019, the Copyright Office issued a notification of inquiry to initiate this current proceeding regarding implementing regulations for the blanket license.[33] The Office invited public comment on regulations that the MMA directs it to adopt, as well as additional regulations to promulgate under its general authority as may be necessary or appropriate to effectuate the new blanket licensing structure.

The notification of inquiry sought comment on areas where the MMA explicitly directs the Register of Copyright to adopt regulations, including: Form and substance of notices of license that digital music providers are required to submit to the mechanical licensing collective; [34] form and substance of notices of non-blanket activity; [35] information to be reported on usage reports,[36] format and maintenance of reports,[37] and mechanisms to account for adjustments; [38] information to be included in the mechanical licensing collective's database; [39] database usability, interoperability, and usage restrictions; [40] and the handling of confidential information.[41]

The Office also solicited comments regarding the following issues not mentioned explicitly in the statute: ''the MLC's payment and reporting obligations with respect to royalties that have been matched to copyright owners, both for works that are matched at the time the MLC receives payment from digital music providers and works that are matched later during the statutorily prescribed holding period for unmatched works.'' [42]

Specifically, the Office asked for input on ''what reporting should be required of the MLC when distributing royalties to matched copyright owners in the ordinary course under section 115(d)(3)(G)(i)(II), as well as input concerning the timing of such regular distributions.'' [43] It also solicited input ''on any issues that should be considered relating to the cumulative statements of account to be provided under section 115(d)(3)(I)(ii), relating to payments due to copyright owners of a previously unmatched work (or share thereof) who is later identified and located by the MLC, including what additional material, if any, may be required in these statements as compared to routine periodic distributions for already matched works.'' [44]

In response to the notification of inquiry, the Office received fifteen initial comments and twenty-nine reply comments.[45] Of those, seven addressed

[25] *Id.* at 115(d)(12).

[26] S. Rep. No. 115–339, at 15.

[27] The legislative history states that when determining whether to redesignate an entity to serve as the collective, ''the failure to follow the relevant regulations adopted by the Copyright Office[] over the prior five years should raise serious concerns within the Copyright Office as to whether that same entity has the administrative capabilities necessary to perform the required functions of the collective.'' S. Rep. No. 115–339, at 5; *see also* H.R. Rep. No. 115–651, at 6 (same).

[28] *See* Future of Music Coalition (''FMC'') Reply at 3 (''[W]e urge the Office to balance this concern for pragmatism and flexibility against the need to provide as much clear guidance and oversight as possible to encourage trust. A good question to ask of any potential rule: 'would including this item help music creators have confidence in the new system and trust that they will successfully get the money they are owed?' If the answer is yes, it should be included.'').

[29] H.R. Rep. No. 115–651, at 10; S. Rep. No. 115–339, at 10.

[30] 83 FR 63061, 63065 (Dec. 7, 2018); 37 CFR 210.20.

[31] *See id.;* 17 U.S.C. 115(d)(10)(B)(iv)(II)(aa), (III)(aa) (cumulative statements to be provided ''in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I)'').

[32] 83 FR at 63062.

[33] 84 FR 49966 (Sept. 24, 2019).

[34] 17 U.S.C. 115(d)(2)(A)(i).

[35] *Id.* at 115(d)(6)(A)(i).

[36] *Id.* at 115(d)(4)(A)(ii)(III).

[37] *Id.* at 115(d)(4)(A)(iii).

[38] *Id.* at 115(d)(4)(A)(iv).

[39] *Id.* at 115(d)(3)(E)(ii)(V).

[40] *Id.* at 115(d)(3)(E)(vi).

[41] *Id.* at 115(d)(12)(C).

[42] 84 FR at 49972.

[43] *Id.* at 49973.

[44] *Id.* at 49972–73.

[45] All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Comments received in response to the September

Continued

the MLC's reporting and payment obligations. In its initial comments, the MLC, provided proposed regulatory language for reporting and payment obligations. Several commenters responded to specific aspects of the MLC's proposal, as discussed in respective sections below.

The accurate distribution of royalties under the blanket license to copyright owners is a core objective of the MLC.[46] The payment of royalties, and the statements that accompany those payments, serve as the most visible and tangible connection many copyright owners will have with the MLC and the blanket license created by the MMA. Copyright owners of musical works have experience with the preexisting mechanical license and have built up certain expectations regarding how they receive royalties and statements under that license, on either a compulsory or voluntary licensing basis.[47] The goal of the MMA is to address significant shortcomings that arose in licensing mechanical reproductions by DMPs and improve the functioning of the licensing regime in the digital ecosystem. So musical work copyright owners should reasonably anticipate royalty distributions and statements that look and operate materially the same or better than status quo mechanical licensing practices.

II. Proposed Rule

A. General

Having reviewed and carefully considered all relevant comments in response to the September 2019 notification of inquiry, the Office now issues a proposed rule and invites further public comment. This proposed rule concerns the reporting and royalty distribution obligations of the MLC for the blanket license. The regulatory language is intended to ensure that copyright owners receive the royalties they are entitled to in a timely fashion with statements that provide them with accurate data regarding how their works are being used under the blanket license. The existing requirements for reporting under the non-blanket license provide a useful starting point.

At the same time, the Office recognizes that the MLC is responsible for implementing an unprecedented licensing regime from scratch, and the MMA is intended to address problems that accumulated under the non-blanket licensing regime. Certain features of the non-blanket licensing regime may be inappropriate to use as benchmarks. Where appropriate, then, the Office is striving to retain flexibility in the regulations for the MLC, particularly when it is in its early stages of operations, while ensuring high standards of accuracy and service to copyright owners.[48] The Office is also considering promulgating this rule on an interim basis, to facilitate adjustment on topics noticed in this rulemaking if necessary once the MLC begins issuing royalty statements to copyright owners.

To be clear, this rulemaking only addresses the reporting and distribution of royalties that are matched by the MLC either as it processes reports of usage received from blanket licensees or through its ongoing matching efforts. It does not address the distribution of unclaimed accrued royalties after the expiration of the prescribed holding period.[49] The Office is currently engaged in a study to determine the best practices that the MLC may implement to effectively identify copyright owners and unclaimed royalties of musical works while encouraging copyright owners to claim royalties and ultimately reduce the occurrence of unclaimed royalties.[50] The Office may in the future separately consider promulgating regulations regarding the ultimate distribution of unclaimed royalties.[51]

B. Terminology: ''Royalty statement'' Instead of ''statement of account''

Although the proposed rule regarding statements issued by the MLC to copyright owners under the blanket license is based upon the existing regulations pertaining to ''statements of account'' required under the non-blanket compulsory license, the proposed rule uses an alternate term ''royalty statements.''

This is not intended to indicate any substantive change, but rather to avoid potential ambiguity with other references to ''statements of account'' pertaining to the non-blanket license. For example, the terms ''Monthly Statement of Account'' and ''Annual Statement of Account'' are defined elsewhere in current regulations for the non-blanket compulsory license and expressly apply only to the statements required under the non-blanket license.[52] The MMA itself does not use the term ''statement of account'' when outlining the MLC's general royalty and reporting obligations,[53] though it does use the term ''cumulative statement of account'' when prescribing obligations for distributing accrued royalties for previously unmatched works.[54] To avoid confusion, the Office will use the generic term ''royalty statement'' in the

2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001.* References to these comments and letters are by party name (abbreviated where appropriate), followed by either ''Initial,'' ''Reply,'' or ''*Ex Parte* Letter,'' as appropriate. Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office encourages parties to refrain from requesting *ex parte* meetings on this proposed rule until they have submitted written comments. As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.

[46] *See* Letter from Lindsey Graham, U.S. Senator, South Carolina, to Karyn Temple, Register of Copyrights, U.S. Copyright Office (Nov. 1, 2019).

[47] Prior to the MMA, the Office studied the section 115 license and noted: ''Although the use of the section 115 statutory license has increased in recent years with the advent of digital providers seeking to clear large quantities of licenses, mechanical licensing is still largely accomplished through voluntary licenses that are issued through a mechanical licensing agency such as HFA or by the publisher directly.'' U.S. Copyright Office, Copyright and the Music Marketplace 30–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.* Including because the MLC has selected HFA as a core vendor and because of the potential that services may prefer to make use of the blanket compulsory license over voluntary arrangements, the Office believes that identifying common industry expectations with regard to direct licensing will be relevant to the proposed rule.

[48] *See* S. Rep. No. 115–339, at 15 (''Pursuant to paragraph (12) of subsection (d), the Register is expected to promulgate the necessary regulations required by the legislation in a manner that balances the need to protect the public's interest with the need to let the new collective operate without over-regulation.''); SoundExchange Initial at 15 (''SoundExchange urges the Office to be cautious in regulating the MLC and avoid the temptation to write into regulations every good idea that comes out of this proceeding. Through SoundExchange's history there have been numerous instances where well-intentioned regulations have not worked out quite as intended, and the inflexible nature of the rulemaking process has caused obsolete rules to persist.''); DLC Reply at 26–27 (''Although these regulations largely affect the relationship between the MLC and individual copyright owners, licensees will be funding the operations of the MLC through the administrative assessment. DLC therefore has a strong interest in ensuring appropriate regulations are in place to encourage a cost-effective approach to MLC's payments and statements of account to rights owners.'').

[49] 17 U.S.C. 115(d)(3)(J).

[50] U.S. Copyright Office, Unclaimed Royalties Study, *https://www.copyright.gov/policy/unclaimed-royalties/* (last visited Apr. 2, 2020). The study was initiated by an all-day educational symposium held by the Office on December 6, 2019. Materials related to the symposium, including a transcript and video of the proceedings can be found at the aforementioned web page.

[51] 84 FR at 49974 (''the Office is tentatively inclined to wait until after the policy study is underway to finalize rules with respect to this important duty of the MLC.'').

[52] 37 CFR 210.12(a), (b). *See* 17 U.S.C. 115(c)(2)(I), (J).

[53] *See* 17 U.S.C. 115(d)(3)(C)(i)(II), (G).

[54] *Id.* at 115(d)(3)(I)(ii).

regulations for those reporting obligations.

C. Reporting and Payment Obligations

1. Scope of Periodic Reports

The MLC must distribute two sets of royalty payments. The first set includes royalties for works that it matches upon receipt of monthly reports of usage from DMPs.[55] The second set includes accrued royalties for works that were unmatched when they were reported by blanket licensees and where the copyright owner is subsequently identified and located.[56] Blanket licensees may also need to adjust prior reports of usage, which may result in overpayment or underpayment of royalties from those prior periods, and the results of those adjustments must similarly be passed through to copyright owners.[57]

The rule proposes that the MLC report these three items—(1) royalties for regularly matched works, (2) cumulative statements of account for accrued royalties of previously unmatched works, and (3) any adjustments to royalties from prior periods—to copyright owners simultaneously, if each category is applicable to a given owner. The reporting for each should be clearly delineated in the statements themselves, but the intent is to minimize and simplify administration for both the MLC and copyright owners.

i. Periodic Matched Works

As stated above, DMPs taking advantage of the blanket license will report usage of musical works and pay royalties to the MLC on a monthly basis. It is anticipated that the MLC will be able to match the majority of works reported to the copyright owners who are entitled to receive their respective royalties upon processing these reports of usage, based on the information reported and the information the MLC has in its own records. As such, the reporting of these regularly matched works will be the primary subject of royalty statements from the MLC to copyright owners. These statements will be in a format familiar to copyright owners who currently receive statements for mechanical reproductions of musical works either under the non-blanket compulsory license or voluntary licenses. The specific content that will be reported in the statements, along with the timing of statements, is discussed below.

ii. Cumulative Statements of Account

For cumulative statements of account that report previously accrued royalties for newly matched musical works, the proposed rule asks the MLC to provide a statement substantially similar to the statement for royalties matched in the ordinary course. This information would be sent to copyright owners at the same time as the regular monthly royalty statements, in a segregated manner. Like royalty statement information relating to works matched in the ordinary course, the cumulative reporting would indicate the monthly reporting period that royalties originally accrued in. Cumulative royalty statements would also report the amount of interest accrued and a clear identification of the total period covered.[58]

iii. Adjustments

In initial comments to the September 2019 notification of inquiry, the DLC notes several reasons why ''it is often (if not usually) the case that the exact amounts of royalty payments owed to the MLC for a given month cannot be known with precision until well after the close of the month—and sometimes not for months afterwards.'' [59] Thus, DMPs may need to adjust the amount of royalties paid in prior periods, and the MMA provides authority to the Register of Copyrights to adopt regulations ''regarding adjustments to reports of usage by digital music providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods.'' [60] The Office is currently promulgating such regulations in a separate proceeding.[61] Such adjustments, and the original reporting period being adjusted, will ultimately be reported by the MLC to copyright owners in a separate and clearly identified section of their monthly statements. As noted below, this proposal is a change from the non-blanket license processes, where copyright owners receive adjustments on an annual basis. The Office is proposing this change in light of the DLC's comments related to the frequency of necessary adjustments.

2. Monthly Reporting and Timing Considerations

The proposed rule would require reporting and distribution of royalties by the MLC on a monthly basis. This approach, supported by the MLC,[62] is also consistent with the regulations for the non-blanket license, which requires monthly statements that ''include all royalties for the month next preceding.'' [63]

Some commenters raised concerns that the MMA increases the amount of time for when a blanket licensee has to report usage at the end of a monthly reporting period. As Music Reports, Inc. (''Music Reports'') noted ''[t]he MMA's requirement that DMPs report and pay royalties to the MLC 'not later than 45 calendar days after the end of the calendar month being reported' inserts a substantial delay into the royalty reporting and payment process required under Section 115 prior to the MMA, which required that such payments occur 'on or before the twentieth day of each month.' '' [64] Music Reports explained that prior to the MMA, it regularly was able to issue ''monthly statements of account and royalty payments no more than ten days following'' receipt of usage and royalty accounting data from DMPs, and it believed that ''through the use of modern accounting systems managed by a professional staff, the MLC should be able to render monthly statements and royalty payments to copyright owners no more than 10 days after it receives usage and other supporting data from DMPs.'' [65] It noted that even assuming the MLC could accomplish this within 10 days, copyright owners would still

[55] *Id.* at 115(d)(3)(G)(i).

[56] *Id.* at 115(d)(3)(I)(ii).

[57] *Id.* at 115(d)(4)(A)(iv)(II).

[58] *Id.* at 115(d)(3)(I)(ii).

[59] DLC Initial at 15. The DLC cites at least two reasons this occurs. First, ''the royalty rate can . . . be a function of a variety of variables, including certain service revenues, royalties paid for performance rights, consideration paid to record labels, and the number of subscribers, where applicable.'' *Id.* at 15–16. Some of these variables may not be known until the end of a particular year and may retroactively affect section 115 royalty calculations. Second, ''many licensees have voluntary licenses with publishers, and the MMA continues to accommodate such direct deals. But in some circumstances—for instance, new releases—neither the digital music provider nor the MLC may know at the time the payment and report of usage is initially due whether a particular track is associated with a direct deal publisher or is licensed under the blanket license or is licensed across some combination of a direct deal and the blanket license. As a result, a digital music provider that is administering its own voluntary agreements (or using a non-MLC vendor) may inadvertently make a payment to the MLC that should have been made directly to a publisher under the terms of a voluntary agreement.'' *Id.* at 16.

[60] 17 U.S.C. 115(d)(4)(A)(iv)(II).

[61] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[62] MLC Initial at 28.

[63] 17 U.S.C. 115(c)(2)(I). The non-blanket license also imposes a deadline on reporting, requiring monthly statements of account and payments to be made within 20 calendar days of the end of the reporting period. The proposed rule does not propose a date certain for reporting by the MLC.

[64] Music Reports Initial at 7 (quoting 17 U.S.C. 115(d)(4)(A)(i) and 17 U.S.C. 115(c)(2)(I)).

[65] Music Reports Initial at 7.

have to ''wait 35 days *longer* to receive payment from the MLC than they were accustomed to waiting prior to the license availability date,'' given the statutory 45-day period for digital music provider reporting.[66]

MLC opposed Music Report's proposal, calling it an ''unreasonably tight timeline,'' and stating:[67]

> [A] 10-day turnaround from the time the MLC receives monthly usage reports from DMPs is not realistic given the sheer volume of transactions that the MLC will be reporting. While Music Reports argues that it generally issued monthly statements and royalty payment within 10 days of receipt of DMPs usage reporting, this comparison does not take into account the difference in the volume of data it was processing (from a limited number of DMPs), versus the exponentially larger volume of data being processed by the MLC. Nor does it take into account the MLC's obligations to carve out voluntary licenses and individual download licenses from blanket license usage. Nor does it consider that, unlike the pre-blanket license process, the blanket license process does not include pre-matching of individual sound recordings as licenses are requested, and therefore, the MLC will be matching many transactions for the very first time when it processes usage. Nor does it consider that the MLC was created precisely to fix the serious problems that arose from prior practices in royalty processing, and those problematic practices are not the appropriate benchmarks for determining what should be best practices for the nationwide blanket license administered by the MLC under the new MMA regime.[68]

MLC therefore reiterated support for the proposal it offered in its initial comments, which is silent on a reporting deadline.[69]

The Office appreciates the points made by both Music Reports and the MLC, and tentatively concludes that the better regulatory approach is to ensure the MLC has sufficient flexibility to maximize its matching efforts before distributing royalties, subject to the commitment to report royalties on a monthly basis. Put another way, the proposed rule allows the MLC to determine the pace at which it will process monthly reports of use received from DMPs (*e.g.,* whether it takes the MLC 10 days or 30 days for its routine matching efforts), but not the frequency—once processing and distribution starts, the proposed rule requires the MLC to report and pay matched royalties to copyright owners every month so that copyright owners can rely on the expectation that they will receive regularly-scheduled payments. Given the unprecedented project of the blanket license and associated transactional challenges, the Office declines at this time to impose a further timing requirement for distribution of royalties, and credits MLC's description of the material differences between its project and pre-blanket processing of matched royalties. The MLC faces both known and unknown challenges when it begins administering the blanket license, and a strict timing requirement for reporting and distributing royalties may compound those challenges.

The proposed rule takes the same approach for reporting of cumulative royalties. The Office notes that, beginning on the license availability date, the MLC will receive cumulative usage reports of unmatched accrued royalties from DMPs covering as much as two years of usage at the same time it must begin processing royalties in the ordinary course. As with the regularly matched portion of monthly royalty statements, it is expected that the MLC will make timely payments of accrued royalties for newly matched musical works, but the proposed rule does not otherwise include a timing requirement with respect to reporting and paying cumulative royalties after they have been identified.

For both revenue streams, significant nonregulatory incentives are also in place to ensure timely distribution of royalties. For one, the MLC represented in its designation proposal that it ''intends to provide 'prompt, complete, and accurate payments to all copyright owners.' ''[70] In addition, because the MLC is governed by the very copyright owners that it will be serving,[71] and because it must maintain the support of copyright owners,[72] it shares their interest in prompt reporting and distribution. The Office reserves the right to revisit a potential timing obligation in the future, and solicits comment on this aspect of the proposed rule.

3. Method of Delivery

The Office proposes that royalty statements be delivered to copyright owners electronically by default, with the option to receive them by mail by request. Copyright owners benefit from electronic statements in several ways, including faster delivery and more robust and useable data—data provided in electronic statements can, for example, be filtered and analyzed by copyright owners in ways that is much more difficult with paper statements. Electronic statements are also less costly to generate and distribute then paper statements. The Office understands that in some cases, the only reason paper statements are still used under current licenses is because of existing contractual conditions which are not applicable here. Nevertheless, the Office appreciates that a small number of copyright owners may prefer paper statements, so the regulations allow that option by request.

Additionally, as suggested by the DLC, the regulations would allow for a copyright owner to request a separate, simplified report or to access their statements through an online password-protected portal.[73] These options may be more attractive to some copyright owners and would likely reduce printing and postage costs. The Office invites comment on these issues.

4. Content

The proposed rule specifies the content the MLC is required, at a minimum, to provide to copyright owners when reporting royalties. In general, the statement will allow copyright owners to see royalties accrued for each blanket licensee's offerings for every musical work owned by the copyright owner embodied in a sound recording. The statement will clearly indicate the usage period when the royalties being distributed accrued.[74] Identifying information for musical works and the sound recordings in which they are embodied, if available to the MLC, will also be included in the statement.

The list proposed by the Office provides for every musical work identified as owned by a copyright owner for which there has been reported usage, a line-by-line statement of royalties earned by service offering and sound recording that embodies the musical work. The content is a combination of what the regulations for

[66] *Id. See also* Monica Corton Consulting Reply at 2 (''Having the DSP's account 45 days after each month is totally changing the time frame for final payments from the MLC to the publishers and will create a huge lag time in mechanical payments from the publishers to the songwriters.'').

[67] MLC Reply at 40.

[68] *Id.* at 40–41.

[69] *Id.* at 41.

[70] 84 FR at 32291.

[71] 17 U.S.C. 115(d)(3)(D).

[72] *Id.* at 115(d)(3)(A)(ii).

[73] DLC Reply at 27 (''The MLC should also be permitted to satisfy the requirement for electronic delivery of statements by providing an online password protected portal, accompanied by email notification of the availability of the statement in the portal.'').

[74] *See* Lowery Reply at 6 (''If the MLC reports do not designate which period the payment corresponds to, there will be no way for songwriters to know what they are being paid for. This boils down to receiving a statement that says, here's some money, or worse, no money for you. If there is no explanation of when the royalties were earned or last paid on a service-by-service basis, there is no way for songwriters to know if any service is current.'').

statements of account under the non-blanket license require and a list proposed by MLC, and is intended to provide reporting information consistent with industry standards.[75] Where the language of the Office's proposed rule departs from the MLC, the departure is not intended to be substantive, but rather to conform with existing language in title 17 and associated regulatory provisions, as well as terminology used in other pending rulemakings regarding content to be provided by the DMPs as well as information included in the MLC's database.

The initial source of much information reported in statements will come from the blanket licensees themselves in the reports of usage that they will provide to the MLC every month.[76] The MMA lists a number of types of information required to be included in reports of usage and also provides the Register of Copyrights with the authority to require additional information by regulation, which the Office is promulgating under a separate rulemaking proceeding.[77] Under the statute, information will also be obtained by the MLC through additional sources. The MLC itself has an obligation to ''engage in efforts to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate.'' [78] The MLC will also ingest information related to musical works copyright ownership, including by ''[a]dminister[ing] a process by which copyright owners can claim ownership of musical works (and shares of such works).'' [79] And musical work copyright owners have an obligation to ''engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.'' [80] This combination of information will be used by the MLC to ensure that royalties generated by covered activities under the blanket license will be matched to their correct copyright owners. The statements that accompany the distribution of royalties to copyright owners will communicate this information to copyright owners. As reflected in the MLC's proposal and incorporated into the proposed rule, it will include identifying information for the copyright owner, including any standard identifiers associated with the owner, such as an Interested Parties Identification (''IPI'') number.[81] The statement will include information identifying the musical work for which royalties are being distributed, including any alternative or parenthetical titles for the work known to the MLC. It will also include identification of the composers and songwriters of the musical work, which one commenter noted was essential to ensuring songwriters are properly paid under common publishing agreements.[82]

In addition, the statement will include information about the individual sound recordings embodying the musical works, including such information as the sound recording name (including, as with musical works, any alternative and parenthetical titles), the names of the featured artists, and the record label. The proposed rule would also require the statement to identify the sound recording copyright owner, an item the statute directs DMPs to include in the usage reports sent to the MLC [83] and directs the MLC to include in its musical works database.[84] The Office is separately considering the meaning of the term ''sound recording copyright owner'' in rulemakings addressing usage reports and the musical works database, and the term will carry the same meaning here.[85] At the same time, the Recording Industry Association of America, Inc. (''RIAA'') identified a potential source of confusion with the term, given that the legal owner of a sound recording copyright is not always the same as the party identified as the sound recording copyright owner in royalty metadata currently used in the digital music marketplace.[86] At a minimum, the Office recognizes that for musical work copyright owners receiving royalty statements, ''sound recording copyright owner'' may not be as important to know for recordkeeping purposes as other fields identifying the sound recording, such as record label, and the Office seeks comment on whether it is necessary to require reporting of sound recording copyright owner on royalty statements.

The proposed rule is not intended to be an exhaustive list of everything the MLC will report to copyright owners, but rather set a baseline of fields that, at a minimum, will be included in royalty statements. The MLC will likely report additional information to copyright owners based on standard industry practices or customer expectations.[87] For example, the proposed rule would encourage, but not require, the MLC to report additional identifying information for sound recordings, including playing time, album title, album artist (which may be different than the featured artist of the individual sound recording, particularly in the case of compilations or soundtracks), record label, distributor, a Universal Product Code (UPC) for albums, version number, release date, producer(s), catalog number, and any other standard identifiers in the MLC's records. It is the Office's understanding that the MLC does intend to report additional information, and so the

[75] The content required to be included in statements of account under the non-blanket compulsory license is prescribed in 37 CFR 210.16(b)–(c).

[76] 17 U.S.C. 115(d)(4)(A)(ii).

[77] *Id.* at 115(d)(4)(A)(ii)(III).

[78] *Id.* at 115(d)(3)(E)(i).

[79] *Id.* at 115(d)(3)(C)(i)(V).

[80] *Id.* at 115(d)(3)(E)(iv).

[81] The regulations make clear that certain types of information—which are not required by the statute for copyright owners to receive royalties they are entitled to under the blanket license, such as IPI numbers or International Standard Name Identifiers (''ISNI'')—will be reported if provided by a copyright owner, but they are not a prerequisite to receiving royalties. Some commenters raised concerns about such standard identifiers, which independent or self-represented songwriters may not necessarily have, becoming de facto requirements for receiving royalties from the MLC. *See, e.g.,* North Music Group Reply at 1.

[82] North Music Group *Ex Parte* Letter at 1 (''Major publisher deals often include language that allows the publisher to not pay the writer if the data within the royalty statement delivered to the publisher does not include the writer's name. The MLC must deliver the writer's name in statements in order to provide the writer the best chance of receiving his/her royalties from the publisher.'').

[83] 17 U.S.C. 115(d)(4)(A)(ii)(I)(aa).

[84] *Id.* at 115(d)(3)(E)(ii).

[85] *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**; U.S. Copyright Office, Notification of Inquiry, *Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[86] RIAA Initial at 2 (''In the digital music space, DMPs are required to pay royalties in exchange for access to valuable sound recordings. DMPs are instructed to whom to send those royalties via a specialized DDEX message known as the ERN (or Electronic Release Notification), which includes a field labeled sound recording copyright owner ('SRCO'). Importantly, as a matter of business custom and practice, the SRCO field is typically populated with information about the party that is entitled to receive royalties (who may or may not be the actual legal copyright owner), because that is the information that is relevant to the business relationship between record labels and DMPs. The SRCO data in the ERN message is not meant to be used to make legal determinations of ownership.''); *see also* Sony Music & RIAA *Ex Parte* Letter at 1–2; Universal Music Group & RIAA *Ex Parte* Letter at 2–3.

[87] *See* MLC *Ex Parte* Letter Mar. 24, 2020 (''MLC *Ex Parte* Letter #3'') at 2.

proposed rule would provide it some flexibility to be responsive to copyright owner needs. If, however, it becomes appropriate for regulations to require the reporting of additional fields, either through the initial adoption of regulations or through adjustment of an interim rule if practical experience demonstrates such an additional need, this proposed language could be adjusted.

Finally, for each separate service, activity, or offering that is reported by blanket licensees to the MLC, royalty information regarding the identification of the blanket licensee, the particular service where the musical work was used under the blanket license, the royalty rate, total usage, and total amount of royalties to be distributed, will be provided to copyright owners. In some cases, the actual blanket licensee may be an infrastructure provider or ''white label'' service that provides all the necessary elements of a digital music provider to a consumer-facing service. Such white label services may in fact serve multiple consumer-facing services. In such cases, the name of the customer-facing service is just as useful (if not more useful) to copyright owners, who are likely to be more familiar with those services than the underlying licensees.[88] Thus, the regulations would require identification of any trade or consumer-facing brand names of such services if they are different from the name of the blanket licensee.

The rule proposes that certain identifying information for musical works and sound recordings, such as Interested Parties Information (''IPI''), International Standard Work Code (''ISWC''), International Standard Recording Code (''ISRC''), and record label, are only required to the extent they are known to the MLC, since there may be copyright owners and musical works that do not have this information associated with them. This threshold—requiring reporting information only ''to the extent it is known to the mechanical licensing collective''—is intended to ensure the MLC includes such information that it has determined is reliable enough to be reported as ''known,'' but does not imply any further obligations to seek out such information beyond what is already required of it.[89] This proposed approach is similar to the standard articulated in a separate notice of inquiry regarding the MLC's public database.[90] The Office seeks comments on whether ''known to the MLC'' is an appropriate standard for triggering an obligation to report specific information.

The Office invites comments on the proposed information to be reported to copyright owners, including whether the rule should require any additional information, or conversely, whether certain fields should be excluded from the rule, with the MLC retaining discretion to include them based on its experiences and judgment.

5. Certification

Under the non-blanket license, licensees are required to certify to the truth of the statements made in monthly statements of account.[91] The MMA is silent on any certification requirement for blanket license royalty statements, and the MLC proposal did not require certification of royalty statements. Music Reports replied in favor of retaining a certification requirement for the MLC royalty statements, saying, ''[t]he same logic, ethical obligations, and need for accounting rigor that apply to monthly, cumulative, and annual statements of account in the pre-license availability date period should also apply to such statements when they are prepared and rendered to copyright owners by the MLC.'' [92] Music Reports noted in particular that ''[h]istorically, music rights owners and digital music providers have been in contractual privity with one another through the mechanism of the compulsory mechanical license.'' [93] That privity is lost with the creation of the blanket license and transfer of blanket license functions to the MLC. The MLC disagreed with Music Report's proposal, saying certification of usage reports by the DMPs, which is required under the statute,[94] ''should be sufficient.'' [95] Certification, it said, ''is unjustified given that the underlying data is certified by the DMPs, and the nonprofit MLC has no financial interest in underpayment, and MLC accountings are subject to audit by any copyright owner.'' [96] Additionally, it noted that the requirement ''would be unduly burdensome and costly.'' [97]

While the requirement that DMPs certify the statements made in their usage reports to the MLC will provide a measure of quality control for much of the information that eventually flows to copyright owners, the Office tentatively concludes that it may not provide sufficient safeguards for copyright owners. The MLC is required to engage in additional processing of the statements made in usage reports when it receives them, including ''identify[ing] the musical works embodied in sound recordings reflected in such reports, and the copyright owners of such musical works (and shares thereof) . . . confirm[ing] uses of musical works subject to voluntary licenses and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license[,] and confirm[ing] proper payment of royalties due.'' [98] Certification by the MLC may thus help ensure the accuracy of this additional accounting done by the MLC before distributing royalties. While the MMA provides copyright owners with the right to audit the MLC to verify the accuracy of royalty payments, this new audit right does not ameliorate the value of certification.[99] As one commenter noted, audits are limited to no more than one a year for any individual copyright owner and may be costly and lengthy.[100]

The proposed rule would require the MLC to certify monthly royalty statements under the blanket license the same way monthly statements of account must be currently certified by non-blanket licensees using the compulsory license. This requirement would provide copyright owners with the same level of certification by the processor of their royalties that they enjoy under the existing non-blanket license. The Office recognizes this will add an additional process step upon the MLC. To address that concern, the Office is proposing a minimum threshold of royalties due that triggers the certification requirement. Under the proposed rule, only statements where the total royalties to be distributed

[88] *See, e.g., id.*

[89] This proceeding is not intended to create any rules regarding when a work is considered ''matched'' as that term is used in 17 U.S.C. 115. As noted above, the Office is currently undergoing a study on unclaimed royalties, which may provide an avenue for members of the public to comment upon that standard in greater detail.

[90] U.S. Copyright Office, Notification of Inquiry, *Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[91] 37 CFR 210.16(f).

[92] Music Reports Initial at 5.

[93] *Id.*

[94] 17 U.S.C. 115 (d)(4)(A)(i) provides that ''[a] digital music provider shall report and pay royalties to the mechanical licensing collective under the blanket license on a monthly basis in accordance with clause (ii) and subsection (c)(2)(I).'' Section 115(c)(2)(I) in turn requires that reports be made under oath and according to regulations prescribing ''the manner of certification.''

[95] MLC Reply at 39.

[96] *Id.* at 40.

[97] *Id.*

[98] 17 U.S.C. 115(d)(3)(G)(i)(I).

[99] *Id.* at 115(d)(3)(L).

[100] *See, e.g.,* Lowery Reply at 7 (''Auditing years after the fact is not going to get it done . . . . The audit language is simply not fit for purpose in a world of trillions of individual transactions rather than hundreds of millions of CDs.'').

during the period covered by the statement exceed $100 are required to be certified by the MLC. The Office seeks comment on this proposal.

6. Payment Thresholds

Under the proposed rule, the MLC will be required to provide copyright owners with a statement for every period in which there is activity relevant to the distribution of royalties under the blanket license. To promote efficiency, royalties will not be considered payable to copyright owners until the total royalties collected equal at least one cent.

Separately, the DLC commented that it would be inefficient to send ''tens of thousands of penny checks'' and suggested setting a default royalty payment threshold of $25.[101] The current regulations for monthly statements of account under the non-blanket license allow a compulsory licensee to defer the payment date for royalties until the cumulative unpaid royalties exceed $5.[102] The Office set the threshold at $5 after a proposal to set it at $50.[103] The Office concluded that although it lacked express statutory authority to set a threshold, it could create one through its ''inherent authority to allow the withholding of amounts it determines are *de minimis.*'' [104] It determined that a threshold of $5 was permitted under that standard.[105]

In light of the additional general rulemaking authority delegated to the Register of Copyrights under section 115(d)(12)(A), it appears that the Office would not be similarly constrained in establishing a minimum threshold for royalty payments and can set a threshold higher than $5. Indeed, it may be appropriate to provide for different thresholds depending on the payment method, given that there are different costs associated with processing payments by direct deposit, physical check, or wire transfer, and such tiered structures are standard in comparable distributions. At this point, there are insufficient data regarding how much it will cost the MLC to process payments, but existing thresholds within the market provide a useful starting point. For example, SoundExchange has a minimum payment threshold of $10 for electronic payments and $100 for paper checks.[106] For ASCAP, the minimum thresholds are set at $1 and $100, respectively; [107] for BMI, the thresholds are $2 and $100.[108] Based on these benchmarks, the Office proposes establishing a minimum payment threshold of $5 for direct deposit, $100 for paper checks, and $250 for wire transfer. In any case, the copyright owner would retain the ability under the regulations to request payment for accrued royalties that fall below the threshold set by the MLC. The Office seeks comment on this threshold, including whether amounts proposed are appropriate.

7. Annual Royalty Statement

At this time, the Office is not proposing including a requirement for annual royalty statements. Although section 115 requires non-blanket licensees to provide an annual statement of account to copyright owners, there is a key difference in how adjustments to royalties distributed in prior reporting periods are proposed to be reported under the blanket license. Under the non-blanket license, licensees are required to serve an amended annual statement of account when royalties are adjusted.[109] Under the blanket license, to facilitate timely payment of royalties to copyright owners, the proposed rule would provide for adjustments to be reported to copyright owners with their regular monthly statements, as the MLC receives and processes reports of adjustments from the DMPs.[110] Thus, the proposed rule ensures copyright owners continue to receive the same information under the blanket license they expect under the non-blanket license, just in a different type of statement. In fact, since the Office is proposing that adjustments be reported by DMPs to the MLC and subsequently, from the MLC to copyright owners, in a more frequent manner than once a year, the Office hopes that adjustments will be made and any additional royalties paid out more quickly under the blanket license than under the non-blanket license.

As with the type of information this rule requires the MLC to report to copyright owners, this rule establishes only minimum reporting obligations. The MLC may choose to provide copyright owners with annual statements if it sees a value in doing so. The rule is silent on the requirement to preserve maximum flexibility to the MLC for providing statements beyond what the Office has identified as required to ensure transparency and accountability. The Office seeks comment on this proposal.

8. Disclosures; Education and Outreach

Under the MMA, the MLC is required to engage in certain outreach and educational efforts, including, ''engag[ing] in diligent, good-faith efforts to publicize, throughout the music industry—the existence of the collective and the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works) held by the collective; the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties; any transfer of accrued royalties for musical works under paragraph (10)(B), not later than 180 days after the date on which the transfer is received; and any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made.'' [111] Royalty statements provide a valuable avenue for communicating with copyright owners. The Office is not proposing any specific disclosures, but encourages the MLC to use royalty statements as part of its educational and outreach obligations under the statute.

III. Subjects of Inquiry

Before promulgating a final rule, the Copyright Office seeks additional public comment on all aspects of the proposed rule, including the specific subjects below:

1. Should the regulations require distribution and reporting of royalties to occur within a specified time period?

2. Should the rule establish electronic delivery of statements by default, with the option to request paper statements?

3. Is ''known to the MLC'' an appropriate standard for triggering an obligation to report information that the MLC is not expected to have for all

[101] DLC Reply at 27.

[102] 37 CFR 210.16(g)(6).

[103] 79 FR at 56198.

[104] *Id.*

[105] *Id.* at 56198–99.

[106] SoundExchange, General FAQs, *https://www.soundexchange.com/about/general-faqs/* (last visited Apr. 2, 2020).

[107] ASCAP, Performance Periods and Payment Methods, *https://www.ascap.com/help/royalties-and-payment/payment/payment* (last visited Apr. 2, 2020).

[108] BMI, How We Pay Royalties, *https://www.bmi.com/creators/royalty/general_information* (last visited Apr. 2, 2020).

[109] 37 CFR 210.17(d)(2)(iii).

[110] The Office is proposing that DMPs report adjustments on a monthly basis in a separate, concurrent rulemaking. *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[111] 17 U.S.C. 115(d)(3)(J)(iii)(II).

musical works, sound recordings, and/or copyright owners?

4. Is there any additional content that should be reported to copyright owners, or, conversely, is there any content proposed to be reported that is unnecessary to require by regulation?

5. Are the minimum payment thresholds ($2 for direct deposit, $100 for paper checks, and $250 for wire transfer) for distribution of royalties appropriate?

6. Should the mechanical licensing collective be required to send annual statements in addition to monthly royalty statements?

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

■ 2. Add § 210.29 to read as follows:

§ 210.29 Reporting and distribution of royalties to copyright owners by the mechanical licensing collective.

(a) *General.* This section prescribes reporting obligations of the mechanical licensing collective to copyright owners for the distribution of royalties for musical works, licensed under the blanket license for digital uses prescribed in 17 U.S.C. 115(d)(1), that have been matched, either through the processing by the mechanical licensing collective upon receipt of a report of usage and royalty payment from a digital music provider, or during the holding period for unmatched works as defined in 17 U.S.C. 115(d)(3)(H)(i).

(b) *Distribution of royalties and royalty statements.* (1) Royalty distributions shall be made on a monthly basis and shall include:

(i) All royalties to a copyright owner for a musical work matched in the ordinary course under 17 U.S.C. 115(d)(3)(G)(i)(II) for the month next preceding;

(ii) All accrued royalties for any particular musical work that has been matched in the month next preceding and a proportionate amount of accrued interest associated with that work; and

(iii) Any overpayment or underpayment of royalties in prior periods based on adjustments to reports of usage by digital music providers.

(2) Royalty distributions shall be accompanied by a royalty statement containing the information set forth in paragraph (c) of this section.

(c) *Content*—(1) *General content of royalty statements.* Accompanying the distribution of royalties to a copyright owner, the mechanical licensing collective shall provide to the copyright owner a statement that includes, at a minimum, the following information:

(i) The period (month and year) covered by the statement.

(ii) The name and address of the mechanical licensing collective.

(iii) The name and mechanical licensing collective identification number of the copyright owner.

(iv) ISNI and IPI name and identification number of the copyright owner, to the extent it has been provided to the mechanical licensing collective by a copyright owner.

(v) The name and mechanical licensing collective identification number of the copyright owner's administrator (if applicable), to the extent one has been provided to the mechanical licensing collective by a copyright owner.

(vi) ISNI and IPI of the copyright owner's administrator, to the extent one has been provided to the mechanical licensing collective by a copyright owner, songwriter, or administrator.

(vii) Payment information, such as check number, ACH identification, or wire transfer number.

(viii) The total royalty payable to the relevant copyright owner for the month covered by the royalty statement.

(2) *Musical work information.* For each matched musical work owned by the copyright owner for which accompanying royalties are being distributed to that copyright owner, the mechanical licensing collective shall report the following information:

(i) The musical work name, including primary and any alternative and parenthetical titles for the musical work known to the mechanical licensing collective.

(ii) ISWC for the musical work, to the extent it is known to the mechanical licensing collective.

(iii) The mechanical licensing collective identification number of the musical work.

(iv) The administrator's unique identifier for the musical work, to the extent one has been provided to the mechanical licensing collective by a copyright owner or its administrator.

(v) The name(s) of the songwriter(s), to the extent they are known to the mechanical licensing collective.

(vi) ISNI(s) and IPI(s) of each songwriter, to the extent either is known to the mechanical licensing collective.

(vii) The percentage share of musical work owned or controlled by the copyright owner.

(viii) For each sound recording embodying the musical work, the identifying information enumerated in paragraph (c)(3) of this section and the royalty information enumerated in paragraph (c)(4) of this section.

(3) *Sound recording information.* For each sound recording embodying a musical work included in a royalty statement, the mechanical licensing collective shall report the following information:

(i) The sound recording name(s), including primary and all known alternative and parenthetical titles for the sound recording.

(ii) The featured artist(s).

(iii) The record label name(s), to the extent it is known to the mechanical licensing collective.

(iv) ISRC, to the extent it is known to the mechanical licensing collective.

(v) The sound recording copyright owner(s).

(vi) The MLC is encouraged to include other information commonly used in the industry to identify sound recordings, such as any other unique identifier(s) for or associated with the sound recording, including any unique identifier(s) for any associated album, including but not limited to:

(A) Playing time.

(B) Album title(s) or product name(s).

(C) Album or product featured artist(s), if different from sound recording featured artist(s).

(D) Distributor(s).

(4) *Royalty information.* The mechanical licensing collective shall separately report, for each service, offering, or activity reported by a blanket licensee, the following royalty information for each sound recording embodying a musical work included in a royalty statement:

(i) The name of the blanket licensee and, if different, the trade or consumer-facing brand name(s) of the service(s), including any specific offering(s), through which the blanket licensee engages in covered activities.

(ii) The service tier or service description.

(iii) The use type (download or stream).

(iv) The number of payable units, including, as applicable, permanent

downloads, plays, and constructive plays.

(v) The royalty rate and amount.

(vi) The interest amount.

(vii) The distribution amount.

(d) *Cumulative statements of account, and adjustments.* (1) For royalties reported under paragraph (b)(1)(ii) of this section, the mechanical licensing collective shall provide a cumulative statement of account that includes, in addition to the information in paragraph (c) of this section, a clear identification of the total period covered and the total royalty payable for the period.

(2) For adjustments reported under paragraph (b)(1)(iii) of this section, the mechanical licensing collective shall clearly indicate the original reporting period of the royalties being adjusted.

(e) *Delivery of royalty statements.* Royalty statements may be delivered electronically or, upon written request of the copyright owner, by mail. Nothing in this section shall prevent the mechanical licensing collective from alternatively providing, upon written request of the copyright owner:

(1) A separate, simplified report containing fewer data fields that may be more understandable for the copyright owner; or

(2) Access to statements through an online password protected portal, accompanied by email notification of the availability of the statement in the portal.

(f) *Clear statements.* The information required by paragraph (c) of this section requires intelligible, legible, and unambiguous statements in the royalty statements without incorporation of facts or information contained in other documents or records.

(g) *Certification.* (1) Each royalty statement in which the total royalty payable to the relevant copyright owner for the month covered is equal to or greater than $100 shall be accompanied by:

(i) The name of the person who is signing and certifying the statement.

(ii) A signature of a duly authorized officer of the mechanical licensing collective.

(iii) The date of signature and certification.

(iv) The title or official position held by the person who is signing and certifying the statement.

(v) One of the following statements:

(A) Statement one:

I certify that (1) I am duly authorized to sign this royalty statement on behalf of the mechanical licensing collective; (2) I have examined this royalty statement; and (3) All statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith; or

(B) Statement two:

This statement was prepared by the Mechanical Licensing Collective and/or its agent using processes and internal controls that were subject to an examination, during the past year, by a licensed Certified Public Accountant in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the opinion of whom was that the processes and internal controls were suitably designed to generate monthly statements that accurately reflect, in all material respects, the blanket licensee's usage of musical works, the statutory royalties applicable thereto, and any other data that is necessary for the proper calculation of the statutory royalties in accordance with 17 U.S.C. 115 and applicable regulations.

(h) *Delivery.* (1) Subject to paragraph (h)(2) of this section, a separate royalty statement shall be provided for each month during which there is any activity relevant to the distribution of royalties under the blanket license.

(2) Royalties under the blanket license shall not be considered payable, and no royalty statement shall be required, until the cumulative unpaid royalties collected for the copyright owner equal at least one cent. Moreover, in any case in which the cumulative unpaid royalties under the blanket license that would otherwise be distributed by the mechanical licensing collective to the copyright owner are less than $2 if the copyright owner receives payment by direct deposit, $100 if the copyright owner receives payment by physical check, or $250 if the copyright owner receives payment by wire transfer and the copyright owner has not notified the mechanical licensing collective in writing that it wishes to receive royalty statements reflecting payments of less than the threshold, the mechanical licensing collective may choose to defer the payment date for such royalties and provide no royalty statements until the earlier of the time for rendering the royalty statement for the month in which the unpaid royalties under the blanket license for the copyright owner exceed the threshold, at which time the mechanical licensing collective may provide one statement and payment covering the entire period for which royalty payments were deferred.

(3) If the mechanical licensing collective is required, under applicable tax law and regulations, to make backup withholding from its payments required hereunder, the mechanical licensing collective shall indicate the amount of such withholding on the royalty statement or on or with the distribution.

Dated: April 15, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–08375 Filed 4–17–20; 4:15 pm]

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–7]

Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding the protection of confidential information by the mechanical licensing collective and digital licensee coordinator under title I of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act. After soliciting public comments through a notification of inquiry, the Office is now proposing regulations identifying appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used. The Office solicits additional public comments on the proposed rule, including regarding the use of confidentiality designations and nondisclosure agreements.

DATES: Written comments must be received no later than 11:59 Eastern Time on June 8, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/mma-confidentiality.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by

email at *regans@copyright.gov* or Anna Chauvet, Associate General Counsel, by email at *achau@copyright.gov.* Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA'').[1] Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] Prior to the MMA, licensees obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (''NOI'') on the relevant copyright owner (or filing it with the Copyright Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[3] The MMA amends this regime most significantly by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license).[4] Instead of licensing one song at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has been designated by the Register of Copyrights.[5]

By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined, if necessary, by the Copyright Royalty Judges (''CRJs'').[6] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the CRJs and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions.[7]

The MMA directs the Copyright Office to ''adopt regulations to provide for the appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the [MLC] and [DLC] is not improperly disclosed or used, including through any disclosure or use by the board of directors or personnel of either entity, and specifically including the unclaimed royalties oversight committee and the dispute resolution committee of the [MLC].'' [8]

The MMA additionally makes several explicit references to the Office's regulations governing the treatment of confidential and other sensitive information in various circumstances, including with respect to: (1) ''all material records of the operations of the [MLC]''; [9] (2) steps the MLC must take to ''safeguard the confidentiality and security of usage, financial, and other sensitive data used to compute market shares'' when distributing unclaimed accrued royalties; [10] (3) steps the MLC and DLC must take to ''safeguard the confidentiality and security of financial and other sensitive data shared'' by the MLC to the DLC about significant nonblanket licensees; [11] (4) voluntary licenses administered by the MLC; [12] (5) examination of the MLC's ''books, records, and data'' pursuant to audits by copyright owners; [13] and (6) examination of digital music providers' ''books, records, and data'' pursuant to audits by the MLC.[14]

On September 24, 2019, the Office issued a notification of inquiry seeking, among other things, public input on any issues that should be considered relating to the treatment of confidential and other sensitive information under the blanket license regime.[15] In response, the Office received proposed regulatory language relating to confidentiality requirements from both the DLC and MLC, and a few comments about confidentiality more generally from other stakeholders.[16]

The MLC's approach generally proposes requiring the MLC and DLC to implement confidentiality policies to prevent improper or unauthorized use of various categories of confidential information, but lacks specific requirements for those policies or a proposed definition of ''confidential information.'' [17] The DLC contends that the MLC's proposal, by providing broad discretion to the MLC and DLC to implement policies regarding confidentiality, ''would inappropriately redelegate that authority [granted to the Register] to itself and DLC.'' [18] The DLC maintains that the Office's regulations should provide necessary guidance, not merely provide the MLC and DLC discretion to create their own policies.[19] Taking into account the statutory text, legislative history, and comments received, the Office agrees with the DLC's concern. As noted previously by the Office, ''establishing confidentiality

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[4] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[5] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[6] 17 U.S.C. 115(d)(7)(D).

[7] *Id.* at 115(d)(5)(B); 84 FR at 32274; *see also* 17 U.S.C.115(d)(3)(D)(i)(IV), (d)(5)(C).

[8] 17 U.S.C. 115(d)(12)(C).

[9] *Id.* at 115(d)(3)(M)(i) (''The mechanical licensing collective shall ensure that all material records of the operations of the mechanical licensing collective, including those relating to notices of license, the administration of the claims process of the mechanical licensing collective, reports of usage, royalty payments, receipt and maintenance of accrued royalties, royalty distribution processes, and legal matters, are preserved and maintained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of not less than 7 years after the date of creation or receipt, whichever occurs later.'').

[10] *Id.* at 115(d)(3)(J)(i)(II)(bb); *see* H.R. Rep. No. 115–651, at 27 (''Unclaimed royalties are to be distributed based upon market share data that is confidentially provided to the collective by copyright owners.''); S. Rep. No. 115–339, at 24 (same); Conf. Rep. at 20 (same).

[11] 17 U.S.C. 115(d)(6)(B)(ii).

[12] *Id.* at 115(d)(11)(C)(iii).

[13] *Id.* at 115(d)(3)(L)(i)(II).

[14] *Id.* at 115(d)(4)(D)(i)(II).

[15] 84 FR 49966, 49973 (Sept. 24, 2019).

[16] All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/.* Comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001.* References to these comments and letters are by party name (abbreviated where appropriate), followed by either ''Initial,'' ''Reply,'' or ''*Ex Parte* Letter,'' as appropriate. Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office encourages parties to refrain from requesting *ex parte* meetings on this proposed rule until they have submitted written comments. As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.

[17] *See* MLC Initial at 29–30, App. H.

[18] DLC Reply at 27.

[19] *See id.* at 28.

rules sooner rather than later may help the MLC and DLC share information as effectively and efficiently as possible as they both get ready for the license availability date.'' [20] In addition, having more specific confidentiality regulations in place may assure those providing confidential and commercially sensitive information to the MLC that it will be protected, as well as ''provide the ground rules for the relationship between DLC, the MLC, and its respective members.'' [21]

In issuing this proposed confidentiality rule, the Office is mindful of Congress's countervailing goals for the MMA to enhance transparency, accountability, and public access to musical work ownership information.[22] The Office thus intends for its proposed confidentiality rule to complement separate regulations regarding transparency, accountability, and public accessibility.[23] Concurrent with this notice of proposed rulemaking, the Office issued a notification of inquiry seeking additional information on a variety of topics relating to the disclosure of non-confidential material to facilitate the MMA's goals of enhanced transparency, accountability, and public accessibility of certain data.[24] Specifically, the notification seeks public input regarding which information in the MLC's database should be publicly available, which information the MLC should be required to disclose in its annual reports (including issues related to vendor selection and performance), which entities should have bulk access to the MLC's database (and through which manner), restrictions on the use of data from the MLC's database, and other ways in which transparency may be promoted. The Office encourages interested commenters in connection with this notice of proposed rulemaking to review that separate notice carefully and consider commenting on that notice as well.

Having reviewed and carefully considered all relevant comments, the Office now issues a proposed rule and invites further public comment. While all public comments are welcome, as applicable, should commenters disagree with language in the proposed rule, the Office encourages commenters to offer alternate language not yet considered by the Office. Depending on the feedback received, the Office will either issue a final rule, or an interim rule with further request for comment.

II. Proposed Rule

A. Defining ''Confidential Information''

Although the MMA requires the Office to issue regulations governing the protection of confidential information contained in the records of the MLC and DLC, the statute does not define the term ''confidential.'' [25] The MLC's proposed language would also not expressly define material as confidential, instead referencing categories of material which may contain confidential material and allowing the MLC and DLC to establish their own policies to ensure the safeguarding of such information. Although the Office has considered the merits of this approach, in part given the interplay between confidential material and material that should be disclosed, the proposed rule defines ''confidential information'' to provide sufficient guidance.

The DLC, which does proffer a definition, proposes that ''confidential information'' include, ''at a minimum, all the usage and royalty information received by the MLC from a digital music provider,'' [26] ''including the amount of royalty payments and calculations thereunder.'' [27] While the Office recognizes that digital music providers understandably want to ensure that sensitive business provided information to the MLC is not unlawfully or inappropriately disclosed or used, defining confidential information as including ''*all* the usage and royalty information'' would be overly broad and unnecessarily place restrictions on information that must necessarily be shared with copyright owners receiving statements of accounts from the MLC.[28] As a workaround, the DLC proposes that the regulations allow copyright owners (and their designated agents) to receive confidential information, ''so long as they sign an appropriate confidentiality agreement with the MLC.'' [29] Prior to the MMA, however, the Copyright Office previously considered and expressly rejected the idea of placing a confidentiality requirement on copyright owners receiving statements of account under the section 115 statutory license due to the inclusion of ''competively sensitive'' information (*e.g.,* licensees' overall revenues, royalty payments to record companies and performance rights organizations, and overall usage); rather, ''once the statements of account have been delivered to the copyright owners, there should be no restrictions on the copyright owners' ability to use the statements or disclose their contents.'' [30] Particularly given that an animating goal of the MMA is to facilitate increased transparency and accuracy in reporting payments to copyright owners, the Office sees no reason to deviate from this policy.[31]

[20] 84 FR at 49968.

[21] DLC Initial at 3.

[22] *See* 17 U.S.C. 115(d)(3)(E), (e)(20); *id.* at 115(d)(3)(E)(v) (stating the database must ''be made available to members of the public in a searchable, online format, free of charge''); 164 Cong. Rec. S501, 504 (daily ed. Jan. 24, 2018) (statement of Sen. Chris Coons) (''This important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.''); 164 Cong. Rec. H3522, 3541 (daily ed. April 25, 2018) (statement Rep. Steve Chabot) (''This legislation provides much-needed updates to bring music licensing into the digital age, particularly improving market efficiencies and transparency to reflect the modern music marketplace.''); *id.* at 3542 (statement of Rep. Norma Torres) (''Information regarding music owed royalties would be easily accessible through the database created by the Music Modernization Act. This transparency will surely improve the working relationship between creators and music platforms and aid the music industry's innovation process.'').

[23] *See* DLC *Ex Parte* Letter Feb. 24, 2020 (''DLC *Ex Parte* Letter #2'') at 5 (acknowledging that the ''MLC will be under certain legal transparency requirements,'' and that confidentiality regulations should ''not stand in the way of that transparency''); The International Confederation of Societies of Authors and Composers (''CISAC'') & The International Organisation representing Mechanical Rights Societies (''BIEM'') Reply at 2 (stating that ''musical works information populated in the database can include confidential, personal and/or sensitive data, and as such, the Regulations should ensure the required balance between the public interest in having transparent access to such information and the protection of commercially sensitive information and personal data'').

[24] U.S. Copyright Office, Notification of Inquiry, *Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information,* Dkt. No. 2020–8, published elsewhere in this issue of the **Federal Register**.

[25] *See* 17 U.S.C. 115(d)(12)(C), (e).

[26] DLC *Ex Parte* Letter #2 at 5.

[27] DLC Reply Add. at A–20. *See also* CISAC & BIEM Initial at 4 (asserting that ''ownership shares are particularly sensitive and confidential information which [should] not be visible by the public''); The American Association of Independent Music (''A2IM'') and the Recording Industry Association of America, Inc. (''RIAA'') Reply at 4 (asserting that the MLC should not receive ''*all* of the metadata associated with the sound recordings,'' as ''a portion of the metadata provided to a DMP with a sound recording can, and typically does, include confidential deal points and usage information''); *id.* at 6 (''The contractual terms between DMPs and record companies are highly confidential and represent extremely sensitive business information.'').

[28] *See* 37 CFR 210.16(c).

[29] DLC *Ex Parte* Letter #2 at 5; *see* DLC Reply at 28; 37 CFR 380.5(c)(3).

[30] 79 FR 56190, 56206 (Sept. 18, 2014); *id.* (holding that placing a confidentiality restriction on copyright owners receiving statements of account ''would have burdened copyright owners' ability to disclose to the public the royalties they received under the statutory license. The Office is particularly reluctant to so drastically restrict copyright owners' ability to freely discuss the effects of government policy.'').

[31] *See* 164 Cong. Rec. H 3522, 3542 (statement of Rep. Norma Torres) (''In addition to an increase in efficiency, the [MMA] would foster a more transparent relationship between creators and music platforms. Information regarding music owed

Continued

Accordingly, the proposed rule instead defines ''confidential information'' as including ''sensitive financial or business information, including information relating to financial or business terms that could be used for commercial advantage'' and ''trade secrets.'' This definition specifically includes categories of information and documents expressly referenced in the statute: ''the confidentiality and security of usage, financial, and other sensitive data used to compute market shares'' when distributing unclaimed accrued royalties,[32] ''financial and other sensitive data shared'' by the MLC to the DLC about significant nonblanket licensees,[33] and voluntary licenses.[34]

The DLC suggests that third parties may submit other types of information to the MLC or DLC ''that should properly be treated as confidential,'' and so proposes that ''confidential information'' include ''any other information submitted by a third party,'' where it has been ''reasonably designated as confidential by the party submitting the information,'' [35] and the proposed rule largely adopts this approach. The Office notes, however, that under the proposed rule, third-party submissions to the MLC and DLC remain subject to the other provisions of the proposed rule, including the exclusion of certain categories of material subject to disclosure from being considered confidential, to ensure that third-party submissions do not receive heightened protection over those submitted by digital music providers and significant nonblanket licensees or musical work copyright owners.

Other stakeholders expressed concern about the disclosure of confidential personal information, particularly relating to copyright owner information.[36] The Office appreciates this concern, as among many other data points, the MLC must maintain, for example, banking information and mailing addresses for copyright owners to whom it remits royalty payments. Appreciating this concern, the MLC notes that it is ''committed to maintaining robust security to protect confidential user data, and that it contractually requires vendors to maintain robust security to protect confidential information handled for the MLC.'' [37] Accordingly, the proposed rule also includes in the definition of ''confidential information'' ''sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or date of birth (other than year).''

As noted above, the proposed rule also defines ''confidential information'' by what it is *not.* Borrowing from current regulations governing SoundExchange in connection with the section 112/114 license, and as recommended by the DLC, the rule proposes that the definition of ''confidential information'' exclude ''documents or information that may be made public by law'' or ''that at the time of delivery to the [MLC] or [DLC] is public knowledge,'' and that ''[t]he party seeking information from the [MLC] or [DLC] based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.'' [38] In addition, because documents and information may be subsequently disclosed by the party to whom the information would otherwise be considered confidential, or by the MLC or DLC pursuant to participation in proceedings before the Copyright Office or Copyright Royalty Judges (including proceedings to redesignate the MLC or DLC), the proposed rule excludes such information and documents from the definition of ''confidential information.''

Recognizing that important restrictions on the disclosure of information are cabined by equally significant countervailing considerations of transparency in reporting certain types of information, the proposed rule also excludes the following from the definition of ''confidential information'': Information made publicly available through notices of license,[39] notices of nonblanket activity, the MLC's online database, and information disclosable through the MLC bylaws, annual report, audit report, or the MLC's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii),(vii), and (ix).

In addition, adopting a suggestion from the MLC, the proposed rule would exclude from the meaning of ''confidential information'' any top level, compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.[40] This exclusion recognizes the MLC's stated need for MLC board and committee members (including DLC representatives) to obtain access to anonymized information, as well as potentially members of the public in MLC reports.

Finally, the proposed rule clarifies that documents or information created by a party will not be considered confidential with respect to usage of that information by the same party (*e.g.,* documents created by the DLC should not be considered confidential with respect to the DLC).

royalties would be easily accessible through the database created by the [MMA]. This transparency will surely improve the working relationship between creators and music platforms and aid the music industry's innovation process.''); Proposal of Digital Licensee Coordinator, Inc. at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001* (acknowledging that goals of the MMA include ''provid[ing] licensing efficiency and transparency, and . . . ensur[ing] that the new blanket licensing system is, and remains, workable for digital music providers as well as copyright owners'').

[32] 17 U.S.C. 115(d)(3)(J)(i)(II)(bb); *see* H.R. Rep. No. 115–651, at 27 (''Unclaimed royalties are to be distributed based upon market share data that is confidentially provided to the collective by copyright owners.''); S. Rep. No. 115–339, at 24 (same); Conf. Rep. at 20 (same).

[33] 17 U.S.C. 115(d)(6)(B)(ii).

[34] *Id.* at 115(d)(11)(C)(iii). Music Artists Coalition (''MAC'') contends that ''data relating to market share determinations and voluntary licenses'' should be publicly shared. MAC Reply at 2–3. The statute, however, specifically contemplates such information being treated as confidential information. 17 U.S.C. 115(d)(3)(J)(i)(II)(bb); *id.* at 115(d)(11)(C)(iii).

[35] DLC *Ex Parte* Letter #2 at 5; DLC Reply Add. at A–20.

[36] CISAC & BIEM Reply at 8 (encouraging ''the Office to adopt suitable regulations that aim to protect sensitive and/or private information from public disclosure''); MAC Reply at 2–3 (noting that ''certain information such as . . . personal addresses should obviously be kept out of public documents'').

[37] MLC *Ex Parte* Letter Jan. 29, 2020 (''MLC *Ex Parte* Letter #1'') at 4.

[38] DLC Reply Add. at A–20.

[39] Consistent with the Office's proposed rule regarding notices of license, the definition of confidentiality in this proposed rule excludes any addendum to general notices of license that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license that is sufficient for the mechanical licensing collective to fulfill its obligations under 17 U.S.C. 115(d)(3)(G)(i)(I)(bb). *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[40] MLC Initial at 30 (proposing that ''the MLC, when providing necessary data to its board or committee Members, will only share proprietary or confidential data as necessary, and in a format that is anonymized and cannot be identified as belonging to any particular copyright owner, in order to prevent any disclosure to potential competitors'').

B. Disclosure and Use of Confidential Information

1. Proposed Approach to Disclosure and Use

While the definition of confidential information is consistent for all uses, the rule proposes various categories of permitted disclosure and use by MLC employees, board and committee members of the MLC and DLC (and members' respective places of employment), and vendors and agents of the MLC and DLC. The segregation into categories of potential users of confidential material is common in analogous situations, such as protective orders in intellectual property litigation and the CRJ's applicable regulation for information under the section 112/114 statutory licenses.[41] The Office anticipates that this framework will allow for more flexible adjustment to the regulation, if it proves necessary to further adjust the permitted disclosure to, and use of confidential information by certain users.

As a general approach, the proposed rule would permit the disclosure of confidential information in the following tiers. First, all uses by the MLC must be limited to activities necessary to perform their duties during the ordinary course of work for the MLC. All recipients of confidential information, including MLC employees, must execute a written confidentiality agreement. Agents, consultants, vendors, and independent contractors of the MLC may receive confidential information, only when necessary to carry out their duties. This approach is somewhat similar to that of the DLC, which proposed that confidential information may be disclosed to ''employees, agents, consultants, and independent contractors of the MLC or DLC, subject to an appropriate written confidentiality agreement, who are engaged in the calculation, collection, matching and distribution of royalty payments hereunder and activities related directly thereto who require access to the Confidential Information, and only to the extent necessary for the purpose of performing their duties during the ordinary course of their work, *provided that* no employee or officer of any music publisher shall have access to Confidential Information.''[42] Similarly, and discussed further below, non-DLC members of the board or statutory committees[43] as well as DLC representatives on the board or statutory committees may receive confidential information only on a need to know basis and to the extent necessary to carry out their duties.

Second, uses by the DLC are also related to the DLC's ordinary work, with similar limitations for any employees, agents, consultants, vendors, and independent contractors of the DLC.

Third, the proposed rule would expressly permit access to certain categories of non-MLC or DLC persons or entities entitled to this information by law, including qualified auditors or outside counsel pursuant to the statutorily-permitted audits by the MLC of a digital music provider operating under the blanket license or audits by a copyright owner(s) of the MLC, in each case subject to an appropriate written confidentiality agreement. The MMA expressly permits audits by copyright owners of the MLC's ''books, records, and data,''[44] and by the MLC of digital music providers' ''books, records, and data,''[45] and this approach is similar, though not identical, to language proposed by the DLC.[46]

Finally, similar to current rules established for the administration of the section 112/114 licenses, information may also be disclosed by parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order. Neither the DLC nor MLC appear to object to such a provision.[47]

2. Restrictions on Use by Members of the Board of Directors and Committees of the MLC

The MLC and DLC share somewhat similar concerns as to how confidential information may be disclosed to and used by board and committee members of the MLC and DLC. Both the MLC and DLC express concern about the disclosure of confidential information to competitors. For example, the MLC maintains that ''[g]iven that the MLC board and committee members may be exposed to highly sensitive and confidential information, permitting [DLC] representatives to share such information with their employers or other individuals who may use such information for competitive advantage or other improper purposes runs contrary to the confidential nature of the information.''[48] The DLC notes that ''licensees will be providing a significant amount of highly confidential information *to* the MLC, especially through the filing of reports of usage, from which highly confidential details of private licensing agreements can be gleaned,''[49] and that ''a music publisher representative on the MLC Board should not be able to see the financial terms that a digital music provider agreed to as part of a voluntary license with one of its competitors—or even that such a voluntary license exists.''[50]

Both designated parties propose limits on the types of information that can be shared with board members, with the DLC focused on limiting access to information confidential to digital services and the MLC focused on limiting access to confidential information belonging to a particular musical work copyright owner.[51] The DLC asserts that ''confidential information provided to the MLC and DLC (including by licensees in reports of usage) are maintained in the strictest of confidence and cannot generally be shared with Board members of those respective organizations.''[52] The MLC proposes that it ''implement and enforce a reasonable policy that prevents any member of its board of directors or any member of its committees from accessing or reviewing any confidential or sensitive data belonging to a particular musical work copyright owner but shall allow members of its

[41] 37 CFR 380.5(c).

[42] DLC Reply Add. at A–21.

[43] The Copyright Office understands that the MLC may have established or wish to establish other standing committees, which may not derogate the duties of the statutory committees; under the proposed rule, those members would presumably be treated as consultants of the MLC.

[44] 17 U.S.C. 115(d)(3)(L)(i)(II).

[45] *Id.* at 115(d)(4)(D)(i)(II).

[46] DLC Reply Add. at A–21.

[47] *See* MLC Initial at 30 (''The policies should allow a limited exception to allow disclosure of such information in response to court orders, subpoenas or other legal processes.''); DLC Reply Add. at A–21 (proposing that confidential information could be disclosed to ''[a]ttorneys and other authorized agents of parties to proceedings before the Copyright Royalty Board, acting under an appropriate protective order'').

[48] MLC Reply at 41–42.

[49] DLC Initial at 22.

[50] DLC *Ex Parte* Letter #2 at 5.

[51] *See* DLC Initial at 22 (''licensees will be providing a significant amount of highly confidential information to the MLC, especially through the filing of reports of usage, from which highly confidential details of private licensing agreements can be gleaned''); DLC *Ex Parte* Letter #2 at 5 (''For instance, a music publisher representative on the MLC Board should not be able to see the financial terms that a digital music provider agreed to as part of a voluntary license with one of its competitors—or even that such a voluntary license exists.''); MLC Initial at 30 (proposing that ''when providing necessary data to its board or committee Members, the MLC will only share proprietary or confidential data as necessary, and in a format that is anonymized and cannot be identified as belonging to any particular copyright owner, in order to prevent any disclosure to potential competitors''); MLC Initial at App. H (proposing regulatory language in support of same); MLC Reply at App. H (same).

[52] DLC Reply at 28.

board of directors or committee members, when necessary to carry out their duties, to review aggregated and/or anonymized data of musical work copyright owners that cannot be identified as belonging to any particular musical work copyright owner.'' [53] It appears that the MLC's approach would potentially allow its board and committee members to view confidential information from a digital music provider (subject to a confidentiality policy), while the DLC's approach would potentially allow its board and committee members to view confidential information from musical work copyright owners. Both parties generally assert that access to confidential information may be necessary for the MLC and DLC to serve their statutory purposes.[54]

The proposed rule addresses these concerns by adopting a general approach that will allow a board or statutory committee member to access confidential information, but only upon a ''need to know'' and ''necessary to carry out'' relevant duties basis, and then only subject to a written confidentiality agreement. Given the somewhat divergent views from the MLC and DLC, and the need for regulatory language to be somewhat flexible to accommodate unforeseen issues, the proposed rule would permit parity in access with disclosure of information, if any, connected to direct performance of statutory duties, rather than hard and fast categories prohibiting disclosure of information relevant to, or accessed by, digital music providers or music publishers. As noted above, the proposed rule also wholly excludes top level, compilation data presented in anonymized format from the definition of ''confidential information.'' As noted below, the Office invites comment upon whether any further restrictions on access by board or committee members is advisable, such as whether to exclude from disclosure and use especially sensitive material, *i.e.,* an additional category of ''highly confidential'' information.[55]

The proposed rule also addresses conditions upon which a DLC representative may share information within the DLC. The DLC contends that its representatives should be able to share confidential information among DLC membership because ''[t]he purpose of that representation is so the broader [DLC] has insight into how the MLC is being run—after all, those licensees have agreed to fund it—and to advise on operational issues. DLC representatives are thus meant to represent the entire digital licensee community, and should be able to share information among DLC membership. Indeed, DLC might appoint someone who is not even employed by a licensee as its representative.'' [56] The DLC's proposed regulatory language thus includes provisions to handle the specific issues that arise with respect to DLC representatives to MLC boards and committees.[57] By contrast, the MLC maintains that ''[g]iven that the MLC board and committee members may be exposed to highly sensitive and confidential information, permitting [DLC] representatives to share such information with . . . individuals who may use such information for competitive advantage or other improper purposes runs contrary to the confidential nature of the information.'' [58]

The Copyright Office acknowledges that in developing operations policies for the MLC, DLC representatives may need to rely on the expertise of individuals within the DLC. The Office also acknowledges, however, the importance of preventing confidential information from being misused by competitors for commercial advantage. The proposed rule thus allows DLC representatives who serve on the board of directors or committees of the MLC to share confidential information with individuals serving on the board of directors and committees of the DLC, but only to the extent necessary for such persons to know such information and only when necessary to carry out their duties for the DLC, subject to an appropriate written confidentiality agreement. Under the proposed rule, all DLC representatives are prohibited from using confidential information for any purpose other than for work performed during the ordinary course of business for the DLC or MLC.

In addition, the proposed rule addresses conditions upon which DLC representatives may share information with additional persons at their respective companies. The DLC contends that its representatives should be able to share confidential information obtained with people with a need to know within DLC companies.[59] By contrast, the MLC maintains that doing so risks disclosure to competitors or others who may misuse such information for competitive advantage or other improper purposes.[60]

In contributing to the operations advisory committee's work on the MLC, some of which may involve fairly technical considerations, the Office tentatively concludes that some DLC representatives may reasonably need to solicit additional subject matter expertise of individuals within DLC member companies. To address the MLC's concerns, under the proposed rule DLC representatives who serve on the MLC's board of directors or committees may share confidential information with individuals employed by DLC members, subject to an appropriate written confidentiality agreement, and only to the extent necessary for such persons to know such information and for the DLC to perform its duties. Individuals employed by DLC members who receive confidential information from DLC representatives are prohibited from using confidential information for any purpose other than for work performed during the ordinary course of business for the DLC or MLC.

Finally, the proposed rule provides some flexibility by incorporating the MLC's suggestion that confidential information may be shared with other individuals authorized by the MLC to receive such information, but only to the extent necessary for such persons to know such information and only when necessary for the MLC to perform its duties, subject to an appropriate written confidentiality agreement.

3. Restrictions on Use by MLC and DLC Vendors and Consultants

Multiple commenters expressed concern about MLC vendors using confidential information they acquire while conducting work for the MLC for commercial advantage or for purposes outside of the MLC's statutory ambit.[61]

[53] MLC Initial at App. H.

[54] *See* MLC Initial at 29 (''The MMA contemplates that certain confidential, private, proprietary, or privileged information will have to be provided in order for the MLC to carry out its statutory obligations . . .''); DLC Initial at 23 (maintaining that having DLC representatives on MLC boards and committees ''is so the broader [DLC] has insight into how the MLC is being run . . . and to advise on operational issues,'' and that DLC representatives should thus be able to share confidential information ''with people with a need to know within DLC membership and within their companies'').

[55] While the DLC's approach would limit disclosure to board and committee members only to information labeled ''MLC Confidential Information,'' without more background, the Office is not sure this approach is advisable. It was not immediately clear to the Office whether the MLC would be able to recreate information that would otherwise not be accessible to board and committee members, and so the Office tentatively concludes that the proposed rule offers a reasonable alternative.

[56] DLC Initial at 23; *see also* DLC Reply at 28.

[57] *See* DLC Reply at 28, Add. A–22.

[58] MLC Reply at 41–42.

[59] DLC Initial at 23; DLC Reply at 28.

[60] MLC Reply at 41–42.

[61] National Association of Independent Songwriters (''NOIS'') et al. Initial at 16 (''The

The MLC states that it ''intends to provide users who submit confidential data to the MLC an ability to voluntarily 'opt in' to share that data for general use by its primary royalty processing vendor, the Harry Fox Agency,'' but that ''MLC users will not be required to opt in to any such sharing in order for the MLC to fully process and pay all royalties due to them under the blanket license.'' [62] The MLC did not further detail what it means by ''general use,'' but presumably, such shared information may potentially include payment information by copyright owners, including self-published songwriters, who sign up through the MLC's online portal. Without more information as to the intended use and anticipated benefit to MLC stakeholders, the Office is disinclined at this time to adopt the MLC's proposal, and so the proposed rule would not permit MLC vendors to use confidential information for purposes other than for duties performed during the ordinary course of work for the MLC, *e.g.,* including the administration of voluntary bundled licensing of performance and mechanical uses that the MLC itself is prohibited from administrating.[63]

Alternatively, where users of the MLC would have voluntarily opted-into ''general use'' of their information by the MLC's vendors, the Office considered whether to propose language requiring the MLC to provide such information to other third parties, perhaps restricted to those offering or administering music licensing services, for a reasonable cost. This approach would have the potential benefit of leveraging the unique nature of the MLC database in other aspects of the music ecosystem, without potentially affecting the competitive landscape in ways unrelated to the section 115 license. This approach, however, could also begin to implicate broader questions of data privacy and sharing that are less central to the MMA's goals, and the Office tentatively concludes that the more prudent approach is to restrict the MLC's disclosure of confidential information to its vendors, even with ostensible permission, to activities related to a given vendor's work for the MLC. For parity, the proposed rule includes a similar provision for DLC vendors, as well as board and committee members, employees, agents, consultants, and independent contractors of either the MLC or DLC. The Office invites public comment on this aspect of the proposed rule.

C. Safeguarding Confidential Information

Both the MLC and DLC propose having the MLC and DLC implement policies and procedures to prevent unauthorized access and/or use of confidential information, an approach that seems necessary to effectuate the intent of the proposed regulations.[64] Accordingly, the proposed rule states that the MLC, DLC, and any person or entity authorized to receive confidential information from either of those entities, must implement procedures to safeguard against unauthorized access to or dissemination of confidential information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own confidential information or similarly sensitive information.[65] In addition, the proposed rule states that the MLC and DLC shall each implement and enforce reasonable policies governing the confidentiality of its records.

D. Maintenance of Records

The MMA requires the Copyright Office to issue regulations ''setting forth requirements under which records of use shall be maintained and made available to the [MLC] by digital music providers engaged in covered activities under a blanket license.'' [66] While the Copyright Office will address records maintenance in connection with a separate rulemaking addressing data collection and reporting obligations by digital music providers,[67] the proposed rule provides that any written confidentiality agreements relating to the use or disclosure of confidential information must be maintained and stored by the relevant parties for at least the same amount of time that certain digital music providers are required to maintain records of use pursuant to 17 U.S.C. 115(d)(4)(A)(iv).

E. Confidentiality Designations

The proposed rule does not impose a requirement that confidential information necessarily bear a designation of confidentiality, although the MLC or DLC could presumably impose such a requirement in their own policies.

F. Nondisclosure Agreements

The MLC and DLC disagree as to whether DLC representatives should be required to sign nondisclosure agreements (''NDAs'') in their personal capacities. The DLC suggests that only the DLC as an organization should be bound, and not the DLC representatives in their personal capacities or as representatives of their employers.[68] Instead, the DLC contends, confidentiality obligations for the MLC and DLC should operate at ''an organization-to-organization level,'' [69] as ''some companies prohibit [DLC representatives from] taking on such personal liability for actions taken in the scope of employment.'' [70] The MLC disagrees, stating that if only the DLC, which is relatively assetless, is bound by a confidentiality agreement, there would be no recourse against the DLC for breach of confidentiality, and that such a proposal ''disincentives individuals on the MLC Board and committees from protecting confidential information, as there will be no penalty for unlawful disclosure.'' [71]

While the Office acknowledges the DLC's concerns, having confidentiality obligations operate at an MLC-to-DLC

vendors for the MLC should not be . . . able to use information and data that the MLC will gather and control to their competitive advantage. If they are in competition with other entities considered to be similar in nature or can use the data to their own unique proprietary advantage, they should not be eligible to be selected as a vendor.''); Lowery Reply at 12 (''If the Copyright Office does not prohibit HFA from selling for other commercial purposes the data it acquires through its engagement by MLC to facilitate the compulsory blanket license, the Congress will have just handed HFA a near insurmountable advantage over its competitors.'').

[62] MLC *Ex Parte* Letter #1 at 4.

[63] *See* 37 CFR 380.5(b) (prohibiting SoundExchange from using ''any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto'').

[64] MLC Initial at 29 (stating ''protection of such confidential, private, proprietary or privileged information may be accomplished through a regulation that requires the MLC and the DLC to implement confidentiality policies that prevent improper or unauthorized use of such material by their directors, committee members, and personnel''); DLC Reply Add. at A–21–22 (proposing that the MLC and DLC (and any person authorized to receive confidential information) ''must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information'').

[65] *See* 37 CFR 380.5(d) (''[SoundExchange] and any person authorized to receive Confidential Information from [SoundExchange] must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.'').

[66] 17 U.S.C. 115(d)(4)(A)(iii), (iv)(I).

[67] *See* U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register.**

[68] DLC Initial at 23.

[69] *Id.*

[70] DLC *Ex Parte* Letter #2 at 6.

[71] MLC Reply at 41.

level presents some potential shortcomings. For example, if DLC representatives are not bound in their personal capacities, what recourse would be available should a former DLC representative disclose or misuse confidential information, including after having left a DLC member company? Moreover, as the DLC would like its representatives to be able to share confidential information with employees of DLC member companies—who themselves do not serve on a DLC board or committee—ensuring that such confidential information is not improperly disclosed or misused may seem to necessitate employees of DLC member companies signing nondisclosure agreements in their personal capacities. In examining the analogous context of preventing confidential information produced through litigation discovery from being improperly disclosed or misused, the Copyright Office observes that model protective orders appear to bind individuals in their personal capacities.[72] Accordingly, at this time, the Office is disinclined to require that confidentiality obligations for the MLC and DLC operate at an organization-to-organization level. Instead, the proposed rule states that the various categories of individuals to receive confidential information do so subject to an appropriate written confidentiality agreement. The Copyright Office invites public comment on this aspect of the proposed rule.

In addition, a few commenters expressed concern about the MLC's ability to require NDAs for its board and committee members. The National Association of Independent Songwriters (''NOIS''), joined by individual stakeholders, contend that there ''must be a rejection of any incremental NDA put forth by the MLC to its board and/or committee members that requires anything not mandated by the MMA.'' [73] Similarly, the DLC maintains that Office's regulations ''should be the ceiling on any confidentiality requirements'' by the MLC.[74] For its part, the MLC states that it should have discretion to impose additional confidentiality requirements for board or committee participation, as it would ''allow[ ] the MLC to fill in inevitable gaps to ensure that confidential information is kept confidential . . .'' [75]

Under the proposed rule, the MLC may not impose additional restrictions relating to the use or disclosure of confidential information, beyond those imposed by the Office's regulations, as a condition for participation on a board or committee. The DLC is similarly restricted. In addition, the proposed rule states that the use of confidentiality agreements by the MLC and DLC is subject to the Office's confidentiality regulations, and that neither entity can permit broader use or disclosure of confidential information than what is permitted under the Office's regulations.

III. Subjects of Inquiry

The Copyright Office seeks additional public comment on all aspects of the proposed rule, including the specific subjects below:

1. Should the proposed rule further limit access to confidential material by MLC board and committee members? What about access to confidential material by employees at companies of MLC and DLC board members?

2. In addition to a ''Confidential Information'' designation, should the regulations provide for a ''Highly Confidential Information'' designation to provide an additional layer of protection for certain documents and information that only the employees, or employees, agents, and vendors of the MLC, may access (*i.e.,* not members of the board or committees of either the MLC or DLC)? If so, should the proposed rule specify which types of information and documents should be eligible for the ''Highly Confidential Information'' designation, or provide the MLC with flexibility to establish such policies, and how would that designation relate to permitted use of such material?

3. Should the Office's regulations address instances of inadvertent disclosure? If so, how?

4. If DLC representatives are not permitted to sign confidentiality agreements in their personal capacities, should the Office's regulations address the penalty for disclosure? If so, how? The Office welcomes suggestions of preferable alternative solutions that would balance the interests identified above to allow DLC representatives to participate on the MLC committees without creating disincentives to protect confidential information, or present issues should a DLC representative end employment with a DLC member company.

List of Subjects in 37 CFR Part 210

Copyright, Phonorecords, Recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 210 as follows:

PART 210—COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHYSICAL AND DIGITAL PHONORECORDS OF NONDRAMATIC MUSICAL WORKS

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 17 U.S.C. 115, 702.

Subpart B—Blanket Compulsory License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator

§§ 210.30 through 210.32 [Reserved]

■ 2. Add reserved §§ 210.30 through 210.32.

■ 3. Add § 210.33 to read as follows:

§ 210.33 Treatment of confidential and other sensitive information.

(a) *General.* This section prescribes the rules under which the mechanical licensing collective (MLC) and digital licensee coordinator (DLC) shall ensure that confidential, private, proprietary, or privileged information received by the MLC or DLC or contained in their records is not improperly disclosed or used, in accordance with 17 U.S.C. 115(d)(12)(C), including with respect to actions of the board of directors, committee members, and personnel of the MLC or DLC.

(b) *Definitions.* For purposes of this section:

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 115.

(2) ''Confidential Information'' includes sensitive financial or business information, including information relating to financial or business terms that could be used for commercial advantage, trade secrets, or sensitive personal information, including but not limited to, an individual's Social Security number, taxpayer identification number, financial account number(s), or

[72] *See, e.g.,* United States District Court for the Northern District of California, Model Protective Orders, *https://www.cand.uscourts.gov/forms/model-protective-orders/* (last visited Mar. 25, 2020); United States District Court for the Southern District of New York, Model Protective Order, *https://nysd.uscourts.gov/sites/default/files/practice_documents/Judge%20Parker%20Model%20Protective%20Order%205-21-19%20%281%29.pdf* (last visited Mar. 25, 2020).

[73] NOIS et al. Initial at 16. The NOIS comment did not provide any information regarding membership of the National Association of Independent Songwriters; many of the individual signatories were previously affiliated with the American Music Licensing Collective (''AMLC''), and do not all appear to be songwriters based on information previously submitted by the AMLC. *See* AMLC Proposal at 35, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001.*

[74] DLC Reply at 28.

[75] MLC Reply at 42.

date of birth (other than year). Confidential Information specifically includes usage data and other sensitive data used to compute market shares when distributing unclaimed accrued royalties, sensitive data shared between the MLC and DLC regarding any significant nonblanket licensee, and sensitive data concerning voluntary licenses or individual download licenses administered by and/or disclosed to the MLC. ''Confidential information'' also includes information submitted by a third party that is reasonably designated as confidential by the party submitting the information, subject to the other provisions of this section. ''Confidential Information'' does not include:

(i) Documents or information that are public or may be made public by law or regulation, including but not limited to information made publicly available through:

(A) Notices of license, excluding any addendum that provides a description of any applicable voluntary license or individual download license the digital music provider is, or expects to be, operating under concurrently with the blanket license.

(B) Notices of nonblanket activity, the MLC's online database, and information disclosable through the MLC bylaws, annual report, audit report, or the MLC's adherence to transparency and accountability with respect to the collective's policies or practices, including its anti-commingling policy, pursuant to 17 U.S.C. 115(d)(3)(D)(ii),(vii), and (ix). Confidential Information also excludes information made publicly available by the MLC or DLC pursuant to participation in proceedings before the Copyright Office or Copyright Royalty Judges, including proceedings to redesignate the MLC or DLC.

(ii) Documents or information that may be made public by law or that at the time of delivery to the MLC or DLC is public knowledge, or is subsequently disclosed by the party to whom the information would otherwise be considered confidential. The party seeking information from the MLC or DLC based on a claim that the information sought is a matter of public knowledge shall have the burden of proving that fact.

(iii) Top level, compilation data presented in anonymized format that does not allow identification of such data as belonging to any digital music provider, significant nonblanket licensee, or copyright owner.

(iv) Documents or information created by a party with respect to usage of such documents or information by that originating party.

(c) *Disclosure and Use of Confidential Information by the MLC and DLC.* (1) The MLC, including its employees, agents, consultants, vendors, independent contractors, and non-DLC members of the MLC board of directors or committees, shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto, in performing their duties during the ordinary course of their work for the MLC. Access and use of Confidential Information by the MLC shall be further limited as follows:

(i) Employees of the MLC may receive Confidential Information, subject to an appropriate written confidentiality agreement.

(ii) Agents, consultants, vendors, and independent contractors of the MLC may receive Confidential Information, only when necessary to carry out their duties during the ordinary course of their work for the MLC and subject to an appropriate written confidentiality agreement.

(iii) Non-DLC members on the MLC board of directors or committees may receive Confidential Information from the MLC, only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the MLC, and subject to an appropriate written confidentiality agreement.

(2) The DLC, including its employees, agents, consultants, vendors, independent contractors, members of the DLC board of directors or committees, and representatives serving on the board of directors or committees of the MLC, shall not use any Confidential Information for any purpose other than determining compliance with statutory license requirements, royalty calculation, collection, matching, and distribution, and activities related directly thereto, in performing their duties during the ordinary course of their work for the DLC. Access and use of Confidential Information by the DLC shall be further limited as follows:

(i) Employees, agents, consultants, vendors, and independent contractors of the DLC may receive Confidential Information from the MLC, only when necessary to carry out their duties during the ordinary course of their work for the DLC and subject to an appropriate written confidentiality agreement.

(ii) Representatives of the DLC who serve on the board of directors or committees of the MLC may receive Confidential Information from the MLC, only to the extent necessary for such persons to know such information, only when necessary to carry out their duties for the DLC, and subject to an appropriate written confidentiality agreement.

(iii) Representatives of the DLC who serve on the board of directors or committees of the MLC, and receive Confidential Information, may share such information with the following persons:

(A) Employees, agents, consultants, vendors, and independent contractors of the DLC, only to the extent necessary for the purpose of performing their duties during the ordinary course of their work for the DLC, and persons otherwise authorized by the MLC to receive Confidential Information, only to the extent necessary for such persons to know such information, subject to an appropriate written confidentiality agreement.

(B) Individuals serving on the board of directors and committees of the DLC, only to the extent necessary for such persons to know such information and only when necessary to carry out their duties for the DLC, subject to an appropriate written confidentiality agreement.

(C) Individuals otherwise employed by members of the DLC, only to the extent necessary for such persons to know such information and only when necessary for the DLC to perform its duties, subject to an appropriate written confidentiality agreement.

(D) Persons otherwise authorized by the MLC to receive Confidential Information, only to the extent necessary for such persons to know such information and only when necessary for the MLC to perform its duties, subject to an appropriate written confidentiality agreement.

(d) *Disclosure of Confidential Information to Non-MLC and Non-DLC Persons and Entities.* In addition to the permitted use and disclosure of Confidential Information in paragraph (c) of this section, the MLC and the DLC may disclose Confidential Information to:

(1) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(4)(D), who is authorized to act on behalf of the mechanical licensing collective with respect to verification of royalty payments by a digital music provider operating under the blanket license, subject to an appropriate written confidentiality agreement;

(2) A qualified auditor or outside counsel, pursuant to 17 U.S.C. 115(d)(3)(L), who is authorized to act on behalf of a copyright owner or group of copyright owners with respect to verification of royalty payments by the mechanical licensing collective, subject to an appropriate written confidentiality agreement; and

(3) Attorneys and other authorized agents of parties to proceedings before federal courts, the Copyright Office, or the Copyright Royalty Judges, or when such disclosure is required by court order or subpoena, subject to an appropriate protective order or agreement.

(e) *Safeguarding Confidential Information.* The MLC, DLC, and any person or entity authorized to receive Confidential Information from either of those entities, must implement procedures to safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information. The MLC and DLC shall each implement and enforce reasonable policies governing the confidentiality of their records, subject to the other provisions of this section.

(f) *Maintenance of records.* Any written confidentiality agreements relating to the use or disclosure of Confidential Information must be maintained and stored by the relevant parties for at least the same amount of time that certain digital music providers are required to maintain records of use pursuant to 17 U.S.C. 115(d)(4)(A)(iv).

(g) *Confidentiality agreements.* The use of confidentiality agreements by the MLC and DLC shall be subject to the other provisions of this section, and shall not permit broader use or disclosure of Confidential Information than permitted under this section. The MLC and DLC may not impose additional restrictions relating to the use or disclosure of Confidential Information, beyond those imposed by this provision, as a condition for participation on a board or committee.

Dated: April 15, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–08374 Filed 4–17–20; 4:15 pm]

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–8]

Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information

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

ACTION: Notification of inquiry.

SUMMARY: The U.S. Copyright Office is issuing a notification of inquiry regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act. Title I establishes a blanket compulsory license, which digital music providers may obtain to make and deliver digital phonorecords of musical works. By statute, the blanket license, which will be administered by a mechanical licensing collective, will become available on January 1, 2021. The MMA specifically directs the Copyright Office to adopt a number of regulations to govern the new blanket licensing regime, including prescribing categories of information to be included in the mechanical licensing collective's musical works database, as well as rules related to the usability, interoperability, and usage restrictions of the database. Congress has indicated that the Office should exercise its general regulatory authority to, among other things, help ensure that the collective's policies and practices are transparent and accountable. The Office seeks public comment regarding the subjects of inquiry discussed in this notification, namely, issues related to ensuring appropriate transparency of the mechanical licensing collective itself, as well as the contents of the collective's public musical work database, database access, and database use. This notification is being published concurrently with a related notice of proposed rulemaking related to confidentiality considerations with respect to the operation and records of the collective.

DATES: Written comments must be received no later than 11:59 Eastern Time on June 8, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/mma-transparency.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 (''MMA'').[1] Title I of the MMA, the Musical Works Modernization Act, substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] Prior to the MMA, licensees obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (''NOI'') on the relevant copyright owner (or filing it with the Copyright Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[3] The MMA amends this regime most significantly by establishing a new blanket compulsory license that digital music providers may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity,'' where such activity qualifies for a compulsory license).[4] Instead of licensing one song

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[4] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket

at a time by serving NOIs on individual copyright owners, the blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has been designated by the Register of Copyrights.[5]

By statute, digital music providers will bear the reasonable costs of establishing and operating the MLC through an administrative assessment, to be determined, if necessary, by the Copyright Royalty Judges (''CRJs'').[6] As permitted under the MMA, the Office designated a digital licensee coordinator (''DLC'') to represent licensees in proceedings before the CRJs and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions.[7]

A. General Regulatory Background and Importance of Transparency

The MMA enumerates several regulations that the Copyright Office is specifically directed to promulgate to govern the new blanket licensing regime, and Congress invested the Copyright Office with ''broad regulatory authority'' [8] to ''conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of [the MMA pertaining to the blanket license].'' [9] The legislative history contemplates that the Office will ''thoroughly review[ ]'' [10] policies and procedures established by the MLC and its three committees, of which the MLC is statutorily bound to ensure are ''transparent and accountable,'' [11] and promulgate regulations that ''balance[ ] the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' [12]

Congress acknowledged that ''[a]lthough the legislation provides specific criteria for the collective to operate, it is to be expected that situations will arise that were not contemplated by the legislation,'' and that ''[t]he Office is expected to use its best judgement in determining the appropriate steps in those situations.'' [13] Legislative history further states that ''[t]he Copyright Office has the knowledge and expertise regarding music licensing through its past rulemakings and recent assistance to the Committee[s] during the drafting of this legislation.'' [14] Accordingly, in designating the MLC, the Office stated that it ''expects ongoing regulatory and other implementation efforts to . . . extenuate the risk of self-interest,'' and that ''the Register intends to exercise her oversight role as it pertains to matters of governance.'' [15] Additionally, the Office stated that it ''intends to work with the MLC to help it achieve the[] goals'' of ''engagement with a broad spectrum of musical work copyright owners, including from those communities'' and musical genres that some commenters in the designation proceeding asserted are underrepresented.[16]

This notification of inquiry is focused on considerations to ensure appropriate transparency and public disclosure of information by the mechanical licensing collective. Fostering increased transparency is an animating theme of the MMA, which envisions the MLC ''operat[ing] in a transparent and accountable manner'' [17] and ensuring that its ''policies and practices . . . are transparent and accountable.'' [18] Indeed, some Members of Congress noted that a key aspect of the MMA is bringing transparency to the music industry.[19] The MLC itself has expressed its commitment to transparency, both by including transparency as one of its four key principles underpinning its operations on its current website,[20] and in written comments to the Office.[21] For example, the MLC noted its ''commitment to working with, and under the oversight of, the Office to ensure that issues relating to its policies and procedures are transparent and appropriate, including with respect to addressing and mitigating conflicts of interest, maintaining diversity, representing the entire musical works community, and ensuring board and committee member service complies will all relevant legal requirements.'' [22]

Further, the MMA specifically directs the Copyright Office to promulgate certain regulations related to the MLC's creation of a free database to publicly disclose musical work ownership information and identify the sound recordings in which the musical works are embodied.[23] As discussed more

license and the mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[5] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[6] 17 U.S.C. 115(d)(7)(D).

[7] *Id.* at 115(d)(5)(B); 84 FR at 32274; *see also* 17 U.S.C. 115(d)(3)(D)(i)(IV), (d)(5)(C).

[8] H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; Conf. Rep. at 4.

[9] 17 U.S.C. 115(d)(12)(A).

[10] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. The Conference Report further contemplates that the Office's review will be important because the MLC must operate in a manner that can gain the trust of the entire music community, but can only be held liable under a standard of gross negligence when carrying out certain of the policies and procedures adopted by its board. Conf. Rep. at 4.

[11] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[12] H.R. Rep. No. 115–651, at 5–6, 14; S. Rep. No. 115–339, at 5, 15; Conf. Rep. at 4, 12. *See also* SoundExchange Initial at 15; Future of Music Coalition (''FMC'') Reply at 3 (appreciating ''SoundExchange's warning against too-detailed regulatory language,'' but ''urg[ing] the Office to balance this concern for pragmatism and flexibility against the need to provide as much clear guidance and oversight as possible to encourage trust''). All rulemaking activity, including public comments, as well as educational material regarding the Music Modernization Act, can currently be accessed via navigation from *https://www.copyright.gov/music-modernization/*. Comments received in response to the September 2019 notification of inquiry are available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2019-0002&refD=COLC-2019-0002-0001*. References to these comments and letters are by party name (abbreviated where appropriate), followed by either ''Initial,'' ''Reply,'' or ''*Ex Parte* Letter,'' as appropriate. Guidelines for *ex parte* communications, along with records of such communications, are available at *https://www.copyright.gov/rulemaking/mma-implementation/ex-parte-communications.html.* The Office encourages parties to refrain from requesting *ex parte* meetings on this notification of inquiry until they have submitted written comments. As stated in the guidelines, *ex parte* meetings with the Office are intended to provide an opportunity for participants to clarify evidence and/or arguments made in prior written submissions, and to respond to questions from the Office on those matters.

[13] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[14] H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15; Conf. Rep. at 12.

[15] 84 FR at 32280.

[16] *Id.* at 32279.

[17] S. Rep. No. 115–339, at 7.

[18] 17 U.S.C. 115(d)(3)(D)(ix)(I)(aa).

[19] *See* 164 Cong. Rec. S6292, 6293 (daily ed. Sept. 25, 2018) (statement of Senator Hatch) (''I need to thank Chairman Grassley, who shepherded this bill through the committee and made important contributions to the bill's oversight and transparency provisions.''); 164 Cong. Rec. S 501, 504 (Senator Chris Coons stating ''[t]his important piece of legislation will bring much-needed transparency and efficiency to the music marketplace.''); 64 Cong. Rec. H 3522, 3541 (Representative Steve Chabot stating ''[t]his legislation provides much-needed updates to bring music licensing into the digital age, particularly improving market efficiencies and transparency to reflect the modern music marketplace.''); *see also* Conf. Rep. at 6 (''Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on.'').

[20] The MLC, Mission and Principles, *https://themlc.com/mission-and-principles* (last visited Apr. 10, 2020) (''The MLC will build trust by operating transparently. The MLC is governed by a board of songwriters and music publishers who will help ensure our work is conducted with integrity.''). *See also* The MLC, The MLC Process, *https://themlc.com/how-it-works* (last visited Apr. 10, 2020) (''The MLC is committed to transparency. The MLC will make data on unclaimed works and unmatched uses available to be searched by registered users of The MLC Portal and the public at large.'').

[21] *See, e.g.,* MLC Reply at 42–43 (''The MLC is committed to transparency and submits that, while seeking to enact regulations is not an efficient or effective approach, the MLC will implement policies and procedures to ensure transparency.'').

[22] MLC Initial at 30–31.

[23] *See* 17 U.S.C. 115(d)(3)(E), (e)(20).

below, the statute requires the MLC's public database to include various types of information, depending upon whether a musical work has been matched to a copyright owner.[24] For both matched and unmatched works, the MLC's database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.'' [25] The database must ''be made available to members of the public in a searchable, online format, free of charge,'' [26] as well as ''in a bulk, machine-readable format, through a widely available software application,'' to certain parties, including blanket licensees and the Copyright Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [27]

B. Non-Regulatory Requirements and Incentives for Transparency

While this notice is directed at exploring ways in which the Copyright Office may reasonably and prudently exercise regulatory authority to facilitate appropriate transparency and public disclosure, it is important to note that both the statutory language as well as the MLC's structure separately include aspects that promote disclosure absent additional regulation. While the Copyright Office does not agree with the MLC that regulations regarding issues related to transparency ''may be premature'' because the MLC's ''policies and procedures are still being developed'' [28]—including because the statute directs the Office specifically to promulgate regulations concerning contents of the public database [29]—the Office does recognize that any regulatory language would be additive to this existing scheme, and should be considered within the full context of the statutory goals.

First, the statute requires the MLC to make its bylaws publicly available,[30] which the MLC has committed to doing.[31] As the Recording Academy suggested, the publication of these bylaws ''are key to establishing trust, and will help assuage any outstanding concerns amongst songwriters about the MLC's operations.'' [32] Indeed, the MLC itself recognizes that making its bylaws publicly available ''promotes transparency.'' [33] Second, and as noted below, the MLC must publish an annual report detailing its operations; while this notice seeks input on whether it would be appropriate to further specify contents of that report, this statutory obligation already serves as a mandate for the MLC to disclose various categories of information. Third, every five years, the MLC will submit itself to periodic public audits to ensure it does not ''engage in waste, fraud and abuse,'' [34] and so some concerns about transparency may be addressed through the statutorily-mandated exercise of this audit provision.[35] Fourth, in a separate provision, copyright owners may also audit the MLC to verify the accuracy of royalty payments paid by the MLC.[36] Fifth, the MLC must ensure that its policies and practices ''are transparent and accountable'' [37]; the MLC has suggested that it would be more fruitful to allow the MLC room to ''fully develop[] its policies and procedures'' and ''provide them to the Office for review'' before considering whether regulation in this area is advisable.[38] Sixth, the MLC must ''identify a point of contact for publisher inquiries and complaints with timely redress.'' [39] Seventh, the MLC must ''establish an anti-comingling policy for funds'' collected and those not collected under section 115.[40] Seventh, the MLC must fulfill a statutory mandate to outreach to songwriters and generally ''publicize, throughout the music industry'' its work and procedures by which copyright owners may claim their accrued royalties.[41] Finally, the five-year designation process established by the statute provides another avenue for the Office to periodically review the mechanical licensing collective's performance.[42]

In some instances, the Office understands that the MLC has already begun working to communicate to the public regarding its transparency of operations, such as by launching an initial website and participating in various industry conferences.[43] The Office presumes these efforts will grow more robust as the license availability date approaches, and anticipates continued discussions with both the MLC and DLC on ways to cooperate on education and outreach. In other cases, the MLC has adopted policies that bear upon issues related to disclosure and governance, including by adopting a conflict of interest policy ''for appropriately managing conflicts of interest in accordance with legal requirements and the MLC's goals of accountability and transparency.''[44] The

[24] *Id.* at 115(d)(3)(E)(ii), (iii).

[25] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[26] *Id.* at 115(d)(3)(E)(v).

[27] *Id.*

[28] MLC Initial at 31 (''The MLC believes that the promulgation of regulations concerning the Office's role in overseeing and regulating the MLC's operations and policies would be more fruitful once the MLC has fully developed its policies and procedures and is able to provide them to the Office for review.'').

[29] 17 U.S.C. 115(d)(3)(E)(ii)(V), (iii)(II); *see also* U.S. Copyright Office, Notice of Proposed Rulemaking, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[30] 17 U.S.C. 115(d)(3)(D)(ii)(II).

[31] MLC Reply at 42–43 (''The publication of the MLC's bylaws is directly addressed by the statute, with which the MLC will of course comply . . . .'').

[32] Recording Academy Initial at 4.

[33] The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Apr. 10, 2020) (noting that the MLC will ''promote transparency'' by ''[m]aking The MLC governing bylaws public'').

[34] Conf. Rep. at 6 (''To ensure that the collective does not engage in waste, fraud and abuse, the collective is required to submit to periodic audits to examine its operations and procedures.''); 17 U.S.C. 115(d)(3)(D)(ix)(II). Beginning in the fourth full calendar year after the MLC's initial designation, and in every fifth calendar year thereafter, the MLC is required to retain a qualified auditor to ''examine the [MLC's] books, records, and operations'' and ''prepare a report for the [MLC's] board of directors,'' which must also be provided to the Register of Copyrights. *Id.* at 115(d)(3)(D)(ix)(II)(aa), (cc).

[35] For each audit, the collective must retain a qualified auditor to ''examine the books, records, and operations of the collective''; ''prepare a report for the board of directors of the collective''; and ''deliver the report . . . to the board of directors of the collective.'' 17 U.S.C. 115(d)(3)(D)(ix)(II)(aa)(AA)–(CC). Each report must address the collective's ''implementation and efficacy of procedures'' ''for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties''; ''to guard against fraud, abuse, waste, and the unreasonable use of funds''; and ''to protect the confidentiality of financial, proprietary, and other sensitive information.'' *Id.* at 115(d)(3)(D)(ix)(II)(bb)(AA)–(CC). And the collective must deliver each report to the Register of Copyrights and make it publicly available. *Id.* at 115(d)(3)(D)(ix)(II)(cc).

[36] *Id.* at 115(d)(3)(L)(i).

[37] *Id.* at 115(d)(3)(D)(ix)(I)(aa). In connection with a separate notice of proposed rulemaking concerning reports of usage, notices of license, and data collection efforts, among other things, the Office is addressing the MLC's obligations under 17 U.S.C. 115(d)(3)(F)(i), and for purposes of transparency, how the MLC should confirm or reject notices of license, and terminate blanket licenses. Specifically, the rule proposes that the MLC maintain a current, free, and searchable public list of all blanket licenses, including various details, such as information from notices of license, whether a notice of license has been rejected and why, and whether a blanket license has been terminated and why. U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[38] MLC Initial at 31.

[39] *Id.* at 115 (d)(3)(D)(ix)(I)(bb).

[40] *Id.* at 115 (d)(3)(D)(ix)(I)(cc).

[41] *Id.* at 115(d)(3)(J)(iii)(II).

[42] *See id.* at 115(d)(3)(B)(ii).

[43] *See* The MLC, *https://themlc.com* (last visited Apr. 10, 2020).

[44] MLC Opening Submission—Part II at 21, U.S. Copyright Royalty Board, Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective, Docket No. 19–CRB–0009–AA, available at *https://app.crb.gov/*

MLC advises that it intends to make this policy public.[45]

Finally, some commenters raised questions about board governance, particularly with respect to appointments and succession.[46] The initial designation process for MLC board and committee members, including those members' qualifications, was detailed in the Office's July 2019 designation of the MLC and DLC, as well as the numerous public comments received, including the MLC's detailed submission.[47] In addition to the MLC's bylaws, which necessarily detail its approach to board and committee members, the Copyright Office's website publicizes MLC and DLC contact information, as well as the procedure by which vacancies to the MLC board of directors, statutory committees, or nonvoting board seats are filled, including the process by which the Librarian of Congress, upon the recommendation of the Register of Copyrights, appoints successive voting members to the MLC board.[48]

C. Solicitation of Additional Public Comment

Against that backdrop, the Copyright Office seeks additional input on issues related to transparency and public disclosure of information by the MLC. On September 24, 2019, the Office issued a notification of inquiry seeking public input on a variety of aspects related to implementation of title I of the MMA, including considerations in facilitating an appropriate balance between promoting transparency and public access while protecting confidential information, as well as the scope and manner of the Office's oversight role.[49] The September 2019 notification of inquiry specifically asked for public input on any issues that should be considered regarding information to be included in the MLC's musical works database (*e.g.,* which specific additional categories of information might be appropriate to include by regulation), as well as the usability, interoperability, and usage restrictions of the MLC's musical works database (*e.g.,* technical or other specific language that might be helpful to consider in promulgating these regulations, discussion of the pros and cons of applicable standards, and whether historical snapshots of the database should be maintained to track ownership changes over time).[50] In addition, the notification of inquiry sought public comment on any issues that should be considered relating to the general oversight of the MLC.[51]

In response, many commenters emphasized the importance of transparency of the MLC's operations and its public database,[52] and urged the Office to exercise ''expansive'' [53] and ''robust'' [54] oversight. Given these public comments, and the MLC's own recognition of the importance of transparency, the Office believes clear guidance at this time on certain areas, such as those related to annual reporting and the public musical works database, may be appropriate.

Having reviewed and carefully considered all relevant comments, the Office now seeks additional comment on the areas of inquiry below. In many areas, the Office has already received valuable information in response to the September 2019 notification of inquiry, but is providing another opportunity for comment before moving forward with a proposed rule. Commenters are reminded that while the Office's regulatory authority is relatively broad, it is obviously constrained by the law Congress enacted.[55] After reviewing the comments received in response to this notification of inquiry, the Office is likely to publish a notice of proposed rulemaking. In recognition of the start-up nature of the collective and current transition period, as the discussion and factual development progresses, the Office will also consider whether fashioning an interim rule, rather than a final rule, may be best-suited to ensure a sufficiently responsive and flexible regulatory structure.

To aid the Office's review, it is requested that where a submission responds to more than one of the below categories, it be divided into discrete sections that have clear headings to indicate the category being discussed in each section. Comments addressing a single category should also have a clear heading to indicate which category it discusses. The Office welcomes parties to file joint comments on issues of common agreement and consensus. While all public comments are welcome, the Office encourages parties to provide specific proposed regulatory language for the Office to consider and for others to comment upon.

Concurrent with this notification of inquiry, the Office issued a notice of proposed rulemaking identifying appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used.[56] The Office encourages interested commenters in connection with this notification of inquiry to

case/viewDocument/7865; id. (''The Conflict of Interest Policy contains clear provisions requiring disclosure of actual, potential or perceived financial or other conflicts of interest, and lays out clear procedures for assessing such conflicts and ensuring the integrity and fairness of the MLC's business transactions.''). *See* Songwriters Guild of America, Inc. (''SGA'') Reply at 5 (''[T]he mandating of adoption by the MLC of conflict of interest policies in coordination with the USCO and the Librarian of Congress would likewise be a wise and welcome development.'').

[45] MLC *Ex Parte* Letter Apr. 3, 2020 (''MLC *Ex Parte* Letter #4'') at 11.

[46] *See* Recording Academy Initial at 4 (''[T]he Copyright Office should articulate clear standards for the MLC board regarding board operations and governance, including appointments and succession.''); Music Artists Coalition (''MAC'') Initial at 2 (expressing concern regarding the selection and makeup of the MLC board of directors and statutory committees).

[47] 84 FR at 32276–95.

[48] U.S. Copyright Office, MLC and DLC Contact Information, Boards of Directors, and Committees, *https://www.copyright.gov/music-modernization/mlc-dlc-info/* (last visited Apr. 10, 2020).

[49] 84 FR 49966, 49973 (Sept. 24, 2019).

[50] *Id.* at 49972.

[51] *Id.* at 49973.

[52] *See* MAC Initial at 2 (indicating ''the need for more transparency'' regarding the MLC's structure); Music Innovation Consumers (''MIC'') Coalition Initial at 3 (''All stakeholders in the music marketplace benefit when current and accurate information about copyright ownership is easily accessible.''); Screen Composers Guild of Canada (''SCGC'') Reply Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001* (''We urge you to make the choice that gives us transparency in the administration and oversight of our creative works, and a fair chance at proper compensation for those works, now and in the future.''); Iconic Artists LLC Initial Comments at 2, U.S. Copyright Office Dkt. No. 2018–11, available at *https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=COLC-2018-0011&refD=COLC-2018-0011-0001* (''In the current paradigm there is a need for greater transparency and accuracy in reporting.''); DLC Reply at 28 (noting that ''transparency will be critical to ensuring that the MLC fulfills its duties in a fair and efficient manner'').

[53] SGA Initial at 6 (urging the Register ''to exercise the expansive oversight authority granted . . . under the MMA'').

[54] FMC Reply at 2 (stating ''the Copyright Office's oversight of the MLC's activities should be robust''). *See also* Recording Academy Initial at 4 (''the Copyright Office should articulate clear standards for the MLC board regarding board operations and governance . . .''); DLC Reply at 28 (encouraging ''the Copyright Office to vigilantly exercise its ongoing authority under the MMA to ensure the success of this enterprise''); Lowery Reply at 2 (stating ''the Copyright Office shouldn't delay establishing the rules of the road'').

[55] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 980 (2005) (''[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion.'') (citing *Chevron, U.S.A., Inc.* v. *Nat. Res. Def. Council, Inc.,* 467 U.S. 837 (1984)). *See also* Conf. Rep. at 4, 12.

[56] U.S. Copyright Office, Notice of Proposed Rulemaking, *Treatment of Confidential Information by the Mechanical Licensing Collective and Digital Licensee Coordinator,* Dkt. No. 2020–7, published elsewhere in this issue of the **Federal Register**.

review that separate notice carefully and consider commenting on that notice as well.

II. Subjects of Inquiry

A. Transparency of MLC Operations; Annual Reporting

One avenue for transparency with respect to the MLC is through its annual report. The MMA requires the MLC to publish an annual report no later than June 30 of each year after the license availability date, setting forth information regarding: (1) Its operational and licensing practices; (2) how royalties are collected and distributed; (3) budgeting and expenditures; (4) the collective total costs for the preceding calendar year; (5) the MLC's projected annual budget; (6) aggregated royalty receipts and payments; (7) expenses that are more than ten percent of the MLC's annual budget; and (8) the MLC's efforts to locate and identify copyright owners of unmatched musical works (and shares of works).[57] The MLC must deliver a copy of the annual report to the Register of Copyrights and make this report publicly available.[58]

The annual report thus functions as a statutorily-prescribed outlet for the MLC to provide much of the information requested by parties in response to the September 2019 notification of inquiry. Some commenters recognized the role that the annual reporting would play in facilitating the transparency envisioned by the MMA and the MLC itself. The DLC, for example, suggested that although the ''the MMA generally specifies that the MLC's annual report must ''set[ ] forth information regarding . . . the operational and licensing practices of the collective,'' ''how royalties are collected and distributed,'' and ''the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works),'' it ''will be crucial for the Office to ensure that the MLC follows not just the letter of these requirements but their spirit.'' [59] Other commenters similarly asked for MLC oversight to ensure disclosure of information in specific areas the statute envisions the annual report addressing, though without directly linking such oversight to the annual report: board governance,[60] the manner in which the MLC will distribute unclaimed royalties,[61] development updates and certifications related to its IT systems,[62] and the MLC's efforts to identify copyright owners.[63] These comments suggest that comprehensive annual reporting may be a key means though which visibility into MLC operations occurs, and thus certain information (in addition to statutorily required information) should be included for full transparency. Indeed, the MLC itself recognizes that its annual report is one way in which it intends to ''promote transparency.'' [64]

As part of analyzing whether it may be beneficial to flesh out the level of detail required in the MLC's annual report through a rule, commenters may consider specific types of additional information the MLC should include. For example, a few commenters expressed a desire for more information about the MLC's vendor selection process.[65] While the Office may consider the MLC's capabilities, including through its vendors, during the re-designation process as part of its duty to confirm whether the collective has ''the administrative and technological capabilities to perform the required functions'' of the collective,[66] the statute vests the MLC itself with authority to ''[i]nvest in relevant resources, and engage for services of outside vendors and others, to support the activities of the mechanical licensing collective.[67] The MLC's annual report could thus serve as a means for the collective to publicly address issues related to vendor selection criteria and performance.

Similarly, in addition to the information provided in the MLC's bylaws, which will be made publicly available, the annual report could further address issues related to MLC board and committee selection criteria. The annual report could thus disclose any actual or potential conflicts raised with and/or addressed by its board of directors, if any, in accordance with the MLC's policy.[68]

The Office seeks public input on any issues that should be considered relating to the substance of the MLC's annual reports, including any proposed regulatory language. The Office welcomes views regarding any additional considerations or proposed regulatory approaches to address issues raised in the public comments beyond the annual reporting mechanism. Further, and in light of the MLC's position that regulatory language may be premature, the Office invites the MLC to publicly share with greater particularity operational and communications planning information, such as notional schedules, beta wireframes, or other documentation, to provide context to MLC stakeholders in the months leading up to the license availability date.

B. Categories of Information in the MLC's Musical Works Public Database

The MLC must establish and maintain a free public database of musical work ownership information that also identifies the sound recordings in which the musical works are embodied,[69] a function expected to provide transparency across the music industry.[70] For musical works that have

[57] 17 U.S.C. 115(d)(3)(D)(vii)(I)(aa)–(hh); Conf. Rep. at 7.

[58] 17 U.S.C. 115(d)(3)(D)(vii)(II).

[59] DLC Initial at 24.

[60] Recording Academy Reply at 2 (encouraging the Copyright Office to ''make oversight of the MLC a priority, particularly with regard to establishing processes and procedures for board governance'').

[61] Lowery Reply at 8 (expressing concern about manner in which the MLC will distribute unclaimed royalties based on market share); Monica Corton Consulting Reply at 3 (same).

[62] Lowery Reply at 5 (expressing concern about manner in which the MLC will disclose system updates).

[63] SGA Initial at 6 (asking for the Office to ''mandate the undertaking through the institution of best practices, bona fide and easily reviewable efforts by the MLC to identify as great a percentage of the proper owners of unmatched royalties and titles as possible'').

[64] The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Apr. 10, 2020) (noting that the MLC will ''promote transparency'' by ''[p]roviding an annual report to the public and to the Copyright Office detailing the operations of The MLC, its licensing practices, collection and distribution of royalties, budget and cost information, its efforts to resolve unmatched royalties, and total royalties received and paid out'').

[65] National Association of Independent Songwriters (''NOIS'') et al. Initial at 16 (''Complete transparency through public documents and test results in regards to the selection of the vendors must be provided. This should include the methodology used for selection along with the results of any Request For Proposals, test results, pricing structure, rates and additional criteria.''); MAC Initial at 3 (''The need for a fully transparent process is also deeply important in the RFI/RFP process to select a vendor.''); Lowery Reply at 3, 12; SGA Reply at 4–5.

[66] 17 U.S.C. 115(d)(3)(A)(iii).

[67] *Id.* at 115(d)(3)(C)((i)(VII). *See* 84 FR at 32287 (discussing MLC applicants' proposed approaches to using vendors).

[68] *See also* Lowery Reply at 8 (asserting that the MLC, including board members, officers, and key employees, should disclose financial incentives or benefits received ''from any person or entity MLC does business with'').

[69] 17 U.S.C. 115(d)(3)(E), (e)(20).

[70] *See* 164 Cong. Rec. H3522 at 3542 (daily ed. Apr. 25, 2018) (statement of Rep. Norma Torres) (''Information regarding music owed royalties would be easily accessible through the database created by the Music Modernization Act. This transparency will surely improve the working relationship between creators and music platforms and aid the music industry's innovation process.''). *See also* The MLC, Transparency, *https://themlc.com/faqs/categories/transparency* (last visited Apr. 10, 2020) (noting that the MLC will ''promote transparency'' by ''[p]roviding unprecedented access to musical works ownership information through a public database'').

been matched, the statute requires the MLC's database to include:

1. The title of the musical work;
2. The copyright owner of the musical work (or share thereof), and the ownership percentage of that owner;
3. Contact information for such copyright owner; and
4. To the extent reasonably available to the MLC, (a) the ISWC for the work, and (b) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works.[71]

For unmatched musical works, the statute requires the database to include, to the extent reasonably available to the MLC:

1. The title of the musical work;
2. The ownership percentage for which an owner has not been identified;
3. If a copyright owner has been identified but not located, the identity of such owner and the ownership percentage of that owner;
4. Identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, ISRC, and other information commonly used to assist in associating sound recordings with musical works; and
5. Any additional information reported to the MLC that may assist in identifying the work.[72]

For both matched and unmatched works, the MLC's database must also include ''such other information'' ''as the Register of Copyrights may prescribe by regulation.'' [73] The ''Register shall use its judgement to determine what is an appropriate expansion of the required fields, but shall not adopt new fields that have not become reasonably accessible and used within the industry unless there is widespread support for the inclusion of such fields.'' [74]

In considering whether to prescribe the inclusion of additional fields beyond those statutorily required, the Office will focus on fields that would advance the goal of the MLC's database: Reducing the number of unmatched works by accurately identifying musical work copyright owners so they can be paid what they are owed by digital music providers operating under the section 115 statutory license.[75] At the same time, the Office is mindful of the MLC's corresponding duties to keep confidential business and personal information secure and inaccessible; for example, data related to computation of market share is contemplated by the statue as sensitive and confidential, despite some comments suggesting that this information should be publicly shared.[76] Recognizing that a robust musical works database may contain many fields of information, the Office tentatively concludes that this rulemaking may be most valuable in establishing a floor of required information, that copyright owners and other stakeholders can reliably expect to access in the public database, while providing the MLC with flexibility to include additional data fields that it finds helpful.[77]

The September 2019 notification of inquiry asked which specific additional categories of information, if any, should be required for inclusion in the MLC's database, and stakeholder comments, generally furthering mandating inclusion of additional information, are discussed by category below.[78] To the extent additional categories of information should be made publicly available in the MLC's database, but are not discussed below, the Office invites public comments regarding those additional categories.

1. Songwriter or Composer

Multiple commenters noted the importance of the database including and making publicly available songwriter and composer information, with SGA for example noting, ''[w]hile the names of copyright owners and administrators associated with a musical work may change on a constant basis, and other variables and data points are subject to frequent adjustment, the title and the names of the creators never vary from the date of a work's creation forward.'' [79] Others echoed the strong need for the database to include songwriter/composer information, and the MLC and DLC both proposed regulatory language including this field.[80] The Office finds these comments persuasive in light of the statute, and is inclined to require that songwriter and composer information be publicly available in the MLC's database, to the extent known to the MLC.

2. Studio Producer

The statute requires the database to include ''producer,'' to the extent reasonably available to the MLC.[81] Initially, there appeared to be confusion about the meaning of this term, with the MLC originally believing that ''producer'' referred to ''the record label or individual or entity that commissioned the sound recording.'' [82] Following comments and discussion with Recording Academy and the Recording Industry Association of America, Inc. (''RIAA''), who compellingly suggest that the legislative intent was that the term mean refer to the studio producer, the MLC updated its understanding.[83] The MLC contends, however, that ''the studio producer of a sound recording is not a data item that

[71] 17 U.S.C. 115(d)(3)(E)(ii).

[72] *Id.* at 115(d)(3)(E)(iii).

[73] *Id.* at 115(d)(3)(E)(ii)(V), (iii)(II).

[74] Conf. Rep. at 7.

[75] *See id.* (noting that the ''highest responsibility'' of the MLC's includes ''efforts to identify the musical works embodied in particular sound recordings,'' ''identify[ing] and locat[ing] the copyright owners of such works so that [the MLC] can update the database as appropriate.'' and ''efficient and accurate collection and distribution of royalties'').

[76] 17 U.S.C. 115(d)(3)(J)(i)(II)(bb) (''the mechanical licensing collective shall take appropriate steps to safeguard the confidentiality and security of usage, financial, and other sensitive data used to compute market shares in accordance with the confidentiality provisions prescribed by the Register of Copyrights''). *See* MLC Initial at 24 (contending that not all information contained in its database ''would be appropriate for public disclosure,'' and that it ''should be permitted to exercise reasonable judgment in determining what information beyond what is statutorily required should be made available to the public''); MAC Reply at 2–3 (suggesting ''data relating to market share determinations and voluntary licenses'' should be publicly shared).

[77] *Compare* U.S. Copyright Office, Notice of Proposed Rulemaking, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register** (proposing a floor of categories of information to be required in periodic reporting to copyright owners, but noting that the MLC expects to include additional information).

[78] 84 FR at 49972. *See, e.g.,* SoundExchange Initial at 6 (''[T]he data fields recited in the statute should be viewed as a minimal and vaguely described set of data for understanding rights with respect to a musical work in a crowded field where there are many millions of relevant works with similar titles in different languages and complicated ownership structures to understand and communicate.'').

[79] *See* SGA Initial at 2.

[80] *See* Barker Initial at 2 (urging inclusion of ''data fields for songwriters for each musical work,'' for matched and unmatched works); FMC Reply at 2 (''We agree that it's of utmost importance that the MLC database contain songwriter/composer names.''); The International Confederation of Societies of Authors and Composers (''CISAC'') & the International Organisation representing Mechanical Rights Societies (''BIEM'') Reply at 6 (''CISAC and BIEM strongly support the need for the inclusion of creators' names in the MLC Database since it is the safest information to identify a work (publishers may change, creators never change . . .''); MLC Reply at 32 (agreeing with inclusion of songwriter information for musical works); DLC Reply at 26 (agreeing ''with several commenters that songwriter and composer information should be collected and included in the database'').

[81] 17 U.S.C. 115(d)(3)(E)(ii)(IV), (iii)(I)(dd).

[82] MLC Initial at 13 n.6.

[83] Recording Academy Initial at 3 (urging Office to ''clarify that a producer is someone who was part of the creative process that created a sound recording''); RIAA Initial at 11 (stating ''producer'' should be defined as ''the primary person(s) contracted by and accountable to the content owner for the task of delivering the recording as a finished product''); MLC Reply at 35.

is needed operationally by the MLC,'' and that the ''producer'' field is not included in the Common Works Registration (''CWR'') format or the DDEX DSRF format(s) that the MLC plans to use.[84] Should the MLC be provided ''a single feed of authoritative sound recording data,'' the MLC ''proposes that the 'studio producer' information be included to the extent available.'' [85]

The term ''producer'' relates not only to the public database, but also to other open rulemakings, including information provided by digital music providers in reports of usage. In connection with its separate NPRM concerning reports of usage, notices of license, and data collection efforts, among other things, the Office is currently proposing an overarching definition that applies throughout its section 115 regulations to clarify that ''producer'' refers to the studio producer.[86]

3. Unique Identifiers

As noted, the statute requires that ISRC and ISWC codes, when available, be included in the MLC database.[87] According to the legislative history, ''[u]sing standardized metadata such as ISRC and ISWC codes, is a major step forward in reducing the number of unmatched works.'' [88] The legislative history also notes that ''the Register may at some point wish to consider after an appropriate rulemaking whether standardized identifiers for individuals would be appropriate, or even audio fingerprints.'' [89]

The DLC proposes that the MLC's database should include ''any standard identifiers . . . used for creators and copyright owners themselves,'' such as Interested Parties Information (IPI) [90] or International Standard Name Identifier (''ISNI''),[91] to the extent reasonably available to the MLC.[92] For its part, SoundExchange asserts that the ''CWR standard contemplates a much richer set of information about 'interested parties' linked to CISAC's Interested Party Information ('IPI') system, including information about songwriters and publishers at various levels,'' and so the database should include and make available a full set of information about interested parties involved in the creation and administration of the musical work, including shares and identifiers.'' [93]

The MLC plans to include the IPI number and ISNI in the public database, but does not believe it should be required to do so through regulation.[94] The MLC also plans to create its own proprietary identifier for each musical work in the database, and while it does not identify which, the MLC ''is giving careful consideration to the virtue of also including third party proprietary musical work identifiers to aid interoperability of its database.'' [95]

The Office seeks public input on issues relating to the inclusion of unique identifiers for musical works in the MLC's database, including whether regulations should require including IPI or ISNI, the MLC's own standard identifier, or any other specific additional standard identifiers reasonably available to the MLC, along with supporting rationale.

4. Information Related to Ownership and Control of Musical Works

By statute, the MMA database must include information related to the ownership of the musical work as well as the underlying sound recording, including ''the copyright owner of the work (or share thereof), and the ownership percentage of that owner,'' or, if unmatched, ''the ownership percentage for which an owner has not been identified.'' [96] The statute also requires a field called ''sound recording copyright owner,'' the meaning of which is discussed further below.

The DLC proposed that the MLC database should include, to the extent available to the MLC, ''all additional entities involved with the licensing or ownership of the musical work, including publishing administrators and aggregators, publishers and sub-publishers, and any entities designated to receive license notices, reporting, and/or royalty payment on the copyright owners' behalf.'' [97] Similarly, SoundExchange observes that ''[c]ommercialization of musical works often involves chains of publishing, sub-publishing and administration agreements that determine who is entitled to be paid for use of a work,'' and that the CWR standard contemplates gathering this information, such that the MLC database should also collect and make available this information.[98]

The MMA does not specifically call out music publishing administrators, that is, entities responsible for managing copyrights on behalf of songwriters, including administering, licensing, and collecting publishing royalties without receiving an ownership interest in such copyrights. One music publishing administrator noted that because ''the copyright owner may not necessarily be the entity authorized to control, license, or collect royalties for the musical work,'' the MLC's database should include information identifying the administrators or authorized entities who license or collect on the behalf of musical work copyright owners.[99] He also proposes that because ''a copyright owner's 'ownership' percentage may differ from that same owner's 'control' percentage,'' the MLC's database should include separate fields for ''control'' versus ''ownership'' percentage.[100] The MLC agrees with this approach.[101]

In addition, with respect to specific ownership percentages, which are required by statute to be made publicly available, SoundExchange raises the question of how the database should best address ''the frequent situation (particularly with new works) where the various co-authors and their publishers have, at a particular moment in time, collectively claimed more or less than 100% of a work.'' [102] Noting that it may be difficult for the MLC to withhold information regarding the musical work until shares equal 100% (the practice of other systems), it suggests the MLC ''make available information concerning the shares claimed even when they total more than 100% (frequently referred to

[84] MLC Reply at 35.

[85] *Id.* at 35–36.

[86] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[87] 17 U.S.C. 115(d)(3)(E)(ii)–(iii).

[88] Conf. Rep. at 7.

[89] *Id.*

[90] IPI is ''[a] unique identifier assigned to rights holders with an interest in an artistic work, including natural persons or legal entities, made known to the IPI Centre. The IPI System is an international registry used by CISAC and BIEM societies.'' U.S. Copyright Office, Glossary, *https://www.copyright.gov/policy/unclaimed-royalties/glossary.pdf.*

[91] ISNI is ''[a] unique identifier for identifying the public identities of contributors to creative works, regardless their legal or natural status, and those active in their distribution. These may include researchers, inventors, writers, artists, visual creators, performers, producers, publishers, aggregators, and more. A different ISNI is assigned for each name used. ISNI is not widely in use across the music industry.'' U.S. Copyright Office, Glossary, *https://www.copyright.gov/policy/unclaimed-royalties/glossary.pdf.*

[92] DLC Initial at 21; DLC Reply Add. at A–16.

[93] SoundExchange Initial at 8; *see id.* at 7–8 (''Reflecting all applicable unique identifiers in the MLC Database will allow users of the MLC Database readily to match records in the database to other databases when ISWC is not included in one or the other of the databases.'').

[94] MLC Reply at 33.

[95] *Id.* at 34.

[96] 17 U.S.C. 115(d)(3)(C)(E)(ii)–(iii).

[97] DLC Reply Add. at A–16.

[98] SoundExchange Initial at 8.

[99] Barker Initial at 2.

[100] *Id.* at 3.

[101] MLC Reply at 32.

[102] SoundExchange Initial at 8–9.

as an 'overclaim') or less than 100% (frequently referred to as an 'overclaim').'' [103]

The Office tentatively concludes that it will be beneficial for the database to include information related to all persons or entities that own or control the right to license and collect royalties related to musical works in the United States, including that music publishing administrator and control information would be valuable additions. With respect to the question SoundExchange raises regarding works that may reflect underclaiming and overclaiming of shares, the Office suggests that the MLC's dispute resolution committee may be an appropriate forum to consider this issue, as part of the committee's charge to establish policies and procedures related to resolution of disputes related to ownership interests in musical works.[104] In general, the Office seeks public input on any further issues related to inclusion of this information in the public musical works database, including proposed regulatory approaches.

5. Additional Information Related to Identifying Musical Works and Sound Recordings

Commenters proposed that the public database include various other fields to identify the musical work at issue or the sound recording in which it is embodied. With respect to musical works, some commenters pointed to fields included in the existing Common Works Registration (CWR) format, and supported inclusion of information relating to alternate titles for musical works,[105] whether the work utilizes samples and medleys of preexisting works,[106] and opus and catalogue numbers and instrumentation of classical compositions.[107] With respect to sound recordings, commenters suggested inclusion of information relating to track duration, version, and release date of sound recording.[108]

The MLC acknowledges the merits of including such information, noting it ''recognizes CWR as the *de facto* industry standard used for registration of claims in musical works, and intends to use CWR as its primary mechanism for the bulk electronic registration of musical works data.'' [109] While cautioning that it ''continues to believe that overregulation is unnecessary and may be detrimental to the MLC's ability to adapt its musical works database as necessary to ensure its usefulness in identifying musical works,'' [110] it amended its proposed regulatory language to clarify that the database would include ''alternative titles of the musical work, and to the extent available to the mechanical licensing collective, the track duration, version title and release date of any sound recordings embodying a particular musical work.'' [111] The MLC's proposal would also require the database to include additional fields ''reported to the mechanical licensing collective as may be useful for the identification of musical works that the mechanical licensing collective deems appropriate to publicly disclose.'' [112] In a separate concurrent notice of proposed rulemaking, the Office has proposed requiring that the MLC report certain data fields in royalty statements provided to copyright owners to the extent such information is ''known'' to the MLC as a regulatory floor, while encouraging the MLC to report additional information.[113] And the Office has issued a notice of proposed rulemaking regarding the circumstances under which digital music providers must provide these and other fields to the MLC in reports of usage.[114]

Here, too, the Office would like to avoid a regulatory approach that discourages the MLC from including additional fields that it determines may be useful to include in the public database. The Office invites further public comment on these issues, including whether a regulatory structure similar to that proposed for the MLC's provision of data in royalty statements to copyright owners is appropriate regarding information to be made publicly available in the MLC's database, including what, if any, additional fields should be required as part of a regulatory floor.

6. Performing Rights Organization Affiliation

A few commenters contend that the MLC's database should include performing rights organization (''PRO'') affiliation, with MIC Coalition for example asserting that ''[a]ny data solution must not only encompass mechanical rights, but also provide information regarding public performance rights, including PRO affiliation and splits of performance rights.'' [115] The MLC points out that its ''primary responsibility is to engage in the administration of mechanical rights and to develop and maintain a mechanical rights database,'' and that ''gather[ing], maintain[ing], updat[ing] and includ[ing] . . . performance rights information—which rights it is not permitted to license—would require significant effort which could imperil [its] ability to meet its statutory obligations with respect to mechanical rights licensing and administration by the [license availability date].'' [116] FMC agrees, and further notes the challenge in keeping PRO affiliation information accurate and up-to-date.[117] The largest PROs, The American Society of Composers, Authors, and Publishers (''ASCAP'') and Broadcast Music, Inc. (''BMI''), similarly object that because ''music performing rights organizations such as BMI and ASCAP all have comprehensive databases on musical

[103] *Id.; see id.* at 15 (''[U]sers of the MLC Database should be able to access information about situations in which there are conflicting claims to a work, including an overclaim (*i.e.,* a situation where putative copyright owners have claimed shares that collectively amount to more than 100% of the work), so as to be able to understand the extent of the overlap and the rightsholders whose claims are involved.'').

[104] 17 U.S.C. 115(d)(3)(K).

[105] *See* RIAA Initial at 8 (''Sometimes the official title of a song includes an alternate title, or a primary title followed by a second, parenthetical title.''); MLC Reply at 32 (agreeing with inclusion of alternate titles for musical works).

[106] SoundExchange Initial at 9 (noting that the CWR standard contemplates provision of such information).

[107] *Id.* (noting that the CWR standard contemplates provision of such information).

[108] *See* MLC Reply at 33, App. E (agreeing with inclusion of duration, version, and release year of the sound recording, to the extent available to the MLC); Recording Academy Initial at 3 (noting such information would ''help distinguish between songs that have been recorded and released under different titles or by different artists multiple times''); RIAA Initial at 6–7 (same);. RIAA recommends revising the ''sound recording name'' field to ''sound recording track title,'' or in the alternative, ''sound recording name/sound recording track title.'' *Id.* at 10–11.

[109] MLC Reply at 38.

[110] *Id.* at 32.

[111] *Id.* at App. E.

[112] *Id.*

[113] U.S. Copyright Office, Notice of Proposed Rulemaking, *Royalty Reporting and Distribution Obligations of the Mechanical Licensing Collective,* Dkt. No. 2020–6, published elsewhere in this issue of the **Federal Register**.

[114] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[115] MIC Coalition Initial at 2. *See* DLC Initial at 20 (suggesting that including PRO affiliation ''will ensure that the MLC's database is fully usable, including as a resource for direct licensing activities); *see* Barker Initial at 8–9.

[116] MLC Reply at 36.

[117] FMC Reply at 3 (''[I]t's difficult to see how including PRO information in the MLC database could work—as the MLC won't be paying PROs, it's hard to envision what would incentivize keeping this data accurate and authoritatively up to date. Repertoire transparency is important, but it is not the Copyright Office's job to facilitate MIC's members' efforts to bypass Performing Rights Organizations that offer songwriters collective representation.'').

works ownership rights, and these databases are publicly available,'' ''administration of data with respect to the licensing of public performing rights does not require government intervention.'' [118]

Because the MMA explicitly restricts the MLC from licensing performance rights, it seems unlikely to be prudent or frugal to require the MLC to expend resources to maintain PRO affiliations for rights it is not permitted to license.[119] Having considered these comments, the statutory text, and legislative history, the Office tentatively concludes against requiring the MLC to include PRO affiliation in its database. This conclusion does not inhibit PRO access or use of the database for their own efforts, and explicitly permits bulk access for a fee that does not exceed the MLC's marginal cost to provide such access; nor does it restrict the MLC from optionally including such information.[120]

7. Terminations

Title 17 allows, under certain circumstances, authors or their heirs to terminate an agreement that previously granted one or more of the author's exclusive rights to a third party.[121] One commenter suggests that to the extent terminations of musical work grants have occurred, the MLC's database should include ''separate iterations of musical works with their respective copyright owners and other related information, as well as the appropriately matched recording uses for each iteration of the musical work, and to make clear to the public and users of the database the appropriate version eligible for future licenses.'' [122] Separately, as addressed in a parallel rulemaking, the MLC has asked that the Office require digital music providers to include server fixation dates for sound recordings, contending that this information will be helpful to its determination whether particular usage of musical works is affected by the termination of grants under this statutory provision.[123] The DLC has objected to this request.[124]

Understanding that termination issues can be complex, the Copyright Office notes that presumably, any requirement to denote whether termination rights are relevant should be conditioned upon information provided to the MLC, and/or otherwise reasonably available to it. The Copyright Office seeks public input on issues that should be considered relating to whether the proposed rule should address the inclusion of termination information in the MLC's database.

8. Data Provenance

The DLC contends that if the MLC's database includes third-party data, ''it should be labeled as such.'' [125] The DLC's proposed language suggests that for musical work copyright owner information, the MLC's database should indicate ''whether the ownership information was received directly from the copyright owner or from a third party.'' [126] SoundExchange agrees, stating that ''the MLC Database should identify the submitters of the information in it, because preserving that provenance will allow the MLC and users of the MLC to make judgments about how authoritative the information is.'' [127] Others commenters noted that for sound recordings, first-hand data is more likely to be accurate.[128] Separately, the Copyright Office is addressing certain sourcing issues with respect to data collection efforts and information provided by digital music providers in a parallel rulemaking proceeding.[129]

The Office appreciates that issues related to data sourcing, confidence in data quality, accurate copyright ownership information, and agency or licensing arrangements, can be nuanced. The Office tentatively believes that the MLC may be better-suited to explore the best way to promote accuracy and transparency in issues related to data provenance without such regulatory language, including through the policies and practices adopted by its dispute resolution and operations committees, and by establishing digital accounts through which copyright owners can view, verify, or adjust information.

The Office seeks further public input on any issues that should be considered relating to the identification of data sourcing in the MLC's database, including whether (and how) third-party data should be labeled.

9. Historical Data

Again pointing to the CWR standard, SoundExchange asserts that the MLC database should ''maintain and make available historical interested party information so it is possible to know who is entitled to collect payments for shares of a work both currently and at any point in the past.'' [130] As noted above, the DLC has also proposed that the MLC database include ''information regarding each entity in the chain of copyright owners and their agents for a particular musical work'' as well as ''relational connections between each of these entities for a particular musical work.'' [131] The MLC sought clarity about the DLC's specific proposal, suggesting ''[i]t is unclear whether the DLC . . . is referring to the entire historical chain of title for each musical work. If so, the MLC objects that ''such information is voluminous, burdensome to provide and maintain, and in this context unnecessary and must not be required.'' [132] The MLC intends, however, to maintain information in its database about ''each and every entity that, at any given point in time, owns a share of the right to receive mechanical royalties for the use of a musical work in covered activities.'' [133]

The Copyright Office tentatively agrees with the MLC's approach to focus on current relationships with respect to this rulemaking, but welcomes further public input.[134] The Office notes that separately, the MLC must maintain all material records of the operations of the mechanical licensing collective in a secure and reliable manner, and such information will also be subject to audit.[135]

[118] ASCAP & BMI Reply at 2.

[119] 17 U.S.C. 115(d)(3)(C)(iii) (limiting administration of voluntary licenses to ''only [the] reproduction or distribution rights in musical works for covered activities.'').

[120] *Id.* at 115(d)(3)(E)(v). *See* Barker Initial at 9.

[121] 17 U.S.C. 203, 304(c), 304(d).

[122] Barker Initial at 4.

[123] MLC Reply at 19, 55. *See also* U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[124] DLC *Ex Parte* Letter Feb. 14, 2020 (''DLC *Ex Parte* Letter #1'') at 3; DLC *Ex Parte* Letter #1 Presentation at 15; DLC *Ex Parte* Letter Feb. 24, 2020 (''DLC *Ex Parte* Letter #2'') at 4; DLC *Ex Parte* Letter Mar. 4, 2020 (''DLC *Ex Parte* Letter #3'') at 5.

[125] DLC Initial at 20.

[126] DLC Reply Add. A–15–16.

[127] SoundExchange Initial at 10–11.

[128] The American Association of Independent Music (''A2IM'') & RIAA Reply at 2 (asserting MLC should be required to obtain its sound recording data from a single authoritative source); Jessop Initial at 3 (''The MLC should obtain sound recording information from as close to the source as possible. In practice this means from the record label or someone directly or indirectly authorized to manage this information for them.'').

[129] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[130] SoundExchange Initial at 10.

[131] DLC Initial at 20.

[132] MLC Reply at 34.

[133] *Id.*

[134] The Office does not envision language *prohibiting* the MLC from providing such historical information.

[135] 17 U.S.C. 115(d)(3)(M)(i); *id.* at 115(d)(3)(D)(ix)(II)(aa).

C. Sound Recording Copyright Owner Information and Disclaimers or Disclosures in MLC Public Database

RIAA, and individual record labels, expressed concern about which information will populate and be displayed to satisfy the statutory requirement to include ''sound recording copyright owner'' (SRCO) in the MLC's database. Specifically, RIAA explained that under current industry practice, digital music providers send royalties pursuant to information received from record companies or others releasing recordings to DMPs ''via a specialized DDEX message known as the ERN (or Electronic Release Notification),'' which is ''typically populated with information about the party that is entitled to receive royalties (who may or may not be the actual legal copyright owner), because that is the information that is relevant to the business relationship between record labels and DMPs.'' [136] In short, information in ''the ERN message is not meant to be used to make legal determinations of ownership.'' [137] RIAA notes the potential for confusion stemming from the SRCO field in the MLC database being populated from the labels' ERN messages—for both the MLC (*i.e.,* the MLC could ''inadvertently misinterpret or misapply SRCO data''), and users of the free, public database (*i.e.,* they could mistakenly assume that the sound recording copyright owner information is authoritative with respect to ownership of the sound recording).[138] Separate but relatedly, SoundExchange notes that it ''devotes substantial resources'' to tracking changes in sound recording rights ownership, suggesting that inclusion of this field ''creates a potential trap for the unwary.'' [139]

Those concerns were echoed in *ex parte* meetings with individual record labels. Universal Music Group (''UMG'') explained that ''actual copyright ownership is irrelevant'' in the digital supply chain, as ''DMPs only need to know who to pay and, maybe, who to call,'' whereas record companies separately track copyright ownership information.[140] UMG suggested that the MLC's inclusion of a field labeled ''sound recording copyright owner'' might confuse relations between the actual copyright owner and the record label conveying information to the DMP, where the label is functioning as a non-copyright owner distributor through a licensing or press and distribution (P&D) arrangement.[141] Sony Music (''Sony'') expressed similar concerns, suggesting that the Office's regulations specify how the ''sound recording copyright owner'' line in the MLC's database should be labeled or defined to minimize confusion.[142] Specifically, Sony suggested that three fields—DDEX Party Identifier (DPID), LabelName, and PLine—may provide indicia relevant to determining sound recording copyright ownership, noting that ''DIY artists and aggregators serving that community'' may be most likely to populate the DPID field.[143] In reply comments, A2IM & RIAA also identified these same three fields.[144]

The Copyright Office received no comments disputing the labels' description of industry practice. As the MMA also requires ''sound recording copyright owner'' to be reported by DMPs to the MLC in monthly reports of usage, the Office has separately proposed a rule regarding which information should be included in such reports to satisfy this requirement. That rule proposes that DMPs can satisfy this obligation by reporting information in each of the fields identified by the labels: DDEX Party Identifier (DPID), LabelName, and PLine.[145] The Office seeks public comment regarding which data the proposed rule should require including in the MLC database to satisfy the statutory requirement, including whether to require inclusion of multiple fields to lessen the perception that a single field contains definitive data regarding sound recording copyright ownership information.[146] The Office also welcomes comments related to the labelling of such field(s). For example, contending that in many cases, the PLine names an individual who may wish not to be listed in a public database, A2IM & RIAA suggest that the MLC database include the DPID name, publicly listed as ''Party Delivering the Sound Recording to the DMP'' and the LabelName, listed as ''Releasing Party (if provided).[147] Finally, since these concerns connect directly to the ERN standard, the Office welcomes any information regarding whether it is likely that the ERN standard may evolve in a relevant manner, and again reiterates its commitment to ensuring appropriate regulatory flexibility.

Relatedly, the Office also notes that it has received persuasive comments requesting that the MLC be required to include a conspicuous disclaimer regarding sound recording copyright ownership information in its database. For example, RIAA suggests that the MLC should be required to ''include a clear and conspicuous disclaimer on the home screen of the public database that it does not purport to provide authoritative information regarding sound recording copyright owner information.'' [148] A2IM & RIAA, CISAC & BIEM, and SoundExchange agree that the MLC's database should display such a disclaimer.[149] And the MLC itself has agreed to display a disclaimer that its database should not be considered an authoritative source for sound recording information.[150] Similarly, given the current record regarding these issues, the Office is not presently inclined to require that the MLC include information relating to sound recording copyright owner with the same prominence as other information related to matched and unmatched musical works. The Office invites comment on these issues.

D. Access to Public Information in the MLC's Database

As noted above, the statute directs the Copyright Office to ''establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the [MLC's] musical works database.'' [151] The database must ''be made available to members of the public in a searchable, online format,

[136] RIAA Initial at 2. Although the RIAA's initial comments suggested that the ERN feed included a field labeled sound recording copyright owner (SRCO), upon reply, it clarified that there is no such specific field. *See* A2IM & RIAA Reply at 8 n.5.

[137] RIAA Initial at 2.

[138] *Id.* at 3; *see id.* (''If database users seek out and enter into sound recording licenses with the wrong parties and/or make payments to the wrong parties—because they misunderstand what the data in the SRCO column of the MLC database actually represents—that would negatively impact our member companies and the artists whose recordings they own and/or exclusively license.'').

[139] SoundExchange Initial at 11–12.

[140] UMG & RIAA *Ex Parte* Letter at 2.

[141] *Id.* at 2–3.

[142] Sony & RIAA *Ex Parte* Letter at 1–2.

[143] *Id.*

[144] A2IM & RIAA Reply at 8–10.

[145] U.S. Copyright Office, Notice of Proposed Rulemaking, *Music Modernization Act Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment,* Dkt. No. 2020–5, published elsewhere in this issue of the **Federal Register**.

[146] 17 U.S.C. 115(d)(3)(E)(ii), (iii).

[147] A2IM & RIAA Reply at 9–10.

[148] RIAA Initial at 10.

[149] A2IM & RIAA Reply at 9 (urging Office to require ''a strong, prominent disclaimer'' to ''make[ ] it explicitly clear that the database does not purport to provide authoritative information about sound recording copyright ownership''); CISAC & BIEM Reply at 8 (''CISAC and BIEM also encourage the use of appropriate disclaiming language in regard to the content of the database, where necessary.''); SoundExchange Initial at 12 (''At a minimum, the MLC Database should at least include a disclaimer that the MLC Database is not an authoritative source of sound recording rights owner information.'').

[150] MLC Reply at 37.

[151] 17 U.S.C. 115(d)(3)(E)(vi).

free of charge.'' [152] The MLC must make the data available ''in a bulk, machine-readable format, through a widely available software application,'' to digital music providers operating under valid notices of license, compliant significant nonblanket licensees, authorized vendors of such digital music providers or significant nonblanket licensees, and the Copyright Office, free of charge, and to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.'' [153] The legislative history stresses the importance of the MLC's database and making it available to ''the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.'' [154] It adds that ''[i]ndividual lookups of works shall be free although the collective may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [155] And it further states that ''there shall be no requirement that a database user must register or otherwise turn over personal information in order to obtain the free access required by the legislation.'' [156]

1. Method of Access

The DLC maintains that the MLC should not be required to provide more than ''[b]ulk downloads (either of the entire database, or of some subset thereof) in a flat file format, once per week per user,'' and ''[o]nline song-by-song searches to query the database, *e.g.,* through a website.'' [157] The DLC also contends that ''it would be unreasonable for digital music providers and significant nonblanket licensees to foot the bill for database features that would only benefit entities or individuals who are not paying a fair share of the MLC's costs,'' [158] and that APIs are ''not needed by digital music providers and significant nonblanket licensees.'' [159]

In response, multiple commenters assert that real-time access to the MLC's database—not merely a weekly file—is necessary to meet the goals of the statute. For example, SoundExchange replied that ''[w]eekly downloads of a copy of the database are distinctly different and less useful than real-time access to current data,'' noting that the MLC will be making constant updates and thus a weekly download would quickly become out of date.[160] SoundExchange asserts that failure to provide real-time access ''could unfairly distort competition for musical work license administration services by giving the MLC and its vendors preferred access to current data,'' and that the Office should ''maintain[ ] a level playing field in the market for musical work license administration services.'' [161] A2IM & RIAA also note that it would be ''damaging to the entire music ecosystem for third parties to utilize stale data, especially if they use it in connection with some sort of public-facing, data-related business or to drive licensing or payment decisions.'' [162]

Further, RIAA, SoundExchange, FMC, MAC, and the Recording Academy all stress the importance of real-time access to the MLC's database through APIs.[163] MAC asserts that having API access and ensuring interoperability ''with other systems is the best way to make certain the MLC database becomes part of the overall music licensing ecosystem.'' [164] SoundExchange challenges the DLC's assertion that providing APIs would be financially burdensome, stating that ''it is not obvious that there would be a significant cost difference between providing full API access and the diminished access the DLC describes.'' [165] Sound Exchange also notes that in the designation of the mechanical licensing collection, the Office stated that both applicants intended to develop APIs.[166]

At this time, the Office is tentatively disinclined to regulate the precise format in which the MLC provides bulk access to its database (*e.g.,* APIs), so as to provide the MLC flexibility as technology develops in providing database access. The Office notes, however, that Congress clearly envisioned use of the MLC's database by entities other than digital music providers and significant nonblanket licensees.[167] Moreover, the MLC's database is meant to serve as an authoritative source of information regarding musical work ownership information,[168] and provide transparency. These goals support real-time access to the MLC's database, either via bulk access or online song-by-song searches.[169]

The Office seeks public input on any issues that should be considered relating to access to the MLC's database, including proposed regulatory language that would facilitate the MLC's provision of real-time access to the database (bulk and online song-by-song).

2. Marginal Cost

Despite the statute and legislative history stating third parties may be

[152] *Id.* at 115(d)(3)(E)(v).

[153] *Id.* at 115(d)(3)(E)(v).

[154] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8; Conf. Rep. at 7.

[155] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

[156] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 9; Conf. Rep. at 7.

[157] DLC Initial at 21.

[158] *Id.*

[159] DLC Reply at 26.

[160] SoundExchange Reply at 4–5, 7 (noting that its Rights Management Department is ''devoted to ensuring that our rights management database is always populated with the most current information about who is entitled to be paid for use of the sound recordings in our repertoire database,'' and that they ''make changes to our rights management database all day every day''); *see* SoundExchange Initial at 13–14 (''no third party maintaining a local musical work repertoire database will ever be able to obtain and maintain ownership information as current and accurate as the MLC's. Providing robust API access to the MLC Database will discourage the creation and maintenance of less accurate local alternatives, promoting accurate licensing of and payment for musical works.'').

[161] SoundExchange Reply at 9. *See also id.* at 5 (''Making only last week's data available to bulk users would also result in a curious situation where members of the public with free access to the MLC Database to search for information on individual works would seem to have access to more current data than commercial users with bulk access, who in some cases would have to pay for such access.'').

[162] A2IM & RIAA Reply at 7.

[163] RIAA Initial at 11 (''To facilitate efficient business-to-business use of the MLC database, the regulations should require the MLC to offer free API access to registered users of the database who request bulk access.''); SoundExchange Reply at 4–5; FMC Reply at 3 (concurring with SoundExchange's recommendations about API access, ''including the recommendations that API access include unique identifiers, catalog lookup, and fuzzy searching''); Recording Academy Initial at 4 (''ensuring that the database has a user-friendly API and 'machine-to-machine' accessibility is important to its practical usability'').

[164] MAC Initial at 2.

[165] SoundExchange Reply at 8.

[166] *Id.* at 3 (citing 84 FR at 32289). In its September 2019 notification of inquiry, the Office noted that ''[MLC] stated that it strongly support[s] the adoption of standards, formats, and frameworks that allow information to be easily and accurately shared throughout the industry, and that good systems functioning and architectural practices instruct that components should have proper APIs.'' 84 FR at 49972.

[167] *See* 17 U.S.C. 115(d)(3)(E)(v) (granting bulk access to the MLC's database to ''[a]ny other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity''). *See also* RIAA Initial at 11 (asserting that record labels ''anticipate making frequent use of the MLC database'').

[168] *See* 17 U.S.C. 115(d)(3)(E), (e)(20).

[169] *See* MIC Coalition Initial at 3 (''The opaqueness of the current music marketplace creates uncertainty that disproportionately harms small artists and independent publishers and stifles innovation. All stakeholders in the music marketplace benefit when current and accurate information about copyright ownership is easily accessible. We believe this transparency is a necessary baseline in creating a more sustainable and equitable system, and a good step toward supporting greater fairness in the music marketplace.'').

charged the ''marginal cost'' of being provided bulk access, A2IM & RIAA express concern about making the MLC's database available to third parties ''unless the fee those third parties are required to pay takes into account the cost for the MLC to acquire that data and all of the costs and hard work that goes into creating, compiling, verifying, deduping, etc. the sound recording data that will reside within the MLC database and the potential opportunity costs to [record labels] of having that data available to third parties via the MLC.'' [170] RIAA contends that otherwise third-party businesses ''would be able to access that data at a highly subsidized, below-market price.'' [171] RIAA asks the Office to define ''marginal cost'' to ''include not just the cost of creating and maintaining the bulk access, but also the cost to the MLC of acquiring the data, including payment to the data source, for the hard work of aggregating, verifying, deduping and resolving conflicts in the data.'' [172]

The Office tentatively declines this request. It is not clear that ''marginal cost'' is a vague term, and at this point, the Office believes the MLC should be able to determine the best pricing information in light of its operations, based on the statutory and legislative history language.[173]

3. Abuse

The Office does welcome comments regarding proposed regulatory language to deter abusive third-party access to the database. The legislative history states that in cases of block efforts by third parties to bypass the marginal cost recovery for bulk access (*i.e.,* abuse), the MLC ''may implement reasonable steps to block efforts to bypass the marginal cost recovery for bulk access if it appears that one or more entities are attempting to download the database in bulk through repeated queries.'' [174] Both the MLC and DLC propose regulatory language that would provide the MLC discretion to block efforts to bypass the marginal cost recovery.[175] A2IM & RIAA also suggest that the MLC be required to implement technological protection measures (''TPMs'') to reduce the likelihood of third parties ''scraping'' data without paying any fee.[176] The Office agrees that, in principle, the MLC should at a minimum have such discretion. The Office seeks public input on any issues that should be considered relating to regulatory language concerning the MLC's ability to block efforts to bypass the marginal cost recovery, particularly how to avoid penalizing legitimate users while providing the MLC flexibility to police abuse, and whether regulatory language should address application of TPMs.

4. Restrictions on Use

CISAC & BIEM ask the Copyright Office to issue regulations defining ''strict terms and conditions'' for use of data from the MLC's database by digital music providers and significant nonblanket licensees (and their authorized vendors), ''including prohibition for DSPs to use data for purposes other than processing uses and managing licenses and collaborating with the MLC in data collection.'' [177] By contrast, the DLC maintains that ''licensees should be able use the data they receive from the MLC for any legal purpose.'' [178] While the MLC ''agrees that there should be some reasonable limitation on the use of the information to ensure that it is not misappropriated for improper purposes'' and ''intends to include such limitation in its terms of use in the database,'' the MLC believes appropriate terms of use should address potential misuse of information from the MLC's database (rather than regulations).[179]

While the Office agrees that it will be important for the MLC to develop reasonable terms of use to address potential misuse of information in its database and appreciates the role that contractual remedies may play to deter abuse, the MMA directs the Office to issue regulations regarding ''usage restrictions,'' in addition to usability and interoperability of the database.[180] The Office is mindful of the risk of misuse. For example, bad actors could acquire and misrepresent information, or exploit personally identifiable information (''PII'') that must be publicly available under the statute (*e.g.,* copyright owner of the musical work (or share thereof), and the ownership percentage of that owner). At the same time, the Office recognizes that potential regulations and any terms of use issued by the MLC should not be overly broad or impose unnecessary restrictions upon good faith users.[181]

The Office seeks public input on any issues that should be considered relating to restrictions on usage of information in the MLC's database, including whether regulatory language should address remedies for misuse (and if so, how and why), or otherwise provide a potential regulatory floor for the MLC's terms of use. The Office invites parties to provide specific proposed regulatory language for the Office to consider and for others to comment upon.

Dated: April 15, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

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[170] A2IM & RIAA Reply at 7.

[171] *Id.*

[172] *Id.* at 8.

[173] *See* Conf. Rep. at 7 (''Given the importance of this database, the legislation makes clear that it shall be made available to the Copyright Office and the public without charge, with the exception of recovery of the marginal cost of providing access in bulk to the public.''). *See also* Music Reports Initial at 5 (''Music Reports notes that the marginal cost of automated daily data delivery protocols is relatively trivial, and calls upon the Office to ensure that such automated delivery be made available upon the first availability of the MLC's database, and that the fee schedule scrupulously adhere to the 'marginal cost' standard.'').

[174] H.R. Rep. No. 115–651, at 8; S. Rep. No. 115–339, at 8–9; Conf. Rep. at 7.

[175] MLC Initial at 25; DLC Reply Add. at A–17.

[176] A2IM & RIAA Reply at 7.

[177] CISAC & BIEM Initial at 4.

[178] DLC Initial at 21.

[179] MLC Reply at 37–38.

[180] 17 U.S.C. 115(d)(3)(E)(vi).

[181] *See* Conf. Rep. at 6 (''Music metadata has more often been seen as a competitive advantage for the party that controls the database, rather than as a resource for building an industry on . . . .'').

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